Admissibility of admission and confession

Admissions

Admission.-Documents containing admission.-Exclusion of evidence.-Document in question is a proceeding of Board.-Document containing admission can be explained by makers thereof.-Neither Section 94 nor Section 92 of Evidence Act has applicability.-Oral evidence in proceedings of Board admissible in evidence.

Section 94 will come into play only when there is a document and the language of it has to be considered with reference to a particular factual situation. That Section will apply only when the execution of the document is admitted and no vitiating circumstances has been put forward against the same. In the present case the document in question is a proceeding of the Board. It at all, it can only be said that the said document contains an admission made by the signatories thereto that they had checked the materials and the serviceability thereof. It is well settled that an admission can be explained by the makers thereof. In *Nagubai vs. B. Sharma Rao*, AIR 1956 SC 593 the Court held that an admission is not conclusive as to the truth of the matter stated therein and it is only a piece of evidence, the weight to be attached to which must depend upon the circumstances under which it is made. The Court said that it may be shown to be erroneous or untrue so long as the person to whom it was made has not acted upon it at the time when it might become conclusive by way of estoppel. The same principle has been reiterated in *K.S. Srinivasan vs. Union of India*, AIR 1958 SC 419, *Basant Singh vs. Janki Singh*, AIR 1967 SC 341 and *P. Ex. S. Co-op. TFS vs. State of Haryana*, AIR 1974 SC 1121.

The appellants herein contended before the High Court that the relevant provision of the Evidence Act is Section 92, Proviso 1. The same contention was repeated before us. In our view neither Section 92 nor Section 94 is attracted in this case. Hence, the view of the High Court that the oral evidence given by PWs. 6, 21 and 24 is inadmissible is totally erroneous.

General Court Martial and others vs. Aniltej Singh Dhaliwal, AIR 1998 SC 983

Admission.-Effect of.-Admission is not conclusive but is sufficient evidence unless explained by other circumstances. *Sitaramacharya (dead) through LRs. v. Gururajacharya (dead) through LRs.,* AIR 1997 SC 806

Admission.-Effect of.-It is a substantive evidence of fact.-The weight to be attached to admission is a matter of appreciation of such evidence. Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party who appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence. *Bharat Singh and others v. Mst. Bhagirathi,* AIR 1966 SC 405

Admission.-Effect of.-It is not conclusive proof of the matter admitted but in certain circumstances it may operate as estoppel. *K.S. Srinivasan v. Union of India,* AIR 1958 SC 419

Admission.-Effect of.-The weight of admission depends on the circumstances in which it was given. An admission is not conclusive as to the truly of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as to person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel. *Nagubai Ammal and others v. B. Shama Rao and others,* AIR 1956 SC 593

Admission.-Facts.-Effect of.-Distinction with estoppel. Admission is an important piece of evidence. But it is open to the person who made the admission to prove that those admissions are not true. Admission is one thing, estoppel is another. Admission is a piece of evidence but estoppel creates title. *Dattatraya v. Rangnath Gopalrao Kawathekar,* AIR 1971 SC 2548

Admission. -Facts.-Nature of evidence.-Admission even if is not confronted to the party making it, is a substantive evidence and can be relied. An admission is substantive evidence of the fact admitted and that admissions duly proved are admissible evidence irrespective of whether the party making them appear in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admission. *Union of India v. Moksh Builders and Financiers Ltd. and others etc.,* AIR 1977 SC 409

Admission.-Operation against maker of admission.-Necessity of conclusive admission of fact by witness before such statement may operate against the maker. Before the right of a party can be considered to have been defeated on the basis of an alleged admission by him, the implication of the statement made by him must be clear and conclusive. There should be no doubt or ambiguity about the alleged admission. *Chikkam Koteswara Rao v. Chikkam Subbarao and others,* AIR 1971 SC 1542

Admission.-Pleadings.-Effect of.- It is binding on the parties making such admission in all subsequent proceedings. *Basant Singh v. Janki Singh,* AIR 1967 SC 341

Admission.-Pleadings.-Defendant making plain admission entitling plaintiff to succeed.-Rule applicable where there is clear admission of facts on the face of which it is impossible for defendant to succeed.

In the objects and reasons set out while amending Rule 6, of Order 12 C.P.C. it is stated that "where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. Where other party has made a plain admission entitling the former to succeed, it should apply and also whenever there is a clear admission of facts in the face of which it is impossible for the party making such

admission to succeed. *Uttam Singh Dugal & Co. Ltd. vs. Union Bank of India and others,* AIR 2000 SC 2740

Admission.-Pleadings.-Suit for recovery of money.-Suit decreed on statement made in proceedings of meeting of Board of Directors and the letter when read together leads to unambiguous and clear admission to the extent to which admission made.-Trial Court justified in holding that there is an unequivocal admission of contents of documents.-Admissions are either in pleadings or in answer to interrogatories or implied from pleadings by non-traverse.-Decree cannot be challenged on ground as to what kind of admissions are covered by Order 12, Rule 6 of C.P.C.

When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.

The petitioner does not deny a word of what was recorded therein and what is denied is the allegation to the contrary. The denial is evasive and the learned Judge is perfectly justified in holding that there is an unequivocal admission of the contents of the documents and what is denied is extent of the admission but the increase in the liability is admitted. *Uttam Singh Dugal & Co. Ltd. vs. Union Bank of India and others,* AIR 2000 SC 2740

Admission.-Reliance on.- Permissibility.-Earlier statement used to discredit a witness.-Effect of. There is a cardinal distinction between a party who is the author of a prior statement and a witness who is examined and is sought to be dis- credited by use of his prior statement. In the former case an admission by a party is substantive evidence if it fulfills the requirements

of Section 21 of the Evidence Act: in the later case a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence proprio vigore: in the latter case the Court cannot be invited to disbelieve a witness on the strength of a prior contradictory statement unless it has been put to him, as required by Section 145 of the Evidence Act. *Biswanath Prasad v. Dwarka Prasad,* AIR 1974 SC 117:

Admission.-Vicarious admission.- Plaintiff making statement that if two persons take special oath, their statement would be admissible to him.-The statement of such person would be an admission by the plaintiff. It will be noticed that in the present case the oath was administered as per plaintiff petitioner's statement and, therefore, there is thus no manner of doubt that the oath taken by two persons in pursuance of the offer of the petitioner amounted to admission of respondent's claim on his part within the meaning of Section 20 of the Evidence Act. The two persons were the nominees of the plaintiff and the statements of the nominees by virtue of Section 20 of the Evidence Act would be treated as an admission of the parties. *K.M. Singh v. Secretary, Association of Indian Universities and others,* AIR 1992 SC 1356

Admission.-Withdrawal of.-Suit for partition.-Definite stand taken in written statement that out of 10 immovable properties, seven were joint family properties and remaining three exclusively belonged to defendants.-Amendment introducing an event that those seven properties were in possession of trespassers.-Withdrawal of admission made not permissible.-Amendment cannot be allowed.

No case was made out by the respondents, contesting defendants, for amending the written statement and thus attempting to go behind their admission regarding 5 out of 7 remaining items out of 10 listed properties in Schedule-A of the plaint. However, so far as Schedule-A properties are concerned, from the very inception the defendants' case qua those properties was that plaintiff has no interest therein. By proposed amendment they wanted to introduce an event with reference to those very properties by

submitting that they had been in possession of trespassers. Such amendment could not be said to have in any way adversely or prejudicially affected the case of the plaintiff or displaced any admission on their part qua Schedule-B properties which might have resulted into any legal right in favour of the plaintiff. Therefore, so far as Schedule-B properties were concerned, the amendment could not be found fault with. Hence exercising the powers under Article 156 of the Constitution of India we would not be inclined to interfere with that part of the decision of the High Court allowing the amendment in the written statement, even though strictly speaking High Court could not have interfered with even this part of the order under Section 115, C.P.C. In the result, this appeal is partly allowed. The respondents' application for amending the written statement in so far as it sought to withdraw earlier admission about 5 properties out of the remaining seven items of Schedule-A of the plaint shall stand dismissed. However, order regarding a part of the application for amending the written statement qua Schedule-B properties, which was allowed by the High Court will remain untouched. *Heerlal vs. Kalyan Mal and others,* AIR 1998 SC 618

Burden of proof (Civil cases)

Burden of proof.-Act of Contempt of Court.-Standard of proof.

As regards, the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof,' be it noted that a proceeding under the extraordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt. *Chhotu Ram vs. Urvashi Gulati,* AIR 2001 SC 3468

Burden of proof.-Adverse possession .-The person claiming adverse possession has to show exactly as to from which date his possession became adverse. *Parwatabai v. Sonabai and others,* AIR 1997 SC 381

Burden of proof.-Agreement to sell.-Suit for specific performance.-Agreement resisted on the ground from it was only as security for loan given to defendant.-No evidence regarding the above fact produced before trial Court.-Prayer for grant of permission to adduce evidence and adjournment declined to defendant.-In appeal High Court also declined.-Order of High Court is not sustainable.-Burden to prove that agreement was not for security but for real sale is on the defendant.-Opportunity to lead evidence must have been given. *Parmanand vs. Bajrang and others*, AIR 2001 SC 3606

Burden of proof.-Bar to jurisdiction .-Determination of.-It is for the party who seeks to oust the jurisdiction of Civil Court, to establish its contention.-Statute ousting jurisdiction must be strictly construed. *Abdul Waheed Khan v. Bhawani and others,* AIR 1966 SC 1718

Burden of proof.-Benami transaction.-Clear pleading that plaintiff purchased suit property as per sale deed.-Burden does not lie on plaintiff to prove that transaction was consistent with apparent tenor of document.-Burden lies on party who wants to prove that recitals in sale deed were untrue.

The clear pleading of the plaintiff is that he purchased the suit property as per Ext. P-11 sale deed. Burden of proof cannot be cast on the plaintiff to prove that the transaction was consistent with the apparent tenor of the document. Ext. P-11 sale deed contains the recital that the sale consideration was paid by the plaintiff to Narain Prasad the transferor. Why should there be a further burden of proof to substantiate that recitals in the document are true? The party who wants to prove that the recitals are untrue must bear the burden to prove it. *Pawan Kumar Gupta vs. Rochiram Nagdeo,* AIR 1999 SC 1823

Burden of proof. -Benami transaction. -Defence of benami taken in written statement.-Both plaintiff and defendant adduced oral as well as documentary evidence.-Evidence led by both parties considered by appellate Court.-Question of burden of proof pales into insignificance.

It is true that the respondents-defendants who have raised a defence of benami in their written statement have to discharge the initial burden of

proof and establish the plea of benami. Parties adduced oral and documentary the evidence. *Rebti Devi (Smt) vs. Ram Dutt and another,* AIR 1998 SC 310

Burden of proof.-Benami transaction.-Benami sale.- Determination of.-Burden of proof of such transaction. The burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. the courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the salr; and (6) the conduct of the parties concerned in dealing with the property after the sale. *Jayadayal Poddar v. Mst. Bibi Hazra,* AIR 1974 SC 171

Burden of proof.-Benami transaction.-The burden is on the person who shall fail if not evidence is led at all.-The abstract principle of burden of proof has no relevance where sufficient evidence exist on record.

It is therefore necessary to weigh the evidence in this case and to decide whether, even if it were assumed that there was no conclusive evidence to establish or rebut the benami' allegation, what would, on a careful assessment of the evidence, be a reasonable probability and a legal inference from relevant and admissible evidence. *Union of India v. Moksh Builders and Financiers Ltd. and others etc.,* AIR 1977 SC 409

Burden of proof.-Burden of proving an institution to be Gurudwara is on the person who asserts. *S.G.P. Committee vs. M.P. Dass Chela (dead) by LRs.,* AIR 1998 SC 1978

Burden of proof.-Caste of a person .-Re-conversion to Hindu religion after embracing Christianity.- Burden is on the person re-converted as Hindu to prove of caste after such re-conversion.

S. Rajagopal v. C.M. Armugam and others, AIR 1969 SC 101

Burden of proof.-Compensation for acquisition.-Market value of land.-Determination of.-The burden is on the claimant to prove the proper, just and adequate compensation for the acquired land.

State of U.P. and another v. Rajendra Singh, AIR 1996 SC 1564

Burden of proof.-Compensation for compulsory acquisition.-Compensation payable at market value of the land.-The burden to prove the prevailing market value is on the claimant. *M.V.K. Gundarao v. Revenue Divisional Officer (L.A.O.), Narasaraopet,* AIR 1996 SC 3241

Burden of proof.-Custom.-The burden of proving custom in derogation of general law is heavy on the persons who sets it up.-The family custom excluding female from taking as heirs claimed by the party must be true by clear and cogent reasons.-Testimony of a person of 22 years of age cannot command much weight as the fact of existence of custom is based on the knowledge of the person. *Mohammad Baqar and others v. Naim-un-Nisa Bibi and others,* AIR 1956 SC 548

Burden of proof.-Distinction with onus of proof.-Burden of proof lies upon a person who is to prove a fact and it never shift but the onus of proof keeps on shifting in evaluation of evidence.

A. Raghavamma and another v. A. Chenchamma and another, AIR 1964 SC 136

Burden of proof.-Effect of.-After the parties have led their evidence, question of Burden of proof is only of academic interest. The expression burden of proof really means two different things. It means sometimes that a party is required to prove an allegation before judgment can be given in its favour; it also means that on a contested issue one of the two contending parties has to introduce evidence. Whichever way one looks, the question is really academic in the present case, because both parties have introduced their evidence on the question of the nature of the deity and the properties and have sought to establish their own part of the case. The two Courts below have not decided the case on the abstract question of burden of proof; nor could the suit be decided in such a way. The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail. Where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract

question of burden of proof becomes academic. *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and others,* AIR 1960 SC 100

Burden of proof.-Effect of.-At the end of trial when both parties have adduced their evidence, the question of burden of proof is not of very great importance as the court has come to a decision on the basis of all the material before it. *Moran Mar Basselios Catholicos v. Thukalan Paulo Avira and others,* AIR 1959 SC 31

Burden of proof.-Effect on adverse inference.-Non-production of documents.-The court should draw inference against such party not withstanding the fact that the onus of proof does not lie on such party. *Gopal Krishnaji Ketkar v. Mohammed Haji Latif and others,* AIR 1968 SC 1413

Burden of proof.-Eviction of tenant.-Burden is on the plaintiff to make out right to evict to prove that the person in possession was admitted under a permanent lease. *Sunkavilli Suranna and others v. Goli Sathiraju and others,* AIR 1962 SC 342

Burden of proof.-Family customs.- It is the person claiming under the custom who has to discharge the burden of proving the same.

Kochan Kani Kunjuraman Kani etc. v. Mathevan Kani Sankaran Kani and others etc., AIR 1971 SC 1398

Burden of proof. -Fictitious documents. -Pleading of. -The burden of proving such document is heavy on the plaintiff seeking to set aside an order passed on the basis of such documents.-The burden is doubly heavier on the plaintiff seeking to set aside order passed in execution proceedings. The burden of proof is heavy on a plaintiff who sues for a declaration of a document solemnly executed and registered, as a fictitious transaction. The burden becomes doubly heavy when the plaintiff seeks to set aside the order of the civil court, passed in execution proceedings, upholding the claim of a third party to a property sought to be proceeded against in execution. The plaintiff, who seeks to get rid of the effect of the adverse order against him, has to show affirmatively that the order passed on due inquiry by the executing court, was erroneous. *Paras Nath Thakur v. Smt. Mohani Dasi (deceased) and others,* AIR 1959 SC 1204

Burden of proof.-Joint Hindu Family.-Presumption of.-A Hindu family is presumed to be joint unless proved to the contrary.-The burden of proving the status of the family is on the person claiming the relief on the basis of such status.-It is a question to be determined in each case. *Bhagwati Prasad Sah and others v. Dulhin Rameshwari Kuer and another,* AIR 1952 SC 72

Burden of proof.-Knowledge of possession of property.- **Determination of date of knowledge .-Burden of proof of bar of limitation**. When a defendant in an action based on tort seeks to show that the suit is not maintainable by reason of the expiry of the statutory period of limitation, it is upon him to prove the necessary facts. The burden of proof on a plaintiff who asserts a right, and it may be, having regard to the circumstances of each case, that the onus of proof may shift to the defendant. But to say that no duty is cast upon the plaintiff even to allege the date when they had knowledge of the defendant's possession of the converted property and that the entire burden is on the defendant is contrary to the tenor of the article in the Limitation Act and also to the rules of evidence.*K.S. Nanji and Co. v. Jatashankar Dossa and others,* AIR 1961 SC 1474

Burden of proof.-Mala fide.- Burden of establishing mala fide is very heavy on the person alleging it.-The allegations are often more easily made than proved.- Seriousness of such allegations demand proof of higher degree of credibility. *E.P. Royappa v. State of Tamil Nadu,* AIR 1974 SC 555

Burden of proof.- Misrepresentation.-Execution of deed alleged to be vitiated on account of the misrepresentation.-The burden is upon the person pleading such misrepresentation. *Mahant Harnam Singh v. Gurdial Singh and another,* AIR 1967 SC 1415

Burden of proof.-Nature of property.-Trust Property.-Burden of proving that the trust property came into hands of Trustee legitimately, is not open to bene- ficiary.-Onus is heavily upon the trustee to show by clear or legible evidence about legitimacy of his personal acquisition. *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and others,* AIR 1960 SC 100

Burden of proof.-Nature of transaction.-*Bona fide*, genuine or sham, bogus and fictitious.-Circumstances showing that transaction was not

bona fide.-Not necessary for Court to find out whether other party has led any evidence to prove that transaction was sham or bogus.

There can be no dispute that a person who attacks a transaction as sham, bogus and fictitious must prove the same. But where the issue raised discloses that it is in two parts, the first part says, 'whether the transaction, in question, is *bona fide* and genuine one' and the second part says 'or is a sham, bogus and fictitious' transaction, it is only when the first part has been proved that the party alleging to be sham has to dislodge it by proving that it is a sham and fictitious transaction. When circumstances of the case and the intrinsic evidence on record clearly point out that the transaction is not *bona fide* and genuine, it is unnecessary for the Court to find out whether the respondent has led any evidence to show that the transaction is sham, bogus or fictitious. *Subhra Mukherjee and another vs. Bharat Coking Coal and Ltd. and others,* AIR 2000 SC 1203

Burden of proof.-Negligence.-*Res ipsa loquitur*.-Application of.-Proof of negligence.-Rule is an exception to ordinary principle that it is for the person alleging negligence who has to prove the same. *Municipal Corporation of Delhi v. Subhagwanti and other,* AIR 1966 SC 1750

Burden of proof.-Negligence.-Injury suffered by consumer due to negligence.-Onus lies on carrier to prove absence of negligence.

The liability of the common carriers is that of the insurer. It was held there that Section 9 of the Carriers Act, 1865 applies to matters before the Consumer Fora under the Consumer Protection Act. It was also held that the principle underlying Section 9 of the said Act relating to burden of proof is a principle of common law and has been incorporated in Section 9 of the Carriers Act, 1865. Even assuming that Section 9 of the Act does not apply to the cases before the Consumer Fora under Consumer Protection Act, the principle of common law gets attracted to all these cases coming up before the Consumer Fora. Section 14(1)(d) of the Consumer Protection Act has to be understood in that light and the burden of proof gets shifted to the carriers by the application of the legal presumption under the common law. Section 14(1)(d) has to be understood in that manner. The complainant can discharge the initial onus, even if it is laid on him under Section 14(1)(d) of

the Consumer Protection Act, by relying on Section 9 of the Carriers Act. It will, therefore, be for the carrier to prove absence of negligence. *Economic Transport Organisation etc. vs. Dharwad District Khadi Gramudyog Sangh etc.,* AIR 2000 SC 1635

Burden of proof.-Paternity of child.-Born during subsistence of valid marriage.-Result of DNA test not enough to escape conclusiveness of Section 112.-Party who wants to dislodge conclusiveness has to prove that he did not have access to his wife and vice versa at relevant time.-Law leans in favour of innocent child from being bastardised.

The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act, e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was nor born to the husband, the conclusiveness in law would remain unrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastarised if his mother and her spouse were living together during the time of conception. *Kanti Devi (Smt.) and another vs. Poshi Ram,* AIR 2001 SC 2226

Burden of proof.-Privity of contract.-supply of goods.-Receipt of goods admitted by defendant.- Burden shifted to the defendant.- Absence to prove privity of contract. *Khushalbhai Mahijibhai Patel v. A firm of Mohamadhussain Rahimbux,* AIR 1981 SC 977

Burden of proof.-Promissory note.-Promissory note alleged as to have been executed as collateral security and not for value received.-Bare denial of passing of consideration not a defence and onus of legal proof does not shift on plaintiff.

In the instant case, the defendant alleged that the promissory note had not been executed for the value received as mentioned therein but was executed by way of collateral security. A perusal of the written statement of the defendant would clearly and unambiguously show that to disprove the consideration of the promissory note, he had brought certain circumstances

to the notice of the court which he wanted to probabilise by leading evidence. The evidence led by the defendant in that regard was not acceptable. In the absence of disproving the existence of the consideration, the onus of proof of the legal presumption in favour of the plaintiff could not be shifted. It is true that the plaintiff had produced evidence in the case and that evidence was in fact the evidence in rebuttal, of the evidence produced by the defendant in the case. Even though it is true that the plaintiffs evidence was not believed yet the same could not be made basis for rejecting the claim because obligation upon the plaintiff to lead evidence for the purposes of 'to prove his case', could not have been insisted upon because the defendant has prima facie or initially not discharged his onus of proof by showing directly or probabilising the non-existence of consideration. *Bharat Barrel and Drum Manufacturing Company vs. Amin Chand,* AIR 1999 SC 1008

Burden of proof.-Property right.-Abandonment of Trade mark .-The burden of proof is on the person seeking removal of mark from the registered of trade mark to prove non user as also lack of bona fide use of the mark. *American Home Products Corporation v. Mac Laboratories Pvt. Ltd. and another,* AIR 1986 SC 137

Burden of proof.-Property rights.-Suit for possession filed by tenant.-Onus lies on tenant to establish his exclusive possession.-Failure to prove plea of tenancy disentitles tenant to any relief under Section 6.Once the case of tenancy is found against, it is for the respondent to establish that his possession is exclusive possession and not one on behalf of the appellant. The question whether a relief can be granted to the respondent under Section 6 of the Specific Relief Act hinges on that issue. The respondent having failed to prove the only plea of tenancy put forward by him is not entitled to get any relief in this suit. *Mahabir Prasad Jain vs. Ganga Singh,* AIR 1999 SC 3873

Burden of proof.-Question of.-Both parties adduced oral as well as documentary evidence.-Appellate Court accepted evidence of plaintiff and rejected the evidence of defendants.-Question of burden of proof does not arise.

In the present case both sides had adduced oral as well as documentary evidence and therefore even assuming that it was erroneous for the lower appellate court to say that the burden of proof lay on the first defendant to prove that the plaintiff was not the son of the Haritheertham, that would not, in our opinion, have any material bearing on the conclusion reached by the lower appellate court. The appellate court had considered the oral and documentary evidence adduced on both sides and preferred to accept the evidence adduced on the side of the plaintiff and it also rejected the evidence adduced on the side of the defendants. *Arumugham (dead) by LRs and others vs. Sundarambal and another,* AIR 1999 SC 2216

Burden of proof.-Succession contrary to normal rules.-Validity of Will.-The burden of establishing the truth and validity of truth is upon the person putting forward the Will. *Baliram Atmaram Kelapure v. Smt. Indirabai and others,* AIR 1996 SC 2024

Burden of proof.-Suspicious circumstances.-Propounder of Will is required to remove all doubts about regarding genuineness of the Will.-Genuineness of Will on the basis of secondary evidence of Will, affirmed. *Aparsini (dead) through LRs. v. Atma Ram and others,* AIR 1996 SC 1558

Burden of proof.-Undue influence.- Execution of sale deed by an old, illiterate and tribal woman who was also blind, in favour of a relative without any evidence of consideration.-The relative in a position to influence the executant upon whom she was dependent.-The burden of proving absence of undue influence passed on to the purchaser on account of such circumstance.

Mst. Sethani v. Bhana, AIR 1993 SC 956

Burden of Proof (Criminal)

Burden of proof - Accused claiming to have caused death in exercise of right of private defence - Strict proof cannot be insisted - Accused has to show the exercise of right on preponderance of probability on the basis of the circumstances.

Section 105, Evidence Act enacts an exception to the general rule whereby in a criminal trial the burden of proving everything necessary to establish

the charge against the accused beyond reasonable doubt, rests on the prosecution. According to the section, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code; or within any special exception or proviso contained in any other part of the Code or in any other Law, shall be on the accused person, and the Court shall presume the absence of such circumstances. But this Section does not neutralised or shift the general burden that lies on the prosecution to prove beyond reasonable doubt all the ingredients of the offence with which the accused stand charge. Therefore, where the charge about the accused is one of culpable homicide, the prosecution must prove beyond all manner of reasonable doubt that the accused caused the death with the requisite knowledge or intention described in Section 299 of the Penal Code. It is only after the prosecution so discharges its initial traditional burden establishing the complicity of the accused, that the question whether or not the accused had acted in the exercise of his right of private defence, arises.

Under Section 105, read with the definition of "shall presume" in Section 5, Evidence Act, the Court shall regard the absence of circumstances on the basis of which the benefit of an Exception (such as the one on which right of private defence is claimed), as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. The accused has to rebut the presumption envisaged in the last limb of Section 105, by bringing on record evidential material before the Court sufficient for a prudent man to believe that the existence of such circumstances is probable. In other words, even under Section 105, the standard of proof required to establish those circumstances is that of a prudent man as laid down in Section 3, Evidence Act. But within that standard there are degrees of probability, and that is why under Section 105, the nature of burden on an accused person claiming the benefit of an Exception, is not as onerous as the general burden of proving the charge beyond reasonable doubt cast on the prosecution. The accused may discharge his burden by establishing a

mere balance of probabilities in his favour with regard to the said circumstances.

The material before the Court to establish such a preponderance of probability in favour of the defence plea may consist of oral or documentary evidence, admissions appearing in evidence led by the prosecution or elicited from prosecution witnesses in cross-examination presumptions, and the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, 1973.

Notwithstanding the failure of the accused to establish positively the existence of circumstances which would bring his case within an Exception, the circumstances proved by him may raise a reasonable doubt with regard to one or more of the necessary ingredients of the offence itself with which the accused stands charged. Thus, there may be cases where, despite the failure of the accused to discharge his burden under Section 105, the material brought on the record may, in the totality of the facts and circumstances of the case, be enough to induce in the mind of the Court a reasonable doubt with regard to the mens rea requisite for an offence under Section 299 of the Code.

Yogendra Morarji v. The State of Gujarat, 1980 AIR (SC) 660 Burden of proof - Accused has to prove not only that the income was from any lawful source but also that receipt of such income was duly intimated by the public servant in accordance with the law applicable on relevant time.

Section 5(1)(e) of the old P.C. Act did not contain an "Explanation" as Section 13(1)(e) now contains. As per the Explanation the "known sources of income" of the public servant, for the purpose of satisfying the Court, should be "any lawful source". Besides being the lawful source the Explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. So a public servant cannot now escape from the tentacles of Section 13(1)(e) of the P.C. Act by showing other legally forbidden sources, albeit, such sources are outside the purview of clauses (a) to (d) of the sub-section.

P. Nallammal etc. v. State rep. by Inspector of Police, 1999 AIR (SC) 2556

Burden of proof - Alibi - Failure to establish - Reliance on medical examination at another place - Time of actual examination and operation not indicated in the medical report - Alibi rightly held not have been established.

Chandrika Prasad Singh and others v. The State of Bihar, 1972 AIR (SC) 109

Burden of proof - Consumption of liquor - Presence of alcohol in blood in accused beyond permissible limit - Burden shift on accused to prove that he consumed medicinal preparation containing alcohol.

It has been proved in this case that the accused person consumed liquor and that the concentration of alcohol in his blood was more than 0.05 per cent weight in volume. So in terms sub-section (2) of Section 66 of the Act the burden of proving that the liquor consumed was a medicinal preparation containing alcohol, the consumption of which was not contravention of the Act, etc. or the rules made thereunder, shifted to the accused. He could have discharged this burden by proving, inter alia, that the medicinal preparation containing alcohol which he had taken was unfit for use as an intoxicating liquor; if so much had been established.

Vijay Singh v. The State of Maharashtra, 1966 AIR (SC) 145 **Burden of proof - Consumption of liquor** - The prosecution evidence showing presence of alcohol in the blood of accused exceeding the permissible limit - The explanation of accused must not only be reasonable but also truthful.

If the appellant was suffering from stomach pain and had in order to cure it taken an overdose of the Javerian mixture, it would be he alone who would have become unconscious and not his companion also. If the mixture was taken in the shop in Kandewadi its bottle would not be with the appellant, and could not have been produced by him at the trial. If the appellant had taken the mixture in that shop, it would have been quite easy for him to examine the person who sold him that bottle. Assuming that he carried that bottle with him in the taxi either after drinking the mixture at the shop or he drank the mixture in the taxi as averred by the taxi driver, that bottle would have been found in the taxi or in his possession and would have been seized by the police. In either event, since the appellant was lying

unconscious in the taxi, the taxi driver, when he brought the appellant and his companion to the police station, would have pointed out to the police officer that the two passengers had taken something in the taxi and that the bottle containing it was either in the taxi or in possession of the appellant. Nothing of that kind was done. It is clear that the production of a bottle of that mixture during the trial was an afterthought spun out with a view to bolster up a defence.

Ram Kishan Bedu Rane v. State of Maharashtra, 1973 CrLJ 287

Burden of proof - Corruption - Abuse of official position - The burden is on the prosecution to prove that accused abused his position for the pecuniary advantage of another person - It is not accused to show that he took all the precaution to ensure that his office is not abused.

It was for the prosecution to prove affirmatively that the appellant by corrupt or illegal means or by abusing his position obtained any pecuniary advantage for some other person. In view of the clear defence taken by the appellant it is obvious that it was for the prosecution to prove that the accused made no enquiries, that the accused made a departure from the normal procedure with oblique motive and that the accused knew that P.W. 2 would make a profit of 45% whereas others would be satisfied with a profit of 10-15%. The High Court, to begin with, started with the presumption that the accused led no evidence to show that he made any enquiries. We might state at the risk of repetition that it was not for the accused to prove the prosecution case but it was for the to disprove what the accused said, namely, that he had made enquiries. The prosecution could prove this fact only by producing satisfactory and convincing evidence to show that the accused in fact made no such enquiries and he knew about the margin of profit which other dealers would have made. We shall immediately show that there is no legal evidence to prove this fact. What the courts below have done is to disbelieve the case of the appellant because he led no evidence to show that he made any enquiries regarding the availability of goods or the rates, and therefore the courts presumed that the accused had a dishonest intention.

It is not disputed that the Chief Ordinance Officer had issued a covering purchase order in this case. In these circumstances the best person who would have thrown a flood of light on the subject and whose evidence would have clinched the issue whether or not the accused was authorised to depart from the normal procedure was Col. Anand, the Chief Ordinance Officer, who though examined by the Police during investigations was not produced before the Court. In the absence of his evidence there was no legal justification for the court to hold that the accused had departed from the normal procedure without the authority of the Chief Ordnance Officer, particularly when it is admitted that a covering purchase order was passed by the said Officer and the bill was also finally sanctioned by him.

Major S.K. Kale v. State of Maharashtra, 1977 AIR (SC) 822 **Burden of proof - Corruption** - Misappropriation of Government property - The burden of proof can be discharged by circumstantial evidence.

The onus on the prosecution is of a negative character and also that the failure on the part of the accused to give evidence on the question as to when, where and to whom the controversial 80 bags were delivered at the point of unloading - a fact on which the driver of the truck and those whose duty it was to receive the goods at the T-Shed could give the best and the most direct information - cannot under our law give rise to any presumption against them. The criminal courts holding trial under the Code of Criminal Procedure have accordingly to bear in mind the provisions of Section 342-A of the Code and to take anxious care that in appreciating the evidence on the record and the circumstances of the case, their mind is not influenced by such failure on the part of the accused. But that does not mean that such negative onus is not capable of being discharged by appropriate circumstantial evidence which is trustworthy and which with unerring certainty establishes facts and circumstances the combination of which, on reasonable hypothesis, does not admit of any safe inference other than that of the guilt of the accused then there can hardly be any escape for his and the Court can confidently record a verdict of guilty beyond reasonable doubt. The court would, of course, be well advised in case of circumstantial evidence to be watchful and to ensure that conjectures or suspicions do not

take the place of legal proof. The chain of evidence to sustain a conviction must be complete and admit of no reasonable conclusion consistent with the innocence of the accused.

Hargun Sunder Das Godeja and others v. The State of Maharashtra, 1970 AIR (SC) 1514

Burden of proof - Criminal offence - Burden of proving the defence would arise only when the prosecution has discharged its general burden of proving the guilt of accused. *Sawal Das v. State of Bihar,* 1974 AIR (SC) 778

Burden of proof - Death due to burn injury within seven years of marriage in matrimonial home - No explanation by accused husband as to how the deceased died unnatural death - Conviction affirmed.

We find that the evidence of Suraj Bhan (PW 4), Phool Devi (PW 5) and Tek Chand (PW 6) is unblemish as regards the demand of additional dowry/money from Sumitra and her parents and for not acceding to such demands causing ill-treatment and harassment to her. Suraj Bhan (PW 4) in his evidence has given all the necessary details as to how on each occasion whenever Sumitra came to his house, narrated the incidents of ill-treatment and harassment caused to her on the ground of not bringing sufficient dowry and also not fulfilling the additional demand of money. Phool Devi (PW 5) has corroborated in all material particulars the evidence of Suraj Bhan (PW 4). There is no effective cross- examination of both these witnesses on this issue. There are some minor inter se inconsistencies as regards the time factor which do not affect the substratum of the prosecution case. Tek Chand (PW 6) is an independent witness from the village who at one time mediated on the issue of additional demand of money and persuaded A-1 to take his wife Sumitra and matter would be sorted out amicably. In the face of this evidence, we have no manner of douubt that A-1 has caused ill-treatment and harassment to Sumitra including beating on various occasions for not getting additional amounts/dowry.

Prem Singh v. State of Haryana, 1998 AIR (SC) 2628

Burden of proof - Defence of accused - It has to be proved on preponderance of probabilities. *Mahesh Prasad Gupta v. State of Rajasthan,* 1974 AIR (SC) 773

Burden of proof - Distinction with burden of proving the guilt - Burden on accused is not as onerous as on prosecution - The accused showing the apprehension of injury on preponderance of probability is entitled to benefit of self- defence.

The burden on the accused is not as one-rouse as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing a mere preponderance of probability.

Partap v. The State of Uttar Pradesh, 1976 AIR (SC) 966 **Burden of proof - Facts of special knowledge** - Certain facts within the knowledge of accused and to some extent burden lies on him to rebut them - Burden not discharged - Conviction of accused held proper.

This is a case where certain facts were within the knowledge of the accused and to some extent the burden lies on him to rebut the allegations made by the prosecution. These admissions coupled with a certificate issued by PW-12 would go to show that the deposits were not made as claimed by the accused and that there was no preponderance of possibilities that the plea taken by him that the deposits were made is plausible. Therefore, we see no grounds to interfere with the findings of the High Court convicting the appellant for the aforementioned offences.

Hira Nand v. State of Himachal Pradesh, 1995 CrLJ 3646

Burden of proof - Facts specially within knowledge of accused - Though the burden of proving the guilt is on prosecution, the illustration (b) cannot be extended to offences like murder to call upon the accused to prove that he did not commit the crime.

This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately

difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than the whether he did or did not.

Illustration (b) to Section 106 has obvious reference to a very special type of case namely to offences under Sections 112 and 113, Indian Railways Act for traveling or attempting to travel without a pass or ticket or with an insufficient pass or ticket or with an insufficient pass, etc.

Shambhu Nath Mehra v. The State of Ajmer, 1956 AIR (SC) 404 : **Burden of proof - Failure to comply with directions made punishable offence with burden of proving the reasonable cause for non-compliance on the accused** - The prosecution fully establishing the offence of non-compliance - Objections about erroneous shifting of burden of proof is of no consequence.

Bashiruddin Ashraf v. The State of Bihar and another, 1957 AIR (SC) 645

Burden of proof - Guilt of accused - The general burden of proving of guilt is always on prosecution but the burden of proving that the case of accused falls within a general or special exception shifts on the accused.

The phrase "burden of proof" is not defined in the Act. In respect of criminal cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt.

Section 105 requires that when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions or special exception or proviso contained in any part of the Penal Code is on him and the Court shall presume the absence of such circumstances. This presumption is rebuttable.

Where the existence of circumstances bringing the case within the exception is pleaded or is raised the Court shall presume the absence of such circumstances. The maxim that the prosecution must prove its case beyond reasonable doubt is a rule of caution laid down by the Courts of Law in respect of assessing the evidence in criminal cases. Section 105 places `burden of proof' on the accused in the first part and in the second part we find a presumption which the Court can draw regarding the absence of the circumstances which presumption is always rebuttable. Therefore, taking the Section as a whole the `burden of proof' and the presumption have to be considered together. It is axiomatic when the evidence is sufficient as to prove the existence of a fact conclusively then no difficulty arises. But where the accused introduces material to displace the presumption which may affect the prosecution case or create a reasonable doubt about the existence of one or other ingredients of the offence and then it would amount to a case where prosecution failed to prove its own case beyond reasonable doubt. The initial obligatory presumption that the Court shall presume the absence of such circumstances gets lifted when a plea of exception is raised. More so when there are circumstances on the record (gathered from the prosecution evidence, chief and cross examinations, probabilities and circumstances, if any, introduced by the accused, either by adducing evidence or otherwise) creating a reasonable doubt about the existence of the ingredients of the offence. In case of such a reasonable doubt, the Court has to give the benefit of the same to the accused. The accused may also show open the basis of the material a preponderance of probability in favour of his plea. If there are absolutely no circumstances at all in favour of the existence of such an exception then the rest of the enquiry does not arise in spite of a mere plea being raised. But if the accused succeeds in creating a reasonable doubt or shows preponderance of probability in favour of his plea, the obligation on his part under Section 105 gets discharged and he would be entitled to an acquittal.

The presumption regarding the absence of existence of circumstances regarding the exception can be rebutted by the accused any introducing evidence in any one of the manner mentioned above. If from such a rebuttal,

a reasonable doubt arises regarding his guilt, the accused should get the benefit of the same. Such a reasonable doubt consequently negatives one or more of the ingredients of the offence charged, for instance, from such a rebuttal evidence, a reasonable doubt arises about the right of private defence then it follows that the prosecution has not established the necessary ingredients of intention the commit the offence. In that way the benefit of a reasonable doubt which arises from the legal and factual considerations even under Section 105 of the Evidence Act should necessarily go to the accused.

Vijayee Singh and others v. State of U.P 1990 AIR (SC) 1459 :

Burden of proof - Guilt of accused - The onus of proving ingredients of offence is always on prosecution and it never shifts - Where the onus shifts, the accused will be entitled to benefit of doubt by probabilising the plea of defence. *Dr. S.L. Goswami v. The State of Madhya Pradesh,* 1972 AIR (SC) 716

Burden of proof - The defence of the accused should not be weighed on golden scales but should be demonstrated on preponderance of probabilities.

It is trite that the onus which rests on an accused person under Section 105, Evidence Act, to establish his plea of private defence is not as onerous as the unshifting burden which lies on the prosecution to establish every ingredient of the offence with which the accused is charged beyond reasonable doubt. It is further well established that a person faced with imminent peril of life and limb of himself or another, is not expected to weigh in "golden scales" the precise force needed to repel the danger. Even if he at the heat of the moment carries his defence a little further than what would be necessary when calculated with precision and exactitude by a calm and unruffled mind, the law makes due allowance for it. *Mohd. Ramzani v. State of Delhi,* 1980 AIR (SC) 1341

Burden of proof - The prosecution case must stand on its own legs - It cannot derive strength from any weakness of the defence - Infirmity or lacuna in prosecution case cannot be cured or supplied by false defence.

S.D. Soni v. State of Gujarat 1991 AIR (SC) 917

Burden of proof - Though the burden of proving the offence is always on the prosecution but the burden of proving the state of mind or insanity of accused at the time of committing the offence is on the accused.

There is no doubt that the burden of proving an offence is always on the prosecution and that it never shifts. It would, therefore, be correct to say that intention, when it is an essential ingredient of an offence, has also to be established by the prosecution. But the state of mind of a person can ordinarily only be inferred from circumstances. Thus if a person deliberately strikes another with a deadly weapon, which according to the common experience of man-kind is likely to cause an injury and sometimes even a fatal injury depending upon the quality of the weapon and the part of the body on which it is struck, it would be reasonable to infer that what the accused did was accompanied by the intention to cause a kind of injury which in fact resulted from the act. In such a case the prosecution must be deemed to have discharged the burden, which rested upon it to establish an essential ingredient of the offence, namely the intention of the accused inflicting a blow with a deadly weapon. Section 84 of the Indian Penal Code can no doubt be invoked by a person for nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. Now it is not for the prosecution to establish that a person who strikes another with a deadly weapon was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. Every one is presumed to know the natural consequences of his act. Similarly every one is also presumed to know the law. These are not facts, which the prosecution has to establish. It is for this reason that Section 105 of the Evidence Act places upon the accused person the burden of proving the exception upon which he relies.

Bhikari v. The State of Uttar Pradesh, 1966 AIR (SC) 1

Burden of proof - Ingredients required to be proved by prosecution for conviction of accused.

In order to bring home the offence under Section 5 of the Explosive Substances Act, the prosecution has to prove; (i) that the substance in

question is explosive substance; (ii) that the accused makes or knowingly has in his possession or under his control any explosive substance; and (iii) that he does so under such circumstances as to give rise to a reasonable suspicion that he is not doing go for a lawful object.

The burden of proof of these ingredients is on the prosecution. The moment the prosecution has discharged that burden, it shifts to the accused to show that he was making or possessing the explosive substance for a lawful object, if he takes that plea.

Mohamad Usman Mohammad Hussain Maniyar and another v. The State of Maharashtra, 1981 AIR (SC) 1062

Burden of proof - Injury found to be sufficient in the ordinary course of nature to cause death - Burden shift on accused to bring his case within any exception.

State of Maharashtra v. Krishnamurti Laxmipati Naidu, 1981 AIR (SC) 617

Burden of proof - Insanity - Burden of proof - Discharge of onus of proof by defence - Duty of prosecution to lead evidence in regard to mental condition of accused in custody - Accused held to be insane on the basis of testimony of defence witnesses.

The crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused.

The behaviour of the appellant on the day of occurrence, failure of the police to lead evidence as to his condition when the appellant was in custody, and the medical evidence indicate that the appellant was insane within the meaning of Section 84, I.P.C. *Ratan Lal v. The State of Madhya Pradesh,* 1971 AIR (SC) 778 1971 Mah LJ 625

Burden of proof - Insanity - Presumption of knowledge of natural consequences of one's act as also of law - Burden of proving the exception by way of insanity is on the accused which is though not as heavy as prosecution but must be discharged by producing cogent material.

The burden, though not as heavy as upon the prosecution in a criminal case, was upon the accused to prove that he was of unsound mind at the time of the commission of the offence and as such, incapable of knowing the

nature of his act or that he was doing what was either wrong or contrary to law. In the absence of any evidence or material to discharge that burden, there is no escape from the conclusion that the conviction of the accused appellant is well founded. *Oyami Ayatu v. The State of Madhya Pradesh,* 1974 AIR (SC) 216

Burden of proof - Negligence - Effect on principle of res ipsa loquitur.

Under the Act, the genral rule is that the burden of proving negligence as cause of the accident, lies on the party who alleges it. But that party can take advantage of presumptions which may be available to him, to lighten that burden, Presumptions are of three types: -

(i) Permissive presumptions or presumptions of fact.

(ii) Compelling presumptions or presumptions of law (rebuttable).

(iii) Irrebuttable presumption of law or `conclusive proof.'

Clause (i), (ii) and (iii) are indicated in clauses (1), (2) and (3) respectively,of Section 4, Evidence Act. `Presumption of facts' are inferences of certain fact patterns drawn from the experience and observation of the common course of nature, the constitution of the human mind, the springs of human action, the usages and habits of society and ordinary course of human aggairs. Section114 is a general Section dealing with presumptions of this kind. It is not obligatory for the Court to draw a presumption of facts. In respect of such presumptions, the Act allows the judge discretion in each case to decide whether the fact, which under Section 114 may be presumed, has been proved by virtue of that presumption.

It is clear that even in an action in torts, if the defendant gives no rebutting evidence but a reasonable explanation, equally consistent with the presence as well as with the absence of negligence, the presumptions or inferences based on res ipsa loquitur can no longer be sustained. The burden of proving the affirmative, that the defendant was negligent and the accident occurred by his negligence, still remains with the plaintiff; and in such a situation it will be for the Court to determine at the time of judgment whether the proven or undisputed facts as a whole, disclose negligence.

Syad Akbar v. State of Karnataka, 1979 AIR (SC) 1848 : 1980 SCC (Cr) 59 : 1979 CrLR (SC) 327 : 1979 CAR 273

Burden of proof - Onus of proof - Prosecution for exporting commodity without permit - The accused producing the permit authorising him to export the commodity - The question whether the commodity in question fell within the description of commodity mentioned in the permit or not, is to be proved by the prosecution - Failure by prosecution to discharge its burden - The accused is entitled to benefit of doubt.

Shrinivas Pannalal Chokhani v. The State of Madhya Pradesh, 1954 AIR (SC) 23 : 1954 CrLJ 253

Burden of proof - Possession of property disproportionate to known sources of income of accused - Burden lies on prosecution to prove - Accused to account satisfactorily for the dispro- portionality of the properties possessed.

During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other queries made. For the formation of a prima facie opinion that an officer may be guilty of criminal misconduct leading to the filing of the first information report, there is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. That such satisfactory account had to be rendered before a Court.

Clause (e) creates a statutory offence which must be proved by the prosecution. It is for the prosecution to prove that the accused or any person on his behalf has been in possession of pecuniary resources or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The Section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression “satisfactorily account”. The emphasis must be on the word “satisfactorily”. That means the accused has

to satisfy the Court that that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused, however, could discharge that burden of proof "on the balance of probabilities" either from the evidence of the prosecution and/or evidence from the defence.

State of Maharashtra and others v. Ishwar Piraji Kalpatri and others,: 1996 AIR (SC) 722

Burden of proof - Presumption of knowledge of natural consequences of one's act as also of law - Burden of proving the exception by way of insanity is on the accused which is though not as heavy as prosecution but must be discharged by producing cogent material.

Oyami Ayatu v. The State of Madhya Pradesh, 1974 AIR (SC) 216

Burden of proof - Proof of guilt - Duty of prosecution to prove its own case irrespective of falsehood in the defence version.

The case of the prosecution has however to be tested independently of the defence version and in a case of the present nature which depends for its proof on direct testimony, falsity of the defence will not help the prosecution to establish its own case. It is therefore necessary to consider whether the evidence led by the prosecution is sufficient to justify the order of conviction and sentence.

Tika and others v. The State of U.P., 1974 AIR (SC) 155 **Burden of proof - Rash and negligent driving** - The bus driver taking the bus on footpath has a duty to explain his conduct but the burden of proving the guilt remains on prosecution who must prove it by cogent evidence which must be collected by investigating agency with diligence.

No doubt when an accident like the present takes place one naturally expects the driver concerned to explain the circumstances in which he was obliged to take the bus on to the footpath and to strike against the electric pole with such force, thereby killing one human being and injuring several others. The satisfactory nature of the explanation to absolve him of his criminal liability for the accident has, in such circumstances, to be

appraised in the light of the entire evidence on the record. The onus of course remains on the prosecution and does not shift to the accused. The evidence of the bus, however, having mounted on to the footpath, which, in the normal course, does not happen, is admissible and has to be duly taken into account in understanding and evaluating the entire evidence led in the case and in appraising the value of the explanation given by the accused for his compulsion which resulted in the accident. Parties could not control the court's discretion to have before it further evidence if it was considered necessary for finding the truth for promoting the cause of justice. Justice would fail not only by unjust conviction of the innocent but also by acquittal of the guilty for unjustified failure to produce available evidence. On the existing record we find the evidence to be inadequate and unsafe for convicting the appellant. This, however, is entirely due to the faulty and inefficient investigation, for which no justification is forthcoming.

Nageshwar Sh. Krishna Ghobe v. State of Maharashtra, 1973 AIR (SC) 165

Burden of proof - Rebuttal of presumption against the accused - The burden of proving that death was not on account of dowry is on the accused.

There is direct evidence that on 17th May itself, there was quarrel at the house of her sister with the deceased and her husband. The quarrel between the deceased and her husband was tried to be explained as some other quarrel which should not constitute to be a quarrel in connection with the dowry or demand of dowry in connection with the marriage. We find that Section 8- A of the aforesaid 1961 Act which came into force w.e.f. 2nd October, 1985 for taking or abetting any dowry, the burden to explain is placed on such person against whom the allegation of committing an offence is made. Similarly, under Explanation to Section 113-B of the Indian Evidence Act, which was also brought in by the aforesaid Act No. 43 of 1986, there is presumption that such death is on account of dowry death. Thus the burden, if at all, was on the accused to prove otherwise.

Hence, for creating doubt or granting benefit of doubt, the evidence was to be such which may lead to such doubt. We do not find that present is a case where any benefit of doubt results at least against the husband.

Pawan Kumar and others v. State of Haryana, 1998 AIR (SC) 958 **Burden of proof - Receipt of money not due as legal remuneration** - Burden shift on the person receiving to prove that it was received under a lawful transaction.

Once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to that person to show that though that money was not due to him as legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114 of Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words `unless the contrary is proved' which occur in this provision make it clear that the resumption has to be rebutted by `proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

M. Sunderamoorthy v. State of Tamil Nadu through Inspector of Police, 1990 AIR (SC) 1269

Burden of proof - Sanction for prosecution - Application of mind - The burden of proving that the requisite sanction has been obtained, rests on the prosecution.

Madan Mohan Singh v. State of Uttar Pradesh, 1954 AIR (SC) 637 : 1954 CrLJ 1656

Burden of proof - Statutory presumption - The burden of disproving the presumption is not as much as on the prosecution to prove the guilt of accused - Both cannot be equated.

The presumption raised, cannot be equated with the degree and character of proof which under Section 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under Section 342, Cr.P.C. may not be enough, the burden on him to negate the presumption may stand discharged, if the effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour; it is not necessary for him to establish his case beyond a reasonable doubt.

If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as still-born.

Trilok Chand Jain v. State of Delhi, 1977 AIR (SC) 666

Burden of proof - Stolen property - Mere possession itself is not sufficient - It must be shown that articles were used or intended to be used as also there was cause for reasonable suspicion of its being stolen.

Kashmirilal v. The State of Uttar Pradesh, 1970 AIR (SC) 1868

Confession

Confession - Admissibility - Confession in the course of investigation, except in limited circumstances, is not admissible.

A statement or confession made in the course of an investigation may be recorded by a Magistrate under Section 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by Section 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under Section 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by Section 162 of the Code of Criminal Procedure, and a confession to any other persons made by him while in the custody of a police officer is protected by Section 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions

made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.

Aghnoo Nagesia v. State of Bihar, 1966 AIR (SC) 119

Confession - Admissibility - Confession made to Police which found the basis of FIR is not admissible in evidence.

Khatri Hemraj Amulakh v. The State of Gujarat, 1972 AIR (SC) 922

Confession - Admissibility - Confession recorded during investigation by Magistrate not competent to record the same - The confessional statement is inadmissible.

Nika Ram v. The State of Himachal Pradesh, 1972 AIR (SC) 2077 **Confession - Admissibility** - Confessional statement made by way of letter addressed to Sub-Inspector - Presence or absence of Sub-Inspector at the time of writing of letter, if relevant,

No doubt the letter contains a confession and is also addressed to a police officer. That cannot make it a confession made to a police officer which is within the bar created by Section 25 of the Evidence Act. The police officer was not nearby when the letter was written or knew that it was being written. In such circumstances quite obviously the letter would not have been a confession to the police officer if the words "Sub- Inspector" had not been written. Nor do we think it can become one in similar circumstances only because the words "Sub-Inspector" had been written there. It would still have not been a confession made to a police officer for the simple reason that it was not so made from any point of view.

I do not see why a confession cannot be made to a police officer unless he is present in the immediate vicinity of the accused. A confession can be made to a police officer by an oral message to him over the telephone or the radio as also by a written message communicated to him through post, messenger or otherwise. The presence or absence of the police officer near the accused is not decisive on the question whether the confession is hit by Section 25. A confession to a stranger though made in the presence of a police officer is not hit by Section 25. On the other hand, on a confession to a police officer is written the ban of Section 25, though it was not made in his presence. A

confessional letter written to a police officer and sent to him by post, messenger or otherwise is not outside the ban of Section 25 because the police officer was ignorant of the letter at the moment when it was being written.

Sita Ram v. State of Uttar Pradesh, 1966 AIR (SC) 1906

Confession - Admissibility - Ingredients to attract the prohibition on admissibility.

To attract the prohibition enacted in Section 24, Evidence Act, these facts must be established:

(i) that the statement in question is a confession;

(ii) that such confession has been made by an accused person;

(iii) that it has been made to a person in authority;

(iv) that the confession has been obtained by reason of any inducement, threat or promise proceeding from a person in authority;

(v) such inducement, threat or promise, must have reference to the charge against the accused person;

(vi) the inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Veera Ibrahim v. The State of Maharashtra, 1976 AIR (SC) 1167 : 1976 (3) SCR 672 : 1976 CrLR (SC) 165 : 1976 SCC (Cr) 278

Confession - Admissibility - Scope of - Confessional statement containing other details about motive, preparation, opportunity etc. of the crime - Every admission of incriminating fact is part of confession.

A confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him, the whole of it should be tendered in evidence, and if part of the admission is exculpatory

and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only.

A confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also, every other admission of an incriminating fact contained in the statement is part of the confession.

Aghnoo Nagesia v. State of Bihar, 1966 AIR (SC) 119

Confession - Admissibility - Statement made by accused to the doctor who examined him about the cause of injury is admissible.

Ammini and others v. State of Kerala, 1998 AIR (SC) 260 **Confession - Appreciation of** - Acceptance of inculpatory portion while ignoring the improbable exculpatory portion - Conviction on the basis of confession, affirmed.

In this case the exculpatory part of the statement in Ex. 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 Cr.P.C. to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13th October 1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in the river

Patro, the amount of bleeding and the washing of the blood-stains being so considerable as to attract the attention of Ram Kishore Pandey, P.W. 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report this knife could have been the cause of the injuries on the victim. In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ex. 6 the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.

Nishi Kant Jha v. State of Bihar, 1969 AIR (SC) 422

Confession - Appreciation of - Admission of a person amounting to confession must be used either as a whole or not at all - It cannot be split up to use a part of it against its maker.

Hanumant Govind Nargundkar and another v. State of Madhya Pradesh, 1952 AIR (SC) 343

Confession - Appreciation of - Inculpatory part of confession not inextricably linked to exculpatory part - Inculpatory part can be relied for conviction.

Inculpatory part of the statement could be accepted even though the exculpatory part of the statement of the accused was rejected.

We find that the inculpatory part of statement Ex. A of the accused is distinct and severable from the exculpatory part. The present is not a case wherein the two parts of the statement are inextricably linked together and it is not possible to accept one part without accepting the other part. In case, the court finds the exculpatory part of the statement of the accused to be inherently improbable, there is no reason why the other part of the statement which implicates the accused to be inherently improbable, there is no reason why the other part of the statement which implicates the

accused and which the court sees no reason to disbelieve, should not be accepted.

Jethamal Pithaji v. The Assistant Collector of Customs, Bombay and another, 1974 AIR (SC) 699

Confession - Appreciation of - The confession of the accused has to be taken as a whole and the exculpatory part cannot be thrown adide.

Devku Bhikha v. State of Gujarat, 1995 CrLJ 3975 : 1995 AIR (SC) 2171 : 1996(1) CCR 221

Confession - Distinction with dying declaration - Principles of appreciation. Sometimes, attempts have been made to equate a dying declaration with the evidences of an accomplice or the evidence furnished by a confession as against the maker, if it is retracted, and as against others, even though not restricted. But in our opinion, it is not right in principle to do so.

Though under Section 133 of the Evidence Act, it is not illegal to convict a person on the uncorroborated testimony of an accomplice, illustration (b) to Section 114 of the Act, lays down as a rule of prudence based on experience, that an accomplice is unworthy of credit unless his evidence is corroborated in material particulars and this has now been accepted as a rule of law.

The same cannot be said of a dying declaration because a dying declaration may not, unlike a confession, or the testimony of an approver, come from a tainted source. If a dying declaration has been made by a person whose antecedents are as doubtful as in the other cases, that may be a ground for looking upon it with suspicion, but generally speaking, the maker of a dying declaration cannot be tarnished with the same brush as the maker of a confession or an approver.

Khushal Rao v. State of Bombay, 1958 AIR (SC) 22

Confession - Evidentiary value - Principles of considering confession.

A confession can only be used to "lend assurance to other evidence against a co-accused.

Where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the confession may be thrown into the scale as an additional reason for believing that evidence.

The proper way to approach a case of this kind is, first to marshall the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call this confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

Kashmira Singh v. The State of Madhya Pradesh, 1952 AIR (SC) 159

Confession - FIR with police - Admissibility - First information amounting to confessional statement is not receivable in evidence.

If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.

Aghnoo Nagesia v. State of Bihar, 1966 AIR (SC) 119

Confession - Place of recording - Confession recorded by Magistrate in Jail is admissible as it is a curable irregularity.

No doubt the confession was recorded in jail though ordinarily it should have been recorded in the Court House, but that irregularity seems to have been made because nobody seems to have realized that that was the appropriate place to record it but this circumstance does not affect in this case the voluntary character of the confession.

Hem Raj Devilal v. The State of Ajmer, 1954 AIR (SC) 462 **Confession - Place of recording - Effect of** - Confession recorded in jail contrary to the rules framed by State Government - No exceptional reasons rendering it not possible to record confession in Court - Reliance on confession, not proper.

The standing orders issued by the Government of Uttar Pradesh which are printed as Appendix 19 at page 566 of Manual of Government Orders Uttar Pradesh (1954 Edition) that confessions may ordinarily be recorded in open Court and during court hours unless for exceptional reasons it is not feasible to do so. This is a very important provision which emphasises that the Magistrate in recording confession is exercising part of his judicial function in the manner prescribed by law. One of these instructions also stated that the Magistrate should enquire the reason why the accused is making the confession knowing that it may be used against him. The Magistrate has appended the usual certificate that she was satisfied that the accused made the confession voluntarily. Quite clearly the Magistrate is an inexperienced officer.

Ram Chandra and another v. State of Uttar Pradesh, 1957 AIR (SC) 381

Confession - Proof of - Necessity of examination of Magistrate - Presumption of validity of - Circumstance for examining the Magistrate as witness.

The learned Magistrate has put to the accused all the necessary questions to satisfy himself that the confession was voluntary. He has also appended the necessary certificate. We do not accept Shri Jain's submission that the learned magistrate should have been examined as a witness. Section 80 of the Evidence Act makes the examination of Magistrate unnecessary. It authorises the Court to presume that the document is genuine, that any statements as to the circumstances under which it was taken are true and that such confession was truly taken in accordance with law.

The Magistrate has appended a certificate that he was satisfied that the confession was voluntary. No circumstance has been brought out in the evidence justifying the calling of the Magistrate as a witness. We do not think that the circumstances of the justify any comment on the alleged failure of the prosecution to examine the Magistrate as a witness.

Madi Ganga v. State of Orissa, 1981 AIR (SC) 1165

Confession - Recording of - Executive Magistrate - Conferment of judicial functions by Executive Magistrate is not opposed to fundamental principle of governance contained in Article 50 of the Constitution - Sub-section (3) of

Section 20 of the TADA does not offend Articles 14, 21 of Constitution - Criminal Procedure Code, 1974 - Section 164.

The Executive Magistrates while exercising their judicial or quasi-judicial functions though in a limited way within the frame of the Code of Criminal Procedure, which judicial functions are normally performed by Judicial Magistrate can be held to be holding the judicial office. Therefore, the contention of the learned counsel that the conferment of judicial functions on the Executive Magistrate and Special Executive Magistrate is opposed to the fundamental principle of government contained in Article 50 of the Constitution cannot be countenanced. Resultantly, we hold that sub-section (3) of Section 20 of the TADA does not offend either Article 14 or 21 and hence this sub-section does not suffer from any constitutional invalidity.

Though we are holding that this Section is constitutionally valid, we, in order to remove the apprehension expressed by the learned counsel that the Executive Magistrates and the Special Executive Magistrate who are under the control of the State may not be having judicial integrity and independence as possessed by the Judicial Magistrate and the recording of confessions and statements by those Executive Magistrates may not be free from any possible oblique motive, are of the opinion that it would be always desirable and appreciable that a confession or statement of a person is recorded by the Judicial Magistrate whenever the Magistrate is available in preference to the Executive Magistrates unless there is compelling and justifiable reason to get the confession or statement, recorded by the Executive or Special Executive Magistrates.

Kartar Singh v. State of Punjab, 1994 CrLJ 3139

Confession - Procedure - Protection from coercion or inducement.

Sections 24 to 26 form a trio containing safeguards against accused persons being coerced or induced to confess guilt. Towards that end Section 24 makes a confession irrelevant in a criminal proceeding if it is made as a result of inducement, threat or promise from a person in authority, and is sufficient to give an accused person grounds to suppose that by making it he would gain any advantage or avoid any evil in reference to the proceedings against him. Under Section 25, a confession made to a Police

Officer under any circumstances is not admissible in the evidence against him. Section 26 provides next that no confession made by a prisoner in custody even to a person other than a Police Officer is admissible unless made in the immediate presence of a Magistrate.

Kanda Padayachi v. State of Tamil Nadu, 1972 AIR (SC) 66

Confession - Procedure - Time for reflection before recording confession - Necessity to ensure that the accused is completely free from the influence of Police.

It will be seen that how much time for reflection should be allowed to an accused person before recording his confession, is a question which depends on the circumstances of each case. The object of giving such time for reflection to the accused, is to ensure that he is completely free from Police influence. If immediately before the recording of the confession, the accused was in judicial custody beyond the reach of the investigating police for some days, then such custody from its very nature, may itself be a factor dispelling fear or influence of the police from the mind of the accused. In such a case, it may not be necessary to send back the accused person for any prolonged period to Jail or Judicial Lock-up.

Shankaria v. State of Rajasthan, 1978 AIR (SC) 1248

Confession - Retracted confession - Corroboration - No hard and fast rule about necessity of confession can be laid down - It is a matter of general rule of prudence which requires corroboration in a particular case.

Muthuswami v. State of Madras, 1954 AIR (SC) 4

Confession - Extra judicial - Accused confessing murder of wife to the uncle and cousin of his wife who were not persons in authority - Confession does not suffer from any legal infirmity.

Darshan Lal v. State of Jammu and Kashmir, 1975 AIR (SC) 898 **Confession - Extra judicial** - Artificial evidence to prove the confession - Unnatural conduct of witnesses - No reliance can be placed on such extra judicial confession.

The evidence in this regard is so artificial that it is not safe to place any reliance on the same. According to P.W. 3 when several weeks after the incident and when rumours were afloat in the village. P.W. 7 came and

informed her about the information given by her son P.W. 2 that the appellant has killed his father- in-law and buried him in the field. On this P.W. 3 is stated to have asked the appellant whether the rumour is true and the appellant confessed that he murdered his father-in-law and his body was buried in the field. Similarly P.W. 5 states that a long after the incident, she found the appellant one day in a very distressed mood and when she asked him the reason, the appellant stated to her that he had killed her father. The evidence regarding this confession stated to have been made to P.Ws. 3 and 5 is very artificial and cannot be acted upon. Their evidence does not appear to be true. The High Court was not justified in acting on the basis that the appellant had made any confession to P.Ws. 3 and 5. Their evidence appears to be somewhat unusual and mechanical. They did not evince any anxiety about the whereabouts of the deceased after he failed to return to the house within a reasonable time. In view of the above circumstances, it is not safe to place reliance on their evidence.

Duvvur Dasaradharamareddy v. The State of Andhra Pradesh, 1971 AIR (SC) 1461

Confession - Extra judicial - Confession proved to be voluntary can be relied along with other evidence - It is not necessary for witness to give exact words used in confession.

An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The confession will have to be proved just like any other fact. The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witness to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given.

It is for the Court having regard to the credibility of the witness, his capacity to understand the language in which the accused made the confession, to accept the evidence or not.

Mulk Raj v. The State of U.P., 1959 AIR (SC) 902

Confession - Extra judicial - Corroboration by evidence of complainant - Conviction not impermissible.

The learned Judge is not right in observing that it was not safe to base a conviction on an extra-judicial confession. The conviction in this case was not based merely on the extra- judicial confession. There was the evidence of the complainant against the respondent. The extra-judicial confession strongly corroborated that statement. The document too, therefore, was admissible in evidence and had been wrongly ignored by the learned Judge.

The State of Gujarat v. Vinaya Chandra Chhota Lal Pathi, 1967 AIR (SC) 778

Confession - Extra judicial - Corroboration - Blood stains - The blood of deceased found on the clothes, hands and knife in the hand of accused corroborated the one line extra judicial confession - Explanation of accused that the deceased was already injured when he entered the room and blood stains caught in attempting to wake her up, not accepted - Conviction affirmed.

Radhabai lives very close to the place of occurrence, while the other two witnesses work in the factory which is located in one of the rooms of the Chawl wherein the occurrence took place. According to these witnesses, the accused with a knife in his hand came and enquired regarding the whereabouts of Ganpat. The accused also told them that he had murdered that woman. There is nothing unnatural or improbable in the above statement of the accused which was made immediately after the murder of the deceased. The three witnesses had no particular animus against the accused and after having been taken through their evidence, we find a ring of truth in it.

In addition to the evidence of the above-mentioned three witnesses, we have the statement of Ganpat PW that the accused came armed with a knife to the witness. The witness on seeing the accused in a threatening mood ran away. The fact that the accused after arming himself with a knife ran after Ganpat is also admitted by the accused. This circumstance lends further assurance to the testimony of Radhabai, Pandurang and Shankar.

We find that the clothes of the accused, who was arrested by the police soon after the occurrence, were found to be stained without blood. The accused

was also soon after the occurrence seen sitting in front of the room in which the dead body of the deceased was lying with a blood-stained knife in his hand. These facts, which are not disputed by the accused, furnish additional corroboration to the evidence relating to the extra-judicial confession made by the accused, furnish additional corroboration to the evidence relating to the extra-judicial confession made by the accused. The explanation furnished by the accused regarding the blood-stains on his clothes and the blood-stained knife in his hand is not at all convincing and has been rightly rejected by the High Court.

Kashinath Krishna Jadhav v. State of Maharashtra, 1973 AIR (SC) 1219

Confession - Extra judicial - **Corroboration - Necessity of.**

Law does not require that the evidence of an extra judicial confession should in all cases be corroborated. in the instance case, the extra judicial confession was proved by an independent witness who was a responsible officer and who bore no animus against the appellants. There was hardly any justification for the Sessions Judge to disbelieve the evidence of Balbir Singh particularly when the extra judicial confession was corroborated by the recovery of an empty from the place of occurrence.

Piara Singh and others v. State of Punjab, 1977 AIR (SC) 2274 **Confession - Extra judicial - Corroboration - Necessity of** - Conviction on the basis of confession without insisting on corroboration - Permissibility.

The evidence furnished by the extra-judicial confession made by the accused to witnesses cannot be termed to be tainted evidence and if corroboration is required it is only by way of abundant caution. If the Court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone.

Maghar Singh v. State of Punjab, 1975 AIR (SC) 1320

Confession - Extra judicial - Corroboration - Necessity of - Murder of wife and children confessed to a close friend whose testimony was found to be reliable.

State of U.P. v. M.K. Anthony, 1985 AIR (SC) 48

Confession - Extra judicial - Improper rejection by trial court - The police not examining the witness to whom alleged confession was made - Extra judicial confession rightly rejected by the trial court - Reversal of acquittal by High Court is not proper.

Sonia Bahera v. State of Orissa, 1983 AIR (SC) 491

Confession - Extra judicial - It is a weak piece of evidence - Introduction of false prosecution storey would further affect the credibility of extra judicial confession.

Jagta v. State of Haryana, 1974 AIR (SC) 1545

Confession - Extra judicial - It is a weak piece of evidence - Reliance cannot be placed unless it is plausible and inspires confidence.

The State of Punjab v. Bhajan Singh and others, 1975 CrLJ 282 : 1975 AIR (SC) 258 : 1975(4) SCC 472 : 1975(1) SCR 747

Confession - Extra judicial - Necessity to ascertain the credential of witness proving the confession as also the actual words used - Acceptance of evidence without passing the text of reproduction of exact words, the reason or motive for confession and the person selected for reposing confidence - Extra judicial confession could not have been acted upon specially without corroboration.

Heramba Brahma and another v. State of Assam, 1983 CrLJ 149 : 1982 AIR (SC) 1595 : 1983 CAR 9 : 1982 CrLR (SC) 502 : 1983 SCC (Cr) 40 : 1983 BBCJ 6 : 1983 (1) Crimes 150

Confession - Extra judicial - Possibility of inducement, threat or promise from a person in authority has to be determined from the point of view of the accused.

Satbir Singh and another etc. etc. v. State of Punjab, 1977 CrLJ 985 : 1977 AIR (SC) 1294 : 1977 CrLR (SC) 211 : 1977 CAR 147 : 1977 SCC (Cr) 333

Confession - Extra judicial - Principles for consideration - Necessity of corroboration.

Before the court will act on extra judicial confession the circumstances under which the confession is made, the manner in which it is made, the persons to whom it is made will be considered along with two rules of

caution. First, whether the evidence of confession is reliable and secondly whether it finds corroboration.

Wakil Nayak v. The State of Bihar, 1972 CrLJ 566 : 1971(3) SCC 778 : 1972 CAR 1 : 1972 Pat LJR 248

Confession - Extra judicial - Probative value - Such confession cannot be presumed in law to be a weak type of evidence - It depends of the facts and circumstances of each case.

The learned Sessions Judge has brushed aside their evidence by presuming that their statements constituting an extra-judicial confession is a very weak type of evidence. This is a wrong view of the law. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession.

Narayan Singh and others v. State of M.P., 1985 CrLJ 1862 : 1985 AIR (SC) 1678 : 1985 CrLR (SC) 404 : 1985 SCC (Cr) 460 : 1985 (2) Crimes 604 : 1989 CAR 235

Confession - Extra judicial - Statement made to superior officer by the accused who was a sepoy in the Army - Senior officer not inimical to the accused - Corroboration by recovery of head of deceased on the disclosure of accused - Confession can be relied for conviction.

Vinayak Shivajirao Pol v. State of Maharashtra, 1998 CrLJ 1558 : 1998 AIR (SC) 1096 : 1998 SCC (Cr) 610 : 1998 CrLR (SC) 83 : 1998 CAR 84 : 1998 UP CrR 399

Confession - Extra judicial - Voluntary nature - Before relying on confession the Court must be satisfied that it is voluntary.

One stage of the investigation suspected of complicity in this murder and, therefore, he should be treated no better than an accomplice. In our opinion, this criticism is not justified. An unambiguous confession, if admissible in evidence, and free from suspicion suggesting its falsity, is a valuable piece of evidence which possesses a high probative force because it emanates directly from the person committing the offence. But in the process of proof of an alleged confession the court has to be satisfied that, it is voluntary, it

does not appear to be the result of inducement, threat or promise as contemplated by Section 24, Indian Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true. For this purpose, the court must scrutinise all the relevant factors, such as, the person to whom the confession is made, the time and place of making it, the circumstances in which it is made and finally the actual words used.

Thimma v. The State of Mysore, 1971 CrLJ 1314 : 1971 AIR (SC) 1871 : 1971(1) SCR 215 : 1970(2) SCC 105 : 1971 Mad LJ (Cri) 336

Confession - Extra judicial confession - Accused absconding for four years before making the confession - One of the witnesses produced to prove the confession not supporting the prosecution case - Confession cannot be relied.

Kansa Behera v. State of Orissa, 1987 CrLJ 1857 : 1987 AIR (SC) 1507 : 1987 SCC (Cr) 601 : 1987 CrLR (SC) 389 : 1987 CAR 212 : 1987 (2) Rec CrR 157

Confession - Extra judicial confession - Admissibility - No reason existing to falsely implicate the accused - Even though the extra judicial confession is not looked upon with favour - Conviction in the circumstances is not illegal.

Extra-judicial confessions are not usually considered with favour but that does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in circumstances which tend to support his statement, should not be believed.

There is no enmity between Ujagar Singh and the appellant and, therefore, no good reason existed for Ujagar Singh to state falsely.

The evidence of the appellant's having enmity with Sheo Sahai, the appellant's conduct in purchasing a sword and delivering it stained with human blood to the Police and the appellant's confession to Ujagar Singh, fully establish that the appellant did commit the murder of Sheo Sahai. We are therefore of opinion that he has been rightly convinced of the offence under Section 302, I.P.C., and has been awarded the proper sentence.

Ram Singh v. State of Uttar Pradesh, 1967 CrLJ 9 : 1967 AIR (SC) 152 : 1962 Supp (2) SCR 203 : 1962 All LJ 302

Confession - Extra judicial confession - It is a very weak type of evidence - Strong corroborating circumstances should be there to sustain conviction.

The case of the prosecution arrests on retracted extra judicial confession. It is well settled that the retracted extra judicial confession is a very weak type of evidence and strong corroborating circumstances should be there. Before we proceed further, it is necessary to examine whether the death was a homicidal one. Unfortunately, for the prosecution, the body was recovered 20 days later and it was in a highly decomposed state. The doctor (S.B. Raha) who conducted the post-mortem found only fracture of the third Cervical Vertibra of the spine and no other injuries. He noted that the same could not be ascertained whether it was the ante-mortem or post-mortem injury. No doubt, in his further deposition he has answered to a question that the injury was sufficient in the ordinary course of a nature to cause death. The answer given does not in any manner improve the prosecution case, in view of the fact that the doctor could not categorically say whether the fracture was ante-mortem or post-mortem. That apart, according to PW 11, the accused is alleged to have confessed that he hit the deceased on the head and other parts of the body. But the doctor did not find, as noted above, any fracture of the skull or any other internal injuries. Therefore, the version as per the extra judicial confession is inconsistent with the medical evidence. The extra judicial confession should be taken as a whole and should not suffer from any infirmity even if it is to be acted upon. But in this case we find that the belated confession itself becomes doubtful in the light of the medical evidence apart from being the same retracted. We think it is highly unsafe to sustain the conviction.

Chhittar v. State of Rajasthan, 1994 CrLJ 245 : 1994 AIR (SC) 214 : 1995 SCC (Cr) 248

Confession - Extra judicial confession - Joint confession by several accused persons - No corroboration by any other evidence of circumstances or the motive - Unlikely circumstance of joint confession - Conviction cannot be based on such confession alone - Penal Code, 1860 - Section 302 - Conviction on confession.

Evidence of P.W.6, who only testified about it, is improbale and lacking in credence. It does not stand to reason - rather it seems odd - that all the four accused persons should be seized at the same time by a mood to approach P.W.6 to make a joint confession. It is significant to note that they had no particular relationship or connection with P.W.6, so as to confide in him and take his assistance for surrendering before the police. If really, they wanted to surrender - as is the evidence of P.W.6 - we fail to understand why instead of going to the Police they would approach him and blurt out a confession before him.

Surinder Kumar v. State of Punjab, 1999 CrLJ 267 : 1999 AIR (SC) 215 : 1999 (SCC) (Cr) 33 : 1998(2) Raj LW 201 : 1998(4) Crimes 101 : 1999(1) Rec CrR 164

Confession - Extra judicial confession - Requirement that witness should give actual words used by accused is not invariable - It depends upon the satisfaction of the Court.

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

Baldev Raj v. State of Haryana, 1990 CrLJ 2643 : 1991 AIR (SC) 37 : 1991 SCC (Cr) 659 : 1991 CAR 57 : 1990 CrLR (SC) 664

Confession - Extra judicial confession - Retraction - Reliability - Evidence of witness before whom extra-judicial confession was made not reliable - No other circumstance to connect the accused with crime - Accused entitled to benefit of doubt - Conviction and sentence set aside.

There are many suspicious features in the evidence of PW-11. It becomes highly doubtful as to why the accused should cover such a long distance and go all the way to PW-11 to confess his crime and then immediately leave his house. This is a retracted extra-judicial confession which is the sole basis on which both the courts have relied and based the conviction. We are not satisfied with the evidence of PW-11 and his conduct also throws any amount of doubt about the truthfulness and the version given by him. If P.W. 11's evidence becomes unreliable, then there is no other circumstance to connect the accused with the crime. In the result, the appellant is given benefit of doubt and the conviction and sentence awarded against him are set aside.

Sakharam Shankar Bansode v. State of Maharashtra, 1994 CrLJ 2189 : 1994 AIR (SC) 1594 : 1994 SCC (Cr) 505

Confession - Extra judicial confession - Testimony of the witness proving the extra judicial confession - Witness did not dare to make statement before to the police during investigation but deposed after two and half years in the court - Since witness remained in custody of the accused mother, it was not unlikely that witness did not dare to make any statement at the initial stage - Corroboration from evidence of other witnesses and from the extra-judicial confession before prosecution witnesses - No reason to discard the evidence.

Learned Senior Counsel appearing for the appellants has, however, contended that the evidence of the daughter of the deceased (P.W. 13) should not be accepted because she did not make any statement when the police recorded her statement when the dead body was discovered. But she deposed only after two and a half years in the Court. It may be indicated here that P.W. 13 was under the custody of the mother and from her evidence it transpires that she had to suffer great trauma on account of a licentious and misguided mother and despite all imploration, she could not persuade her mother to lead dignified life. She had to live with her mother and accused No. 1 and it is not at all unlikely that at the initial stage she did not dare making any statement about the said murder but when she was cited as a witness, she wanted to make clean breast of the relevant facts and stated the truth. Her evidence gets corroboration from the depositions of

other witnesses and also from the extra-judicial confession proved by P.Ws. 1, 2, 3 and 4. We, therefore, do not find any reason to discard the evidence of P.W. 13.

Pathan Fathima v. State of Andhra Pradesh, 1995 CrLJ 3613 : 1995 AIR (SC) 1958

Confession - Extra judicial confession - The confession made before close relative - Delay in recording the statement of witness duly explained by the investigating officer - Evidence of witness proving extra-judicial confession found to be reliable and truthful - Conviction on the basis of testimony of such witness, affirmed.

Ram Khilari v. State Rajasthan, 1999 CrLJ 1450 : 1999 AIR (SC) 1002 : 1999 SCC (Cr) 376 : 1999 CrLR (SC) 123 : 1999(38) All CrC 455

Confession - Scope of reliance - Conviction without corroboration - Permissibility.

It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 40, the fact remains that is is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

It has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance to support of its conclusion deducible

from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

Haricharan Kurmi v. State of Bihar, 1964(2) CrLJ 344 : 1964 AIR (SC) 1184 : 1964 (6) SCR 623 : 1964 BLJR 510

Discovery u/s 27

Section 27 – Disclosure statement – Admissibility – Accused stated that dead body was carried on motor cycle upto particular place – Broken glass pieces of tail lamp of motor cycle of co-accused alleged to be used to carry deceased recovered from that place – It can be held that Investigating Officer discovered fact that accused had carried dead body on particular motor cycle up to said place – Disclosure statement – Held, admissible.

State of Maharashtra vs. Damu Gopinath Shinde and others, 2000 Cri.L.J. 2301 (S.C.): 2000(2) All Cri R 781 : 2000(3) Cur Cri R 41 : 2000 SCC (Cri) 1088 : 2000(28) All Cri R 1237 : 2000 Cri LR (S.C)538 : 2000(2) Rec Cri R 781 : 2000(41) All Cri C 56 : AIR 2000 SC 1691

Section 27 – Disclosure statement – Evidentiary value – Such statement cannot be rejected merely on ground that there was delay in interrogation of accused.

State of U.P. vs. Babu Ram, 2000 Cri.L.J. 2457 (S.C.): 2000(2) Crimes 260 : 2000(3) All Cri LR 723 : 2000 SC Cri R 860 : 2000(28) All Cri R 960 : 2000 SCC (Cri) 845 : 2000(2) Rec Cri R 618 : 2000(40) All Cri C 976 : AIR 2000 SC 1735

Section 27—Application of—Discovery—Admissibility—Pre-conditions for relying the information received from accused.

Under Section 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word `fact' means some concrete or material fact to which the information directly relates.

For the applicability of Section 27 therefore two conditions are pre-requisite, namely (1) the information must be such as has caused discovery of the fact; and (2) the information must `relate distinctly' to the fact discovered. In the present case, there was a suggestion during the trial that P.W. 26 had prior knowledge from other sources that the incriminating articles were concealed at certain places and that the statement Ex. P-35 was prepared after the recoveries had been made and therefore there was no `fact discovered' within the meaning of Section 27 of the Evidence Act.

Earabhadrappa v. State of Karnataka, 1983 CrLJ 846 : 1983 AIR (SC) 446 : 1983 CrLR (SC) 268 : 1983 CAR 232 : 1983 SCC (Cr) 447 : 1983(2) Kant.LJ 1

Section 27—Confession—Appreciation of—Inculpatory part of confession not inextricably linked to exculpatory part—Inculpatory part can be relied for conviction.

Inculpatory part of the statement could be accepted even though the exculpatory part of the statement of the accused was rejected.

We find that the inculpatory part of statement Ex. A of the accused is distinct and severable from the exculpatory part. The present is not a case wherein the two parts of the statement are inextricably linked together and it is not possible to accept one part without accepting the other part. In case, the court finds the exculpatory part of the statement of the accused to be inherently improbable, there is no reason why the other part of the statement which implicates the accused to be inherently improbable, there is no reason why the other part of the statement which implicates the accused and which the court sees no reason to disbelieve, should not be accepted.

Jethamal Pithaji v. The Assistant Collector of Customs, Bombay and another, 1974 CrLJ 621 : 1974 AIR (SC) 699 : 1973 CAR 424 : 1974 (1) SCR 645

Section 27—Confession—Statement to police—Admissibility—Bar against use of statement made by any person to the police cannot be circumvented by obtaining a written statement from the person concerned.

The statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1), or for the purposes mentioned in sub-section (2) with which we are not concerned

in the present case. The prohibition contained in the section relates to all statements made during the course of an investigation. Letter PEEE which was addressed by Sahi Ram to Station House Officer was in the nature of narration of what, according to Sahi Ram, he had been told by the accused. Such a letter, in our opinion, would constitute statement for the purpose of Section 162 of the Code of Criminal Procedure. The prohibition relating to the use of a statement made to a police officer during the course of an investigation cannot be set at naught by the police officer not himself recording the statement of a person but having it in the form of a communication addressed by the person concerned to the police officer. If a statement made by a person to a police officer in the course of an investigation is inadmissible, except for the purposes mentioned in Section 162, the same would be true of a letter containing narration of facts addressed by a person to a police officer during the course of an investigation. It is not permissible to circumvent the prohibition contained in Section 162 by the investigating officer obtaining a written statement of a person instead of the investigating officer himself recording that statement.

Kali Ram v. State of Himachal Pradesh, 1974 CrLJ 1 : 1973 AIR (SC) 2773 : 1974 (1) SCR 722 : 1973 (2) SCC 808

Section 27—Confession to police—Admissibility—Discovery of fact in consequence of statement made to police is admissible in evidence.

Section 27, is an exception to the rules enacted in Section 25 and 26 of the Act which provide that no confession made to a police officer shall be proved as against a person accused of an offence and that no confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Where however any fact is discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, that part of the information as relates distinctly to the fact thereby discovered can be proved whether it amounts to a confession or not.

The expression, "whether it amounts to a confession or not" has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby

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

Ramkishan Mithanlal Sharma and others v. State of Bombay, 1955 AIR (SC) 104 : 1955 CrLJ 196 : 1955(1) SCR 903 : 57 Bom LR 600 : 1955 All WR (Supp) 41

Section 27—Disclosure—Hidden article—No person other than the accused could have known the place from where the recovery of fire arms was made—The disclosure statement is admissible in evidence.

Narpal Singh and others v. State of Haryana, 1977 CrLJ 642 : 1977 AIR (SC) 1066 : 1977(2) SCC 131 : 1977 CAR 197 : 1977 Pun LJ (Cr) 116

Section 27—Disclosure—Murder trial—Discovery of dead body at the instance of accused does not lead to conclusion of murder by accused but discovery of silver buttons belonging to deceased stained in blood, recovered at the instance of accused may give rise to presumption of participation of accused in the crime.

Kanbi Karsan Jadav v. State of Gujarat, 1966 CrLJ 605 : 1966 AIR (SC) 821 : 1962 Supp (2) SCR 726 : 1962 (1) Ker LR 511 : 1963 Mad LJ (Cri) 465

Section 27—Disclosure—Successive recovery—Investigating officer recovering the empty cartridges from the scene of occurrence the next day after recovering the fire arms on the previous night—The recovery memo cannot be said to be a fabricated document.

The Sessions Judge seems to believe that since these empties were not recovered at night although the Investigating Officer searched for the same in the light of the torch and lantern, their recovery in the day must be deemed to be a fabrication. We are unable to agree with this fallacious procese of reasoning. After all night, however lighted it may be, cannot be a good substitute for a day light or for the light of the sun. The empties were very small articles measuring about 1/2<$Eprime prime> to 1<$Eprime prime> and it is common experience that there are a number of small articles which

one may not, with due diligence, be able to find even with the aid of a torch or electric light, yet they could be easily found in the day.

The recovery has been proved also by P.W. 19 Gurdial Singh who is an eyewitness and who has also been held by the Courts below to be an independent and disinterested witness. Both these witnesses have deposed on oath regarding the recovery of seven empties from the spot. Merely because other witnesses were not examined would beno ground to reject their evidence. We would, however, like to point out that in future the Investigating Officer should not associate any eye-witness with the recovery memos, because that partakes of an attempt to make the witness omnibus.

Narpal Singh and others v. State of Haryana, 1977 CrLJ 642 : 1977 AIR (SC) 1066 : 1977(2) SCC 131 : 1977 CAR 197 : 1977 Pun LJ (Cr) 116

Section 27—Disclosure statement—Form of—Absence of signature or thumb impression of accused at disclosure statement—Authenticity of such statement doubtful.

The absence of the signatures or the thumb impression of an accused on the disclosure statement recorded under Section 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement.

Jackaran Singh v. State of Punjab, 1995 CrLJ 3992 : 1995 AIR (SC) 2345

Section 27—Discovery—Admissibility—Only such statement which relates to discovery of fact is admissible in evidence.

Section 27 does not nullify the ban imposed by Section 26 in regard to confessions made by persons in police custody but because there is the added guarantee of truthfulness from the fact discovered the statement whether confessional or not is allowed to be given in evidence but only that portion which distinctly relates to the discovery of the fact. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence.

Thus, Section 27 partially removes the ban placed on the reception of confessional statements under Section 26. But the removal of the ban is not of such an extent as to absolutely undo the object of Section 26. All it says is that so much of the statement made by a person accused of an offence and in

custody of a police officer, whether it is confessional or not, as relates distinctly to the fact discovered is provable. Thus, in this case taking the recovery memos the statements in regard to the key was this that the appellant handed over the key and said that he had opened the lock of the shop of the complainant with that key. The handling over of the key is not a confessional statement but the confession lies in the fact that with that key the shop of the complainant was opened and, therefore, that portion will be inadmissible in evidence and only that portion will be admissible which distinctly relates to the fact discovered, i.e., the finding of the key. Similarly the recovery of the box is provable because there is no statement of a confessional nature in that memorandum.

Udai Bhan v. The State of Uttar Pradesh, 1962 AIR (SC) 1116 : 1962 (2) CrLJ 251 : 1962 Supp (2) SCR 830

Section 27—Discovery—Admissibility—Scope of the admissibility of statement made at the time of discovery.

It is only that part which distinctly relates to the discovery which is admissible; but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the court cannot say that it will excise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not. We are therefore of opinion that the entire statement of the appellant (as well as of the other accused who stated that he had given the ornament to Bada Sab and would have it recovered from him) would be admissible in evidence and the Session Judge was wrong in ruling out part of it.

K. Chinnaswamy Reddy v. State of Andhra Pradesh and another, 1963(1) CrLJ 8 : AIR 1962 (SC) 1788 : 1963 (3) SCR 413 : 1962 (2) Ker LR 364

Section 27—Discovery—Admissibility—Gun shot—Gun recovered at the instance of one accused and empty shell recovered at the instance of another person—Shell even though fired from the gun, recovery not sufficient to lead to conviction of accused.

The gun, Exhibit 23, is alleged to have been recovered in pursuance of a statement made by accused Durga. The evidence of the Ballistic expert,

Shariq Alvi, shows that the empty shells which were found at the spot of occurrence were fired from that gun. This would be very good evidence to connect an accused with a crime but, the police did not recover the gun from Durga. Nor, indeed, did he made any statement that he had concealed it at a place which he would point out. The discoveries under Section 27 of the Evidence Act are not of guns and daggers used in a crime. Guns and daggers have an ancient origin and one does not have to hunt for an accused to discover them. The discovery, mostly and really, is as regards the authorship of concealment. Conduct and concealment are incriminating circumstances and their discovery becomes relevant and admissible under Section 27 of the Evidence Act. Here, we are left with the position that a gun was recovered from a person called Sunder Ahir and the shells or cartridges found at the scene of offence were fired from that gun. Inexplicably, Sunder has not been examined in the case. His evidence could have shown, what is alleged by the prosecution, that Durga had borrowed his gun at about the material time. Sunder, not having been a witness in the case, there is no legal evidence on the record to connect Durga with the gun.

State of Uttar Pradesh v. Jageshwar and others, 1983 CrLJ 686 : 1983 AIR (SC) 349 : 1983 SCC (Cr) 427 : 1983 CrLR (SC) 196 (2) : 1983 CAR 242 : 1983 All WC 438

Section 27—Discovery—Admissibility—The facts disclosed by accused already known to Police—The statement is not admissible in evidence.

The discovery must be of some fact which the police had not previously learnt from other sources and that the knowledge of the fact was first derived from information given by accused. If the police had no information before of the complicity of accused No. 3 with the crime and had no idea as to whether the diamonds would be found with him and the appellant had made a statement to the police that he knew where the diamonds were and would lead them to the person who had them, it can be said that the discovery of the diamonds with the third accused was a fact deposed to by the appellant and admissible in evidence under Section 27. However, if it be shown that the police already knew that accused No. 3 had got the diamonds but did not know where the said accused was to be found, it cannot be said that the

information given by the appellant that accused No. 3 had the diamonds and could be pointed out in a large crowd at the waiting hall led to the discovery of fact proving his complicity with any crime within the meaning of Section 27.

Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovey of the fact must relate to the commission of some offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled. If an accused charged with a theft of articles or receiving stolen articles, within the meaning of Section 411 I.P.C. states to the police. `I will show you the articles at the place where I have kept them' and the articles are actually found there, there can be no doubt that the information given by him led to the discovery of a fact, i.e., keeping of the articles by the accused at the place mentioned. The discovery of the fact deposed to in such a case is not discovery of the articles but the discovery of the fact that the articles were kept by the accused at a particular place. In principle there is no difference between the above statement and that made by the appellant in this case which in effect is that “I will show you the person to whom I have given the diamonds exceeding 200 in number.” The only difference between the two statements is that a “named person” is substituted for `the place' where the article is kept. In neither case are the articles or the diamonds the fact discovered.

Jaffer Hussain Dastagir v. The State of Maharashtra, 1970 CrLJ 1659 : 1970 AIR (SC) 1934 : 1970(2) SCR 332 : 1969 (2) SCC 872 : 1970 Mad LW (Cri) 138 : 73 Bom LR 26

Section 27—Discovery—Admissibility—The fact discovered must be relevant—The information given by accused should result in discovery—Even confession leading to discovery is admissible.

A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. In order to render the Information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made. What is the fact discovered in this case? Not the dagger but the dagger hid under the stone which is not known to the police.

Where the accused's statement connects the fact discovered with the offence and makes it relevant, even though the statement amounts to a confession of the offence, it must be admitted because it is that that has led directly to the discovery.

Himachal Pradesh Administration v. Om Prakash, 1972 CrLJ 606 : 1972 (1) SCC 249 : 1972 AIR (SC) 975 : 1972(2) SCR 765 : 1972 Andh WR 16

Section 27—Discovery—Admissible evidence—Recovery made from a place open and accessable to all—Unless the incriminating article is hidden or concealed, its discovery at the instance of accused shall not be admissible.

There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is “open or accessible to others”. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disintered its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not

whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

State of Himachal Pradesh v. Jeet Singh, 1999 CrLJ 2025 : 1999 AIR (SC) 1293 : 1999 SCC (Cr) 539 : 1999(2) Crimes 31 : 1999(2) Rec CrR 167 : 1999(1) Cal HN 103

Section 27—Discovery—Admissible statement—Recovery of alleged weapon used to assault the deceased—The information leading to recovery but the statement that the weapon was used is inadmissible.

Babboo and others v. The State of Madhya Pradesh, 1979 CrLJ 908 : 1979 AIR (SC) 1042 : 1979 SCC (Cr) 743 : 1979 CrLr (SC) 15 : 1979 CAR 134

Section 27—Discovery—Blood stained clothes—Discovery at the instance of accused persons which were discovered from a hidden place—Discovery indicate guilty knowledge and is consistence only with guilt of accused.

Pershadi v. State of Uttar Pradesh, 1957 AIR (SC) 211 : 1957 CrLJ 328

Section 27—Discovery—Blood-stained clothes—Blood-stained clothes of accused recovered at his instance is a circumstance sufficient to corroborate the charge of murder.

Sanjiv Kumar etc. v. State of Himachal Pradesh, 1999 CrLJ 1138 : 1999 AIR (SC) 782 : 1999 SCC (Cr) 127 : 1999(1) Rec CrR 717 : 1999 CrLR (SC) 89

Section 27—Discovery—Circumstantial evidence—Accused and deceased last seen together—Murder weapon recovered from another accused who was discharged in the trial—Accused is also entitled to acquittal.

The instrument of the offence was recovered at the instance of one Jitrai Majhi who has been discharged and under these circumstances therefore the evidence about the appellant having been seen in the evening with the deceased also is of no consequence. It is a settled rule of circumstantial evidence that each one of the circumstances has to be established beyond doubt and all the circumstances put together must lead to the only one inference and that is of the guilt of the accused. As discussed above the only circumstance which could be said to have been established is of his being with the deceased in the evening and on that circumstance alone the inference of guilt could not be drawn especially in the circumstances of the

case where one another accused person from whom an instrument of offence was recovered, who has a grudge against the deceased has been let off.

Kansa Behera v. State of Orissa, 1987 CrLJ 1857 : 1987 AIR (SC) 1507 : 1987 SCC (Cr) 601 : 1987 CrLR (SC) 389 : 1987 CAR 212 : 1987 (2) Rec CrR 157

Section 27—Discovery—Conditions for admissibility—Provision is exception to Sections 25 and 26—Only the statement which is immediate approximate cause of discovery is admissible.

The expression "Provided that" together with the phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

Mohmed Inayatullah v. The State of Maharashtra, 1976 CrLJ 481 : 1976 AIR (SC) 483 : 1976 SCC (Cr) 199 : 1975 CrLR (SC) 567 : 1975 BBCJ 760 : 1975 CAR 350

Section 27—Discovery—Contradiction with inquest report—The fact of discovery mentioned in the FIR itself before actual discovery was made—The accused not stated to have been present anywhere near the place of discovery—The circumstance of discovery cannot be relied.

P.W. 11 stated in his evidence that before going to the paddy field the F.I.R. Ex. P. 10 was drawn up by him. Surprisingly we find a mention about the discovery of the body in the F.I.R. itself. But the same is not found in the inquest. There is not even a reference to the accused in the Column No. 9 of the inquest report where the information of witness as to the cause of death has to be noticed. We are aware that the purpose of inquest report is only to ascertain the cause of death but in a case of this nature there should have been at least a mention in the inquest report as to how the body was discovered. Apart from that usually a panchnama is prepared for such a discovery made under Section 27 of the Evidence Act but strangely in this case there is no such panchnama nor there is any other evidence apart from the evidence of P.Ws. 1 and 11. P.W. 6 does not say anything about this aspect.

We have perused the evidence of P.W. 4. His evidence does not in any manner incriminate the accused. P.W. 4 deposed that the dead body of the deceased was found lying in a paddy field and that the police held inquest over the dead body in his presence and that the inquest report is P. 1 in which he put his signature as a witness. Nothing more is stated by him. He does not even refer to the presence of the accused at the place where the dead body was found or at the time of inquest, which was held also there. P.W. 4 does not in any manner help the prosecution case so far as this circumstance is concerned.

Jaharlal Das v. State of Orissa, 1991 CrLJ 1809 : 1991 AIR (SC) 1388 : 1991 SCC (Cr) 527 : 1991 CAR 217 : 1991 CrLR (SC) 467 : 1991(2) Crimes 268

Section 27—Discovery—Corroboration —Absence of substantive evidence—Recovery at the instance of accused cannot advance the prosecution case.

Babboo and others v. The State of Madhya Pradesh, 1979 CrLJ 908 : 1979 AIR (SC) 1042 : 1979 SCC (Cr) 743 : 1979 CrLr (SC) 15 : 1979 CAR 134

Section 27—Discovery—Delay—Recovery of articles belonging to deceased a long time after the incident—Possibility of accused receiving articles from another person—Circumstance of recovery cannot be relied to suggest participation of accused in the attack on the deceased.

State of Himachal Pradesh v. Wazir Chand and others, 1978 CrLJ 347 : 1978 AIR (SC) 315 : 1977 CrLR (SC) 511 : 1978 SCC (Cr) 58 : 1978 CAR 9

Section 27—Discovery—Exhumation of dead body at the instance of accused—Police already aware about the place— Circumstance of discovery cannot be relied against the accused.

Even before the respondent gave the information to the police about the place where from the dead body was exhumed, the respondent's husband who stands convicted gave the information to the head constable as to where the dead body was buried. After carefully examining the material placed before us, we are of the opinion that the reasons given by the High Court for discarding the evidence in regard to the recoveries as well the evidence with regard to the exhumation of the dead body do not suffer from any infirmity.

State of Rajasthan v. Smt. Kamla, 1991 CrLJ 602 : 1991 AIR (SC) 967

Section 27—Discovery—Form of seizure memo—Signature of accused on any statement attributed to him—The investigating officer has no obligation to obtain signatures of accused but obtaining such signatures is also not illegal.

The resultant position is that the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But, if any signature has been obtained by an Investigating Officer, there is nothing wrong or illegal about it.

State of Rajasthan v. Teja Ram and others, 1999 CrLJ 2588 : 1999 AIR (SC) 1776 : 1999 SCC (Cr) 436 : 1999(2) Raj LW 276 : 1999(2) Cal LT 106

Section 27—Discovery—Independent witnesses—Non-examination—Discovery of weapon allegedly made at the instance of accused proved only

by police officer—The discovery is a corroborative piece of evidence and is not effected by such infirmity.

Mst. Dalbir Kaur and others v. State of Punjab, 1977 CrLJ 273 : 1977 AIR (SC) 472 : 1976 CrLR (SC) 417 : 1976 SCC (Cr) 527 : 1977 Mad LJ (Cr) 50

Section 27—Discovery—Independent witnesses—Recovery not made in the presence of independent witnesses—Conviction on the basis of circumstance of last seen together alone is not permissible.

State of Punjab v. Sarup Singh, 1998 CrLJ 3292 : 1998 AIR (SC) 2899 : 1998 SCC (Cr) 711 : 1998 CAR 1 : 1998(2) Rec CrR 417

Section 27—Discovery—Murder weapon—Deceased suffering injury with sharp edge weapon—Recovery of blood stained gupti at the instance of accused—Corroboration by eye-witnesses —Conviction for murder affirmed.

It appears to us that the fatal injuries had been inflicted by Prakash with the gupti. The gupti was recovered at the instance of the accused and such recovery was not otherwise possible if the accused himself had not assisted for such recovery of the gupti. The said gupti was stained with human blood and no reasonable explanation has been given by accused for such blood stain. The injuries found on the person of the deceased could be inflicted by a gupti and complicity of Prakash in inflicting the fatal injuries by gupti has been corroborated by the eye-witness. There may be some minor discrepancies in the evidence of the eye-witness but so far as the complicity of Prakash is concerned, the depositions of the eye-witnesses were consistent.

Prakash and another v. State of Madhya Pradesh, 1992 CrLJ 3703 : 1993 AIR (SC) 65 : 1992 SCC (Cr) 853 : 1992 CAR 290 : 1992 Cr LR (SC) 712 : 1993 (3) Crimes 530

Section 27—Discovery—Murder weapon—Admissibility—Merely because accused had already told the Police that he would show the knife where it was hidden would not render its discovery inadmissible.

The blood stained knife (Ext. 5), with which the murder was committed was recovered at the instance of the appellant. We have not been impressed by the argument on behalf of the appellant that this evidence is not admissible under the provisions of Section 27 of the Evidence Act as the police already knew about the place where the knife could be found. This argument is

wholly without substance. This was based on the fact that the appellant first told the police that he would show them the knife and then took them to the place where the knife was hidden.

Karan Singh v. State of U.P., 1973 CrLJ 1136 : 1973 AIR (SC) 1385 : 1973(3) SCC 662 : 1973 Cr LR (SC) 90

Section 27—Discovery—Murder weapon—Absence of any statement by the accused who merely took out the weapon from beneath his cot—Nothing to show that accused had concealed it at a place which was known to him alone—Event of discovery neither admissible nor conviction thereon is permissible.

Bahadul v. State of Orissa, 1979 CrLJ 1075 : 1979 AIR (SC) 1262 : 1979 SCC (Cr) 982 : 1979 CrLR (SC) 177 : 1980 CAR 153

Section 27—Discovery—Murder weapon—Recovery of loaded pistol from a heap of rubbish near the road side—The statement accompanying the discovery found to be vague—No inference can be drawn that the accused has concealed the weapon.

The appellant was taken to the scene of offence where he made a certain statement and took out a loaded pistol from a heap of rubbish lying on the Kamla Nehru Road, being the direction in which he had run away after killing Pappoo. The Ballistic expert, Budul Rai, opined that the empty cartridge-shell, which was lying at the scene of offence, was fired from that particular pistol.

Evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon wielded it in offence. The statement accompanying the discovery is woefully vague to identify the authorship of concealment, with the result that the pointing out of the weapon may at best prove the appellant's knowledge as to where the weapon was kept.

Dudh Nath Pandey v. State of U.P., 1981 CrLJ 618 : 1981 AIR (SC) 911 : 1981 SCC (Cr) 379 : 1981 CAR 152 : 1981 All WC 297

Section 27—Discovery—Murder weapon—No material to connect the weapon with the crime—No motive to commit crime—Discovery cannot be relied.

Discovery of the consequential information, namely, saw blade, is not of a conclusive nature connecting the appellant with the crime. The recoveries were long after the arrest of the appellant. The blood stains on all the articles were disintegrated. So it was not possible to find whether it is human blood or not. Moreover, from the prosecution evidence it is clear that the deceased himself was an accused in an earlier murder case and it is obvious that he had enemies at his back. Absolutely no motive to commit crime was attributed to the appellant.

Kishore Chand v. State of Himachal Pradesh, 1990 CrLJ 2289 : 1990 AIR (SC) 2140 : 1991 SCC (Cr) 172 : 1990 CAR 348 : 1990 CrLR (SC) 608 : 1990(3) Crimes 341

Section 27—Discovery—Place of—Dead body recovered at the instance of accused at the place which was not in exclusive possession of accused—Accused himself stating about the dead body to the witness who lodged the missing report—The circumstance is not consistent with the innocence of the accused.

Anant Bhujangrao Kulkarni v. State of Maharashtra, 1992 CrLJ 4027 : 1993 AIR (SC) 110 : 1992 CAR 248 : 1992 Cr LR (SC) 464 : 1992(2) Crimes 644 : 1993 Supp (2) SCC 267

Section 27—Discovery—Probability—No recovery of stolen articles recovered in the first instance—Recovery made on subsequent examination—The cir<%4>cumstance of recovery is not reliable.

Chandran alias Surendran and another v. State of Kerala, 1990 CrLJ 2296 : 1990 AIR (SC) 2148 : 1991 SCC (Cr) 245 : 1990 CAR 296 : 1990 CrLR (SC) 519 : 1990(3) Crimes 328

Section 27—Discovery—Procedure—Information furnished by the accused leading to recovery of weapons is though admissible but Court must be satisfied that it was voluntary and reliable.

Rammi alias Rameshwar v. State of Madhya Pradesh, 1999 CrLJ 4561 : 1999 AIR (SC) 3544 : 1999(8) SCC 649 : 1999 (2) Jab LJ 354 : 1999(4) Rec CrR 246 : 1999(39) All CrR 762

Section 27—Discovery—Procedure—Recovery of articles—Essential requirements for application of Section 27 of the Evidence Act.

The two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence, and (2) he must also be in police custody.

The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confiemed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false.

Suresh Chandra Bahri v. State of Bihar, 1994 CrLJ 3271 : 1994 AIR (SC) 2420 : 1995 SCC (Cr) 60 : 1994 (2) Crimes 1027 : 1994 (2) BLJR 1147

Section 27—Discovery—Procedure for recording of statement—Involvement of more than one accused person—Vague statement without indicating who made the statement is highly improper.

It is impossible to believe that all spoke simultaneously. This way of recording evidence is most unsatisfactory and we record our disapproval of the same. If evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against the person.

Mohd. Abdul Hafeez v. State of Andhra Pradesh, 1983 CrLJ 689 : 1983 AIR (SC) 367 : 1983 CAR 25 : 1983 CrLR (SC) 26 : 1983 SCC (Cr) 139

Section 27—Discovery—Recovery of shirt of deceased at the instance of accused—Discovery highly improbable therefore cannot be believed.

This part of the story is highly improbable and difficult to believe. There is no reason whatsoever as to why the murderer of deceased should take the shirt of the deceased along with him. One can imagine the taking away of jewellery, weapon or some other valuable article from the person of deceased but taking

away of the shirt of the deceased by the appellant is a c ircumstance which cannot be believed.

Chandu alias Chandrahas v. State of Madhya Pradesh, 1992 CrLJ 3956 : 1992 AIR (SC) 2302 : 1992 CAR 377 : Cr LR (SC) 631 : 1992(3) CCR 285 : 1993 Supp (1) SCC 358

Section 27—Discovery—Statement made to Police Officer—Recovery of blood stain spear—The expression leading to discovery doubtful of interpretation that accused kept the same—Conviction on the basis of such statement is not possible.

The Marathi expression `Thevalela' would more appropriately be translated `has been kept' and not `I have kept' because in the case of `Have kept it,' the Marathi world would be `Thevala'. It may be that being not conversant with Marathi language our translation may not be appropriate but if this recovery of blood-strained spear is the only important circumstance of an incriminating character established in this case and if the authorship of concealment is not clearly borne out by cogent and incontrovertible evidence but as the High Court observes left to be inferred by implication, we have considerable hesitation in placing implicit reliance upon it. More so when it is a confessional statement which becomes admissible under Section 27 of Evidence Act though made in the immediate presence of a Police Officer. The recovery of a bloodstained spear becomes incriminating not because of its recovery at the instance of the accused but the element of criminality tending to connect the accused with the crime lies in the authorship of concealment, namely, that the appellant who gave information leading to its discovery was the person who concealed it.

To make such a circumstance incriminating it must be shown that the appellant himself had concealed the blood-stained spear which was the weapon of offence and on this point the language used in the contemporaneous record Ext. 28 is not free from doubt and when two constructions are possible in a criminal trial, the one beneficial to the accused will have to be adopted. Therefore, this linchpin of the prosecution case ceases to provide any incriminating evidence against the appellant.

Pohalya Motya Valvi v. State of Maharashtra, 1979 CrLJ 1310 : 1979 AIR (SC) 1949 : 1980 SCC (Cr) 261 : 1980 CrLR (SC) 185 : 1979 CAR 340

Section 27—Discovery—Stolen goods—Attestation by independent witness—Neighbourhood—Witness residing 38 miles away from the scene of occurrences unreliable—Reliable merely on evidence of police officer not proper.

The Delhi Administration v. Balakrishan, 1972 CrLJ 1 : 1972 AIR (SC) 3 : 1972(4) SCC 659 : 1972 MLJ (Cr) 205

Section 27—Discovery—Stolen property —Recovery made from public place after more than three weeks from the occurrence of alleged murder—Recovery of wearing apparel of deceased —Recovery from public place cannot be believed in the circumstances.

According to the prosecution these two wearing apparel had been removed from the body of the deceased after he had been done to death and to avoid identification, as indicated by the appellant, the pant and the shirt had been removed from the body and hidden there. Recovery is said to have been made more than three weeks after the occurrence. Admittedly, the place from where these two things are said to have been recovered was a public place and appears to have been very much accessible to people of the locality. It is difficult to believe that these two had been so concealed that they were not noticed and were available to be collected from the very place such a long time after.

Abdul Sattar v. Union Territory, Chandigarh, 1986 CrLJ 1072 : 1986 AIR (SC) 1438 : 1985 CAR 333 : 1985 CrLR (SC) 485 : 1985 SCC (Cr) 505 : 1986 (1) Rec CrR 483

Section 27—Dying declaration—Presence of eye-witnesses—Assault by accused persons with gun and chopper—Statement recorded by the police at the hospital without recording a statement about mental fitness of the deceased—Statement is not reliable.

It is not disputed that the deceased reached the hospital and an effort was made to call the police officer threat. The doctor attending him then found that the deceased was restless, his pulse was not detectable and his blood pressure was not recordable. It is thus difficult to believe that in that

condition he could have made any statement to the police officer. The doctor attending on the deceased did not certify that the deceased was in fit condition to make a statement. The police officer was required to ask the doctor whether the deceased was fit to make a statement whereafter the statement could be recorded. The statement recorded by the police officer, allegedly at the instance of the deceased, has been thumb marked by the deceased even though he was a literate person and could sign. Had he been in senses, we see no reason, why the deceased could not have signed the statement.

There is no mention therein about the presence of PWs 1 and 2 who, as it transpires, were agricultural labourers and would not normally be morning walkers. That is a luxury of the urban few and not of the working classes. We add this reason to uphold the orders of the High Court that the presence of PWs 1 and 2 was doubtful. They seemingly have been inducted to further the prosecution case, knowing that some comment could be offered against the impartiality of PW 4. In the totality of the circumstances, thus we get to the view that the High Court was justified in dis believing these eye-witnesses.

Ashok Kumar v. State of Bihar and others, 1999 CrLJ 599 : 1998(1) Pat LJR 1 : 1999(1) APLJ (Cr) 65

Section 27—Recovery—Country made revolver and cartridge—Disclosure statement by accused—Statement capable of an interpretation that accused had knowledge about concealment not that he had concealed the same—Conscious possession of revolver and cartridge by accused doubtful—Conviction and sentence set aside.

From this statement, "Revolver is concealed at Dadar. Come on. I will point out the place and revolver", we are at loss to understand how the trial Judge could have come to the conclusion that the recovery pursuant to it could clothe the appellant with conscious possession of the revolver and the cartridge. The statement extracted above is capable of an interpretation that the appellant had the knowledge about the concealment of the revolver at the particular place from where it was got recovered and not that he had concealed the same. In this view of the matter, it is not possible to say

conclusively and beyond a reasonable doubt that the appellant had conscious possession of the revolver and the cartridge.

Since, the prosecution has failed to establish beyond a reasonable doubt that the appellant was in conscious possession of the revolver and the cartridge his conviction for an offence under Section 3 read with Section 25 of the Arms Act, 1959 cannot be sustained. We accordingly accept this appeal and set aside the conviction and sentence of the appellant and acquit him.

Raosaheb Balu Killedar v. State of Maharashtra, 1995 CrLJ 2632

Section 27—Recovery—Things discovered during search is an evidence—Slip of paper with entries thereon can be looked into.

Girdhari Lal Gupta and another v. D.N. Mehta, 1971 CrLJ 1 : 1971 AIR (SC) 28 : 1971(3) SCR 748 : 1970(2) SCC 530 : 1971 Mad LJ (Cri) 387

Section 27—Validity of—Provision if unconstitutional—Admissibility of statement of accused to Police—Classi- fication of person in custody and persons is not in custody is reasonable classification—Provision is not arbitrary or violative of equality clause.

Distinction between persons in custody and persons not in custody, in the context of admissibility of statements made by them concerning the offence charged cannot be called arbitrary, artificial or evasive: the legislature has made a real distinction between these two classes, and has enacted distinct rules about admissibility of statements confessional or otherwise made by them.

There is nothing in the Evidence Act which precludes proof of information given by a person not in custody which relates to the facts thereby discovered: it is by virtue of the ban imposed by Section 162 of the Cr.P.C., that a statement made to a police officer in the course of the investigation of an offence under Ch. 14 by a person not in police custody at the time it was made even if it leads to the discovery of a fact is not provable against him at the trial for that offence. But the distinction which it may be remembered does not proceed on the same lines as under the Evidence Act, arising in the matter of admissibility of such statements made to the police officer in the course of an investigation between persons in custody and persons not in custody, has little practical significance.

If Section 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of the truth of the statement made by him, and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement, that rule is not to be deemed unconstitutional, because of the possibility of abnormal instances to which the legislature might have, but has not extended the rule. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be a ground for holding that there is an attempted hostile discrimination because the rule of admissibility of evidence is not extended to a possible, but an un common or abnormal class of cases.

State of Uttar Pradesh v. Deoman Upadhyaya, 1960 AIR (SC) 1125 : 1960 CrLJ 1504 : 1960(3) SCR 14 : 1960 All LJ 733 : 1960 All Cr R 361

Res gestae

Section 6 – Res gestae – Fact forming part of same transaction – When admissible – Witness stated that on hearing sound of firing he reached on spot and found that injured was lying on ground and he told him that his nephew has fired at him – Statement of accused held admissible under Section 6.

Sukhar vs. State of Uttar Pradesh, 2000, Cri.L.J. 29 (S.C.): 1999(3) Crimes 191 : 1999(4) All Cri LR 60 : 2000 SCC (Cri) 49 : 1999(26) All Cri R 2283 : 1999(4) Cur Cri R 85 : 2000 SC Cri R 20 : 1999(3) Chand Cri C 97 : 1999(39) All Cri C 831 : AIR 1999 SC 3883

Section 6—Hearsay—Relevance of—Witnesses while stating the accused to have fired at the scene of occurrence also relying upon the version of other witnesses present at the scene immediately after occurrence—It is admissible as a relevant fact.

Jetha Ram v. The State of Rajasthan, 1979 CrLJ 26 : 1979 AIR (SC) 22 : 1978 CrLR (SC) 332 : 1978 SCC (Cr) 561 : 1978 CAR 270

Section 6—Hearsay—Witness proving the statement have been given by a third person—Without examination of third person the statement is not admissible—No amount of suspicion can constitute legal evidence.

Bhugdomal Gangaram and others etc. v. The State of Gujarat, 1983 CrLJ 1276 : 1983 AIR (SC) 906 : 1983 CAR413 : 1983 CrLR (SC) 382 : 1984 SCC (Cr) 67

Section 6 – Relevancy of facts forming part of same transaction – Case of murder – Accused killing his wife and daughter – Father of deceased stated that father of accused informed him on telephone that his son has killed the deceased – Father of accused not supported prosecution during trial – No finding as to whether such information, was either of the time of commission of offence or immediately thereafter, so as to form the same transaction – Such utterances by father of accused cannot be considered as relevant under Section 6.

Vasa Chandrasekhar Rao vs. Ponna Satyanarayana and another, 2000 Cri.L.J. 3175 (S.C.): 2000 (2) Crimes 328 : 2000 (3) Rec Cri R 96 : 2000 (28) All Cri R 1623 : 2000 SCC (Cri) 1104 : 2000 (3) Cur Cri R 17 : 2000 (41)All Cri C 210 : AIR 2000 SC 2138

<u>Dying Declaration</u>

Section 32 – Dying declaration – Admissibility – FIR as well as statement given by injured to Investigating Officer – Not admissible as dying declaration under Section 32 of Act.

Sukhar vs. State of Uttar Pradesh, 2000, Cri.L.J. 29 (S.C.): 1999(3) Crimes 191 : 1999(4) All Cri LR 60 : 2000 SCC (Cri) 49 : 1999(26) All Cri R 2283 : 1999(4) Cur Cri R 85 : 2000 SC Cri R 20 : 1999(3) Chand Cri C 97 : 1999(39) All Cri C 831 : AIR 1999 SC 3883

Section 32—Confession—Corroboration—Judicial confession of murder corroborated by recovery of dead body—Accused admitting to have caused four strokes with the axe on the head of deceased—Recovery of decomposed body—Medical opinion stating solitary injury is not relevant.

The confessional statement recorded by the 1st Class Magistrate has been rightly held to be correct in as much as in accordance with the statement the

dead body was recovered from a room of the deceased's house after removing the earth on the pointing out of place by the appellant where the corpse was buried by the appellant herself. This dead body was recovered in the presence of P.W. 6, who is the Tehsildar. Secondly, the dead body was in a highly decomposed state as it was recovered after 10 days from the date of dumping the dead body under earth and as such the injuries on the dead body were not clearly visible and it is not possible for the doctor, P.W. 5 who held the post mortem examination to see all the injuries on the person of the deceased. The evidence of the doctor was not very relevant in this connection.

Manguli Dei v. State of Orissa, 1989 CrLJ 823 : 1989 AIR (SC) 483 : 1989 SCC (Cr) 322 : 1988 CAR 267 : 1989 CrLR (SC) 106 : 1988(3) Crimes 773 : 1988 All CrC 574

Section 32—Dying declaration—Absence of particulars—Groaning utterances of dying person cannot be insisted to be complete in particulars—Dying declaration cannot be discredited for want of particulars.

Counsel has sought to discredit these declarations relevant under Section 32 of the Evidence Act forgetting that they are the groaning utterances of a drying woman in the grip of dreadful agony which cannot be judged by the standards of fullness of particulars which witnesses may give in other situations. To discredit such dying declarations for shortfalls here or there or even in many places is unrealistic, unnatural and unconscionable if basically there is credibility.

Som Nath v. State of Haryana, 1980 CrLJ 925 : 1980 AIR (SC) 1226 : 1980 CAR 124(2) : 1980 CrLR (SC) 194 : 1980 SCC (Cr) 681

Section 32—Dying declaration—Admissibility—Necessity of strict scrutiny and closest circumspection by Court before acting upon the dying declaration—The Court must be satisfied about the fit state of mind of the deceased making declaration before relying on the same—Omission of Magistrate recording declaration to put direct question about mental condition of injured may renders it unsafe to be relied.

The dying declaration is undoubtedly admissible under Section 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny

and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the Court has to be on guard against the statement of the deceased being a result of either tutoring prompting or a product of his imagination. The Court must be satisfied the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration.

The person who recorded the dying declaration to question the deceased regarding his state of mind to make the statement was considered to be a very serious one and in our opinion in the instant case the omission of the Judicial Magistrate who knew the law well throws a good deal of doubt on the fact whether the deceased was really in a fit state of mind to make a statement. The Sessions Judge has rightly pointed out that even though the deceased might have been conscious in the strict sense of the term, there must be reliable evidence to show, in view of his intense suffering and serious injuries, that he was in a fit state of mind to make a statement regarding the occurrence. Having regard, therefore, to the surrounding circumstances mentioned above, which have not been fully considered by the High Court, we find it extremely unsafe to place any reliance on Ext, P-2 particularly in view of the conduct of the deceased in not making any disclosure regarding the occurrence on the three previous occasions when he had a full and complete opportunity to name his assailants.

K. Ramachandra Reddy and another v. The Public Prosecutor, 1976 CrLJ 1548 : 1976 AIR (SC) 1994 : 1976 CrLR (SC) 286 : 1976 CAR 278 : 1976(3) SCC 618 : 1876 (2) APLJ 39

Section 32—Dying declaration—Admissibility—Recording by police officer—The mental fitness of deceased not questioned from the officer during his cross-examination—The statement is admissible.

A statement, written or oral, made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, becomes admissible under Section 32 of the Evidence Act. Such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case. In the instant case, the dying declaration has been properly proved. It is significant to note that in the course of cross-examination of the witness proving the dying declaration, no questions were put as to the state of health of the deceased and no suggestion was made that the deceased was not in a fit state of health to make any such statement. The doctor's evidence also clearly indicates that it was possible for the deceased to make the statement attributed to her in the dying declaration in which her thumb impression had also been affixed.

Ramawati Devi v. State of Bihar, 1983 CrLJ 221 : 1983 AIR (SC) 164 : 1983 CrLR (SC) 160 : 1983 CAR 169 : 1983 SCC (Cr) 169 : 1983 Pat LJR 27 : 1983 Guj LH 337

Section 32—Dying declaration—Admissibility—The statement must inspire confidence—Where the deceased received severe injuries on vital organs and cannot be said to be in a fit state of mind as his peritoneum, stomach and spleen were completely smashed, any kind of coherent or credible statement cannot be expected—The dying declaration in such case is not reliable.

Darshan Singh and others v. State of Punjab, 1983 CrLJ 985 : 1983 AIR (SC) 554 : 1983 SCC (Cr) 523 : 1983 CAR 264 : 1983 CrLR (SC) 235

Section 32—Dying declaration—Admissibility—Application of provision to homicide as well as suicide—Application of test of proximity between the statement and the death.

The Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English law where only the

statements which directly relate to the cause of death are admissible. The Second part of Clause (1) of Section 32, viz., "the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question" is not to be found in the English Law.

From a review of the authorities and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:—

(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait-jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of Clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sancity of oath for the simple reason that a person on the verge

of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.

What Manju is alleged to have told them against the appellant and/or his parents and what she has stated in her letters, Exts. 30, 32 and 33, are inadmissible in evidence under Section 32(1) of the Evidence Act and cannot be looked into for any purpose.

Though I respectfully agree with Fazal Ali, J. that the test of proximity cannot and should not be too literally construed and be reduced practically to a cut-and-dried formula of universal application, it must be emphasised that whenever it is extended beyond the immediate, it should be the exception and must be done with very great caution and care. As a general proposition, it cannot be laid down for all purposes that for instance where a death takes place within a short time of marriage and the distance of time is not spread over three or four months, the statement would be admissible under Section 32 of the Evidence Act. This is always not so and cannot be so. In very exceptional circumstances like the circumstances in the present case such statements may be admissible and that too not for proving the positive fact but as an indication of a negative fact, namely raising some doubt about the guilt of the accused as in this case.

Sharad Birdhichand Sarda v. State of Maharashtra, 1984 CrLJ 1738 : 1984 AIR (SC) 1622 : 1984 CAR 263 : 1984 CrLR (SC) 296 : 1984 SCC (Cr) 487

Section 32—Dying declaration—Admissibility in evidence—Probative value of dying declaration depends upon the facts of each case.

A dying declaraton made by a person who is dead as to cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which cause of his death comes in question, is relevant under Section 32 of the Evidence Act and is also admissible in evidence. Though dying declaration is indirect evidence being a specie of hearsay, yet it is an exception to the rule against admissibility of hearsay evidence. Indeed, it is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused. But then the question as to how much weight can be attached to a dying declaration is a question of fact and has to be determined on the facts of each case.

Ram Bihari Yadav v. State of Bihar and others, 1998 CrLJ 2515 : 1998 AIR (SC) 1850 : 1998 SCC (Cr) 1085 : 1998 CrLR (SC) 562 : 1998 (2) Pat LJR 169 : 1998(2) Rec CrR 563

Section 32—Dying declaration—Anticipation of death is not necessary.

Tehal Singh and others v. State of Punjab, 1979 CrLJ 1031 : 1979 AIR (SC) 1347 : 1979 SCC (Cr) 722 : 1978 CrLR (SC) 660

Section 32—Dying declaration—Appreciation of—Crux of the matter as to who stabbed whom and why—Deceased not bothered due to his condition—The statement supporting prosecution case rightly taken into consideration.

Although the deceased was fit enough to make a statement, yet on account of being in great agony, his words were scarce. He could not be bothered more by the Magistrate in such a condition. It would have been sheer torture to him, if the Magistrate tried to interrogate him at length in regard to all the details. The crux of the whole matter was as to who had stabbed the deceased and why. These crucial facts are to be found in the dying declaration (Ex. 18), in which there is a mention that the stabbing of the deceased by the accused was preceded by abusing of Shivaji by the accused, to which the deceased objected.

The dying declaration supports the substratum of the prosecution case as narrated by the eyewitnesses, that the accused had following an altercation with the deceased, stabbed the unarmed deceased twice in the abdomen, and caused such injuries as were sufficient in the ordinary course of nature to cause death, and did cause his death. It was therefore, for the accused to

establish with a balance of probability circumstances which would bring his case within any Exception. Since the deceased was unarmed and the assault cannot be said to be sudden and unpremeditated, Exception II <%4>or any other Exception in Section 300.

State of Maharashtra v. Krishnamurti Laxmipati Naidu, 1981 CrLJ 9 : 1981 AIR (SC) 617 : 1981 CrLR (SC) 145 : 1981 SCC (Cr) 364

Section 32—Dying declaration—Appreciation of—Material diversions relating to commission of crime cannot be ignored by the Court.

The High Court has sidelined such a noticeable discrepancy looming large as between the two different statements made by the same person. When the sphere of scrutiny of dying declaration is a restricted area, the Court cannot afford to sideline such a material divergence relating to the very occasion of the crime. Either the context spoken to one was wrong or that in the other was wrong. Both could be reconciled with each other only with much strain as it relates to the opportunity for the culprit to commit the offence. Adopting such a strain to the detriment of the accused in a criminal case is not a feasible course.

Dandu Lakshmi Reddy v. State of A.P., 1999 CrLJ 4287 : 1999 AIR (SC) 3255 : 1999 SCC (Cr) 1176 : 1999(3) Raj LW : 1999(17) OCR 409 : 1999(3) Rec CrR 764

Section 32—Dying declaration—Bride burning—Declaration recorded by a Judicial Officer in the presence of doctor who certified the mental fitness—The deceased exonerated all the relatives—Acquittal affirmed.

A dying declaration properly recorded by a competent magistrate as far as practicable in the words of the maker stands on a much higher footing than a dying declaration which depends upon oral testimony.

The statement is recorded by a responsible Judicial officer. P.W. 1, the Doctor deposed that when he was on casualty duty the deceased was brought to the hospital in a seriously burnt condition and she was followed by her husband, mother-in-law etc. He examined her and sent an intimation to the police. He also deposed that the Magistrate also came at about 9 a.m. The Magistrate, who is examined as P.W. 3, deposed that he went to the casualty ward and recorded the dying declaration of the deceased in the presence of the Doctor

and that before recording the dying declaration he obtained the opinion from the Doctor that the deceased was in a fit condition to make a statement. In his cross-examination he also asserted that he was satisfied that the deceased made the statement voluntarily without any fear, persuasion or pressure.

Kishan Lal Sethi v. Jagan Nath and another, 1990 CrLJ 1500 : 1990 AIR (SC) 1357 : 1990 SCC (Cr) 460 : 1990 CAR 211 : 1990 CrLR (SC) 373 : 1990(3) Crimes 43

Section 32—Dying declaration—Cause of death—Relevance of—The deceased not proved to have died on account of transaction stated in the dying declaration—The statement is not admissible in evidence.

Clause (1) of Section 32 of the Evidence Act makes a statement of a person who has died relevant only when that statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. When Gaya Charan is not proved to have died as a result of the injuries received in the incident his statement cannot be said to be the statement as to the cause of his death or as any of the circumstances of the transaction which resulted in his death.

The result then is that the statement of Gaya Charan Ex. Kha 75 is inadmissible in evidence.

Moti Singh and another v. The State of Uttar Pradesh, 1964(1) CrLJ 727 : 1964 AIR (SC) 900 : 1964 (1) SCR 688 : 1963 MLJ (Cri) 625 : 1963 All CJ 647

Section 32—Dying declaration—Conditions for reliance—Court must satisfy itself that it is wholly reliable and does not suffer from any major infirmity.

To base a conviction on the basis of dying declaration, the Court must be satisfied that it is wholly reliable and it should not suffer from any major infirmity. If there are some infirmities then the Court should examine whether they are fatal or whether there is any corroborating evidence which supports the prosecution case and renders the dying declaration acceptable.

Shakuntala v. State of Punjab, 1994 CrLJ 246 : 1994 AIR (SC) 220 : 1994 SCC (Cr) 1781

Section 32—Dying declaration—Contents of—Omission to mention names of eye witnesses in dying declaration does not render the testimony of such witnesses doubtful.

Surat Singh and another v. State of Punjab, 1977 CrLJ 347 : 1977 AIR (SC) 705 : 1976 SCC (Cr) 605 : 1977 CrLR (SC) 53

Section 32—Dying declaration—Contents of—Either such statement should relate to cause of his death or should relate to any of the circumstances of transactions which resulted in his death.

Section 32(1) of the Evidence Act renders a statement relevant which was made by a person who is dead in cases in which cause of his death comes into question, but its admissibility depends upon one of the two conditions. Either such statement should relate to the cause of his death or it should relate to any of the circumstances of transaction which resulted in his death.

The collocation of the words in Section 32 (1) "circumstances of the transaction which resulted in his death" as apparently of wider amplitude than saying "circumstances which caused his death." There need not necessarily be a direct nexus between "circumstances" and death. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distance circumstances can also become admissible under the sub-section, provided it has nexus with the <%4>transaction which resulted in the death.

Rattan Singh v. State of Himachal Pradesh, 1997 CrLJ 833 : 1997 AIR (SC) 768 : 1997 SCC (Cr) 525 : 1996(4) Crimes 282 : 1997 CrLR (SC) 140 : 1997 (1) Rec Cr R 550

Section 32—Dying declaration—Corroboration recorded within short time after incident—Deceased catagorically stated that it was accused who shot at him—Bitter animity against other two accused—Dying declaration not a result of tutoring—Evidence of three eye-witnesses supporting dying declaration found to be reliable—In the circumstances conviction held proper.

The Executive Magistrate stated in his deposition that he reached the hospital at 8 p.m. and he removed everybody from the place and recorded the dying declaration in the presence of the doctor. After recording he read out the statement of the deceased and took the thumb impression because his right hand was having needle for glucose drip. PW 9 remained therefrom the beginning to the end and signed on it certifying that the patient was conscious. In KA-16 the deceased has stated that when he was coming down from the stair-case of the Women's Hospital he saw the three accused including the appellant standing there and the appellant fired at him. He did not, however, mention that the other two accused exhorted the appellant. As a matter of fact he had bitter enmity against the other two accused and the appellant was not an important person as compared to the other two accused, yet the deceased categorically stated that it was the appellant who shot at him. This itself shows that the declaration given by him was not a result of tutoring. It may not be necessary for us to refer to the contents of Ex. KA-28 recorded by the Investigating Officer. At that stage it was recorded as a statement under Section 161, Cr.P.C. and naturally more details were incorporated. However, we are satisfied that the Ex. KA-16 is a true one. Further we have the evidence of three eye-witnesses PWs 1, 2 and 3. We have gone through their evidence carefully. Their presence at the place of occurrence cannot be doubted. Having witnessed the occurrence they immediately shifted the injured to the hospital. Each one of them has categorically stated that the appellant shot at the deceased. Therefore, there is overwhelming evidence against the appellant.

Gangotri Singh v. State of U.P., 1992 CrLJ 1290 : 1992 AIR (SC) 948 : 1992 CAR 369 : 1992 Cr LR (SC) 284 : 1992 (1) Crimes 981 : 1992 (1) CCR 1064

Section 32—Dying declaration—Corroboration—Necessity of—Conviction solely on such declaration—Permissibility.

If the dying declaration is acceptable as truthful then even in the absence of other corroborative evidence it would be open to court to act upon the dying declaration and convict the appellant stated therein to be the offender. An accusation in a dying declaration comes from the victim himself and if it is

worthy of acceptance then in view of its source the Court can safely act upon it.

Tapinder Singh v. State of Punjab and another, 1970 CrLJ 1415 : 1970 AIR (SC) 1566 : 1971(1) SCR 599 : 1970 (2) SCC 113

Section 32—Dying declaration—Corroboration—Necessity of—Suspicious circumstances surrounding recording of declaration—Deceased a young boy of 12 years making two dying declarations—Improvement in second declaration by implicating more persons—Possibility of tutoring not ruled out—Reliance on declaration without corroboration, not permissible.

Rasheed Beg and others v. State of Madhya Pradesh, 1974 CrLJ 361 : 1974 AIR (SC) 332 : 1973 Cr LR (SC) 795 : 1974(4) SCC 264

Section 32—Dying declaration—Corroboration—Nature of injury— Deceased claimed to have stated that accused pierced him while co-accused assaulted—Absence of corroboration from nature of injuries as no piercing injury inflicted on the deceased consciousness of deceased at the time of making declaration, doubtful—Dying declaration cannot be relied.

Statements are to the effect that the deceased told them that Dandapani Choudhury and Radhakrishna Choudhury `'pierced' him while Banka Nayako assaulted on the head with a `kati'. We however find that Dr. K.K. Misra (P.W. 13) has categorically stated that while there was one "incised looking" lacerated wound on the forehead and side of the scalp and one similar lacerated wound on the eye-brow and the left temple, they were lacerated wounds which could have been caused by a blunt weapon. There is nothing in the statement of the witness to show that he found any such injury as could corroborate the version that piercing injuries had been inflicted on the deceased.

Dr. K.K. Misra (P. W. 13) has however stated that he found, on a post-mortem examination, that there was congestion of the brain of the deceased due to the head injuries and that having "lost consciousness the victim might not have regained consciousness." This part of the statement was also not noticed by the High Court and was also not taken into consideration even though it had a great bearing on the question whether the deceased could regain

consciousness and make a dying declaration. As it is, it cannot be said with any amount of certainty that the deceased made the dying declaration.

Banka Naiko and others v. State of Orissa, 1976 CrLJ 1556 : 1976 AIR (SC) 2013 : 1976 CrLR (SC) 341 : 1976 SCC (Cr) 417

Section 32—Dying declaration—Corroboration—Necessity of—It is not a rule of law or rule of prudence—Corroboration must be insisted before acting upon dying declaration.

Though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross-examination, there is neither a rule of law 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.

Munnu Raja and another v. The State of Madhya Pradesh, 1976 CrLJ 1718 : 1976 AIR (SC) 2199 : 1976 SCC (Cr) 376 : 1976 CrLR (SC) 54 : 1976 Jab LJ 599

Section 32—Dying declaration—Corroboration—Recording of statement by Sub Inspector verified by the doctor—Corroboration by other witnesses—Reliance on dying declaration for conviction is not improper.

We are satisfied that the dying declaration (Exhibit P.W. 21/F), the genuineness of which is verified by Dr. Avtar Singh Gill (P. W. 18), is truthful and convincing and it cannot be brushed aside merely on the ground that it was not recorded by a Magistrate especially when it is remembered that it was recorded by S.I. Din Dayal in the presence of the duty doctor Avtar Singh Gill at a time when the deceased was in great agony and the life in her was fast ebbing away. It is well recognised that when the words are few, they are seldom spent in vain. It would also be well at this stage to recall the statement made in cross-examination by Shri Yashpaul, Link Judicial Magistrate, Jama Masjid, Delhi to the effect that when he reached the Hospital to record the statement of the deceased but could not do so as she had expired before his arrival, he was informed that a police officer had already recorded her statement. The testimony of the parents of the deceased namely, Roshan (P.W. 1) and Phool Vati (P.W. 2) also lends strong corroboration to Exhibit P. W. 21/F. They have categorically stated that the

relations between the deceased and the appellant were strained as the latter was ill-treating the former and was carrying on with another woman from Shahdara who used to visit his (the appellant's) house every now and then; that the deceased often used to complain to them about the misbehaviour and cruel conduct of the appellant towards her and used to send oral and written messages imploring them to take her away from the matrimonial house.

Jaswant Singh v. State (Delhi Administration), 1978 CrLJ 1869 : 1979 AIR (SC) 190 : 1978 CAR 387 : 1978 SCC (Cr) 523 : 1978 CrLR (SC) 527

Section 32—Dying declaration—Corroboration—Deceased stating that the accused forcibly administered the endrine poison—Corroboration by chemical analysis according to which the viscera did contain the poison—Injuries on the person of accused corroborating the dying declaration—Theory of suicide completely excluded—Conviction for murder affirmed.

Nelluri Subba Rao and another v. State of Andhra Pradesh, 1979 CrLJ 1130 : 1979 AIR (SC) 1513 : 1979 SCC (Cr) 521 : 1979 CrLR (SC) 327 : 1979 All CrR 367

Section 32—Dying declaration—Corroboration—Necessity of.

The Evidence Act attaches a special sanctity to a dying declaration. Thus, if the statement of a dying person passes the test of careful scrutiny applied by the Courts, it becomes a most reliable piece of evidence which does not require any corroboration. Suffice it to say that it is now well established by a long course of decisions of this Court that although a dying declaration should be carefully scrutinised but if after perusal of the same, the Court is satisfied that the dying declaration is true and is free from any effort to prompt the deceased to make a statement and is coherent and consistent, there is no legal impediment in founding the conviction on such a dying declaration even if there is no corroboration.

Kusa and others v. State of Orissa, 1980 CrLJ 408 : 1980 AIR (SC) 559 : 1980 Cr LR (SC) 200 : 1980 SCC (Cr) 289 : 1980(3) Mah LR 138

Section 32—Dying declaration—Corroboration—Necessity of—A dying declaration found to be truthful can form sole basis of conviction if the Court is satisfied about its truthfulness.

There can be conviction on the basis of dying declaration and it is not at all necessary to have a corroboration proved the Court is satisfied that the dying declaration is a truthful dying declaration and not vitiated in any other manner.

There can be a conviction on the basis of dying declaration even in the absence of other corroborating evidence but before doing so, the Court has to be satisfied about the truthfulness of the dying declaration.

State of Assam v. Mafizuddin Ahmed, 1983 CrLJ 426 : 1983 AIR (SC) 274 : 1983 SCC (Cr) 325 : 1983 CAR 129 : 1983 CrLR (SC) 163 : 1983(1) Crimes 380

Section 32—Dying declaration—Corroboration—Necessity of—If the dying declaration is true it can be relied upon without insisting upon the corroboration.

As a matter of law, a dying declaration can be acted upon without corroboration.

There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primacy effort of the Court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear of convincing that the Court may, for its assurance, look for corroboration to the dying declaration. The case before us is a typical illustration of that class of cases in which, the Court should not hesitate to act on the basis of an uncorroborated dying declaration.

State of Uttar Pradesh v. Ram Sagar Yadav and others, 1986 CrLJ 836 : 1985 AIR (SC) 416 : 1985 SCC (Cr) 552 : 1985 CrLR (SC) 73 : 1985(1) Crimes 344 : 1985(1) Rec CrR 600

Section 32—Dying declaration—Corroboration—Necessity of—Where the court is satisfied that the dying declaration is truthful and is not vitiated, corroboration is not necessary.

State of Assam v. Muhim Barkataki and another, 1987 CrLJ 152 : 1987 AIR (SC) 98 : 1986 CAR 277 : 1986 CrLR (SC) 505 : 1986(3) Crimes 586 : 1986 SCC (Cr) 503

Section 32—Dying declaration—Corroboration—If the Court is satisfied that dying declaration is true and free from any embellishment—Such dying declaration is sufficient for recording conviction even without any corroboration.

Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32 when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by 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 the guarantee of the truth of the statement made by the deceased regarding the causes of circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration. If there are more than one dying declarations, then the court has also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same.

Kundula Bala Subrahmanyam and another v. State of Andhra Pradesh, 1993 CrLJ 1635 : 1993(1) Crimes 1169 : 1993(2) SCC 684 : 1993(2) CCR 154

Section 32—Dying declaration—Corroboration—Particulars mentioned in dying declaration leaving no doubt about identity of accused—Evidence of witness supporting the prosecution case—Doctor recorded dying declaration deposed that mental condition of injured was fit to give the statement—Other circumstances also corroborate dying declaration—Conviction on the basis of dying declaration affirmed.

The firing of shot was heard by the deceased and after he was injured, he turned to that side and saw the accused running away and he identified him and has given the particulars of the accused namely about his residence and his brother's name also. Therefore, there is no question of any mistake in identification. The High Court has considered this aspect in great detail and has rightly held that all the particulars mentioned in the dying declaration would leave no doubt regarding the identity of the accused. Apart from this even though P.W. 1 is treated hostile, in his chief examination and also during cross-examination on the first day, he supported the prosecution case and his evidence also would show that it was the accused who shot at the deceased. The Doctors, P.Ws. 3 and 4 who recorded the dying declaration deposed that the injured was conscious and his mental condition was such that he could give a statement and whatever he stated was correctly recorded and read out to him. The High Court also pointed out certain circumstances which corroborate the dying declaration. Therefore we see absolutely no grounds to come to a different conclusion.

Gopal (Ram Gopal) v. State of U.P., 1994 CrLJ 240 : 1994 SCC (Cr) 169 : 1993 CrLR (SC) 683 : 1993(3) Crimes 1106 : 1993 All LJ 1360

Section 32—Dying declaration—Corroboration—Medical evidence and serologist report—Minor discrepancy in evidence—No evidence regarding motive—No explanation in examination under Section 313 Cr.P.C.—Conviction affirmed.

It is settled law some improvements here and some exaggerations there or some minor discrepancies in the evidence do not hurt the prosecution case.

PW 4, Dr. Das, who had done post-mortem, does not in any way show if Ranjit Singh was not in a position to speak.

Dying declaration has received corroboration because of finding of one blood-stained keduwa from appellant Rooqa and blood-stained lathi recovered at the instance of appellant Baje. No doubt, it is correct that the serologist had not given the blood groupings; but, the finding of extensive stains of human blood does incriminate the appellants, because when they were questioned about these findings in their examination under Section 313, Cr.P.C. they had not given any explanation, which it was their duty, if the blood-stains had been contacted, not in the course of the occurrence but due to injury received somewhere else, as contended by Shri Bachawat.

Failure to bring on record any evidence regarding motive does not, however, weaken a prosecution case, though existence of the same may strengthen the same. Secondly, there is also nothing on record to show as to why the dying man would have falsely implicated the appellants. Natural presumption is that a dying man does not lie, if there be no motive for the same.

We confirm the conviction as awarded by the High Court; so too the sentence which is imprisonment for life.

Meharban and others v. State of Madhya Pradesh, 1997 CrLJ 766 : 1997 AIR (SC) 1528 : 1996(4) Crimes 23 : 1997 SCC (Cr) 118 : 1996 CrLR (SC) 614 : 1996(4) CCR 114

Section 32—Dying declaration—Corroboration—Necessity of—Though a dying declaration alone can form the basis of conviction without insisting upon the corroboration but it must be found to be true and reliable.

A dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premiss that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premiss which is considered strong enough to set off the need that the maker of the statement should state so on oath and be cross-examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable

and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the Court on strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence neither extra strong nor weak and can be acted upon without corroboration if it is found to be otherwise true and reliable.

Jai Karan v. State of (N.C.T. Delhi), 1999 CrLJ 4529 : 1999 AIR (SC) 3512 : 1999(3) Raj LW 476 : 1999(8) SCC 161 : 1999(4) Curr CrR 53 : 1999(4) Rec CrR 265

Section 32—Dying declaration—Corroboration—Necessity of—Case mainly resting on evidence of injured witness and dying declaration of deceased victim—Witness could not be confronted with dying declaration—This is no ground to give benefit to defence—Aquittal of those accused persons whose names were mentioned by deceased later, affirmed.

The case entirely rests on the evidence of P.W. 7 and admittedly D.W. 2 Executive Magistrate recorded the dying declaration which is a valuable piece of evidence but unfortunately P.W. 7 could not be confronted by the defence. That by itself is not a ground to give the benefit which the defence can legitimately claim on the basis of the contents of Ex. D-5 particularly when the case rests on the sole testimony of P.W. 7. No doubt as pointed out by the counsel for the State that she has later mentioned the names of A-3 and A-4 also in her statement as well as in the deposition but the benefit should naturally go to these two accused and the High Court has rightly given the same to them. We see no grounds to interfere.

Ram Vilas and another v. State of Madhya Pradesh and others, 1993 CrLJ 3251

Section 32—Dying declaration—Corroboration—Witnesses categorically stated that accused alone was responsible for causing injuries on the deceased—Two dying declarations recorded within an hour in the presence of Medical Officer alone are safe to base conviction of accused—Mitigating

circumstances against the accused—Undue importance to trivial contradictions between ocular evidence and dying declarations is not proper—Conviction, restored.

All the three witnesses (PWs 3 to 5) consistently and convincingly have stated on oath that it was the respondent and respondent alone who was responsible for causing the injury on the stomach of the deceased which proved fatal within a few hours. Nothing has been brought in the cross-examination to discredit the testimony of any of these witnesses.

Now let us scrutinise the two dying declarations. The first dying declaration was recorded by P.W. 16 at the dispensary between 6.30 and 7.15 p.m. in the presence of the Medical Officer P.W. 6. The subsequent dying declaration was recorded by P.W. 7, the Executive Magistrate at about 7.15 p.m. in the same dispensary in the presence of the Medical Officer. The High Court by giving undue importance to some trivial and insignificant contradictions between the evidence of the witnesses and the version of the dying declaration (declarant?) regarding as to whether the knife, namely the weapon of offence was lying on the road or carried away by the respondent or whether the injured was made to walk up to the Anand Guest House or removed on a cycle up to that place, has rejected the dying declaration.

After carefully examining both the dying declarations which were recorded within a hour successively in presence of the Medical Officer P.W. 6 and which declarations were given by the injured without being influenced by others, we absolutely find no reason to reject the same but on the other hand, in our considered opinion, both these dying declarations can implicitly relied upon and a conviction can be safely recorded by these two dying declarations alone.

For all the above mentioned reasons, we set aside the judgment of the High Court acquitting the respondent and restore the judgment of the trial Court upholding the conviction under Section 302, I.P.C.

State of Maharashtra v. Rajendra Garbad Patil, 1994 CrLJ 145 : 1994 AIR (SC) 475 : 1992 SCC (Cr) 967

Section 32—Dying declaration—Credibility of—Charge of murder— Medical Officer not attesting the dying declaration as he was not satisfied with the

correct recording of the statement—No suggestion addressed to Medical Officer or any of the witnesses that the deceased gave different name, but the A.S.I. recorded the name of accused—No attestation of Medical Officer does not affect veracity of dying declaration.

The Medical Officer PW-4 after supporting the entire prosecution version in his chief-examination, in the fag end of his cross-examination stated that he did not know whether the statement recorded by the ASI was correct or not and he did not attest the same as he was not satisfied with the correct recording of the statement from Rajbir Singh. However, PW-4 has not stated that the deceased gave any other name except the name of the present appellant as the assailant in this case. Nor even a suggestion has been addressed to the Medical Officer or to any other witness that the deceased gave a different name, but the ASI recorded the name of the appellant as the assailant. As already pointed out, the assailant is none other than the brother of the deceased himself. Therefore, it is far-fetched to suggest or even to imagine that the ASI could have substituted the name of the appellant as the assailant leaving out the name of the real assailant. Under these circumstances, this sporadic admission made by the Medical Officer which in our opinion does not in any (way) affect the veracity of the dying declaration.

Suraj Mal v. State of Punjab, 1992 CrLJ 520 : 1992 AIR (SC) 559 : 1993 Supp. (1) SCC 639

Section 32—Dying declaration—Deceased knowing the assailant and on being asked telling their name—Dying declaration could not be disbelieved.

We are inclined to accept the finding of the High Court that the deceased was alive at least up to half an hour after the assault. He had been taken to the hospital where he received some treatment for about 10-15 minutes. It is not borne out from the evidence of the doctor that the injuries were so grave and the condition of the patient was so critical that it was unlikely that he could make any dying declaration. In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no

occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with.

Prakash and another v. State of Madhya Pradesh, 1992 CrLJ 3703 : 1993 AIR (SC) 65 : 1992 SCC (Cr) 853 : 1992 CAR 290 : 1992 Cr LR (SC) 712 : 1993 (3) Crimes 530

Section 32—Dying declaration—Deceased shouting the name of assailants before dying in presence of two witnesses who were relative—Non-recording of evidence of other persons who appeared at the scene of occurrence later, does not render the dying declaration doubtful.

Ananta Mahanto v. State of Orissa, 1979 CrLJ 1091 : 1979 AIR (SC) 1433 : 1979 SCC (Cr) 523 : 1979 CrLR (SC) 352

Section 32—Dying declaration—Disappearance from judicial record—The original statement missing from record during committal proceedings—The Magistrate proving the contents of declaration found to be reliable—Conviction affirmed.

As the original dying declaration has somehow disappeared from the judicial record and the case is of a serious nature, we undertook to examine the evidence in respect of the dying declaration.

The Magistrate, as observed by the High Court, is quite clear as to what the deceased had told him. He has repeated the same in his statement in court. Exhibit PJ has been proved by him as a correct account of the dying declaration recorded by him. It is not understood how the fact that the Investigating Officer was allowed to make a copy of the dying declaration could got against the Magistrate. The dying declaration could legitimately serve as a guide in further investigation. It was not argued that the dying declaration being a confidential document had to be kept secret from the Investigating Officer.

Considering the nature and the number of injuries suffered by the deceased and the natural anxiety of his father and others present at the spot to focus

their attention on efforts to save his life we are unable to hold that he had within the short span of time between the occurrence and the making of the dying declaration been tutored to falsely name the appellant as his assailant in place of the real culprit and also to concoct a non-existent motive for the crime.

Tapinder Singh v. State of Punjab and another, 1970 CrLJ 1415 : 1970 AIR (SC) 1566 : 1971(1) SCR 599 : 1970 (2) SCC 113

Section 32—Dying declaration—Discrepancy—Deceased attributing all injuries to one particular weapon—Injuries caused by other weapon not explained nor its author prosecuted—Other evidence itself discrediting or contradicting the declaration—Conviction on such dying declaration alone not safe.

If the dying declaration is analysed carefully it will be noticed that the only weapon which is said to have been used against the deceased was a saif, and according to the deceased himself it was Dhano who first used the weapon. There is no mention of bhallas in the dying declaration and there is also no mention that the two appellants used any other weapon. The deceased attributed all the three injuries to this very weapon.

We find that on this evidence it is not safe to convict the appellants. This dying declaration is not of a type on which a conviction can be based solely on its basis, especially in view of the other circumstances of the case.

Md. Ekramul and another v. State of Bihar, 1973 CrLJ 335 : 1973 AIR (SC) 1395 : 1973 (3) SCC 312 : 1973 CAR 5

Section 32—Dying declaration—Doctor and Police Constable certifying the mental fitness of deceased to make the statement—Corroboration by circumstantial evidence of sustained harassment of deceased on account of dowry—Conviction on the basis of such evidence affirmed.

Kailash Kaur v. State of Punjab, 1987 CrLJ 1127 : 1987 AIR (SC) 1368 : 1987 CAR 301 : 1987 CrLR (SC) 393 : 1987 (2) Rec CrR 63 : 1987 SCC (Cr) 431

Section 32—Dying declaration—Dowry death—Deceased wife while making statement stating that her husband should not be beaten up—This does not exculpate the husband stated to have set her on fire.

Vaswant Narayan Pawar v. State of Maharashtra, 1980 CrLJ 1009 : 1980 AIR (SC) 1270 : 1980 CAR 187 : 1980 SCC (Cr) 845 : 1980 CrLR (SC) 724

Section 32—Dying declaration—Dowry death—Wife set on fire by her husband—Prosecution rested its case upon three dying declarations—No eye witness—Two dying declarations prove prosecution case beyond reasonable doubt—Conviction of husband on the basis of dying declaration upheld.

It stands fully established that at the material time Hansaben was in a fit state of mind and she voluntarily made the statement on the basis of her personal knowledge without being influenced by others. We have not found any discrepancy whatsoever in the above dying declaration which could have justified the trial Judge to discredit the same. So far as the other declaration before Dr. Joshi is concerned, the trial Judge did not, as noticed earlier, advert to it all. Since these two dying declarations prove the prosecution case beyond reasonable doubt, we need not go into the question whether the dying declaration made before the head constable (Ext. 23) is reliable or not.

We therefore uphold the judgment of the High Court and dismiss this appeal.

Kumbhar Dhirajlal Mohanlal v. State of Gujarat, 1997 CrLJ 769 : 1997 AIR (SC) 1531 : 1996 SCC (Cr) 1409 : 1996(4) Crimes 98 : 1996 CrLR (SC) 754 : 1997 APLJ (Cr) 79

Section 32—Dying declaration—Dowry death—Statement recorded by police—Mental fitness of deceased not questioned from the doctor—Complaint recorded by police can be treated as dying declaration subsequently—Conviction on the basis of dying declaration, affirmed.

It was then in the nature of a complaint and was later treated as a dying declaration because she died. Whether police could have recorded a regular dying declaration or not was a matter for cross-examination of the Investigating Officer. In absence of such cross-examination, it cannot have any bearing on the correctness or otherwise of the statement recorded on 7-10-1990.

What was recorded by the police officer was not a dying declaration. As he recorded a complaint, it was not necessary for him to keep any doctor present or obtain any endorsement from him.

It was not even suggested to the Police Officer that she was not able to speak clearly. No attempt was made in the cross-examination of the Doctor to show that her condition had not improved between 7.30 a.m. and 1.30 p.m. and, therefore, this submission also deserves to be rejected.

This dying declaration receives corroboration from the site inspection report and also by the application Ex. PL referring to the compromise arrived at on the previous day.

Jai Prakash and others v. State of Haryana, 1999 CrLJ 837 : 1999 AIR (SC) 3361 : 1998 SCC (Cr) 806 : 1998 CAR 440 : 1999(1) Raj LW 60 : 1998(37) All CrC 595

Section 32—Dying declaration—Evidentiary value—Principle of distinction between English law and the Indian law.

There is distinction between the evaluation of dying declaration under the English law and that under the Indian law. Under the English law, credence and the relevancy of a dying declaration is only when person making such statement is in hopeless condition and expecting an imminent death. So under the English law for its admissibility, the declarant should have been in actual danger of death at the time when they are made, and that he should have had a full apprehension of his danger and the death should have ensued. Under the Indian law the dying declaration is relevant whether the person who makes it was or was not under expectation of death at the time of declaration. Dying declaration is admissible not only in the case of homicide but also in civil suits. Under the English law, the admissibility rests on the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath. The general principle on which this species of evidence are admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to flasehood is silenced, and the mind is induced by the most powerful considerations to speak only the truth. If evidence in a case reveals that declarant has reached this state while making declaration then within the sphere of the Indian law, while testing the credibility of such dying declaration weightage can be given. Of course depending on other relevant facts and circumstances of case.

Kishan Lal v. State of Rajasthan, 1999 CrLJ 4070 : 1999 AIR (SC) 3062 : 1999(3) Rec CrR 735 : 1999(39) All CrC 555 : 1999(2) Raj LW 361

Section 32—Dying declaration—Extra-judicial statement—Dowry death—Deceased set on fire by her husband and in-laws, rescued by neighbours and taken to hospital—Statement made on way to hospital implicating the accused persons—Fact that deceased was not in a position to speak when she reached hospital does not affect the dying declaration.

C.V. Govindappa and others v. State of Karnataka, 1998 CrLJ 1107 : 1998 AIR (SC) 792 : 1998 SCC (Cr) 683 : 1998 CrAR 90 : 1998 CrLR (SC) 79

Section 32—Dying declaration—FIR—Evidentiary value—It is not a substantive evidence but can be used for corroborating or contradicting of its maker—It is admissible in case of death of informant as dying declaration—No reliance can be placed on it when it is not tendered in accordance with law.

Damodar Prasad Chandrika Prasad and others v. State of Maharashtra, 1972 CrLJ 451 : 1972 AIR (SC) 622 : 1972 (2) SCR 622 : 1972 (1) SCC 107

Section 32—Dying declaration—FIR—The deceased after making statement to police succumbed to his injuries and died—The contents of FI<%4>R can be treated as dying declaration.

Munnu Raja and another v. The State of Madhya Pradesh, 1976 CrLJ 1718 : 1976 AIR (SC) 2199 : 1976 SCC (Cr) 376 : 1976 CrLR (SC) 54 : 1976 Jab LJ 599

Section 32—Dying declaration—Fitness—Certification by the Doctor that though the condition was bad, deceased was in fit condition to make the statement—No opportunity for tutoring of the deceased—Statement duly proved by the Magistrate corroborated by injury received by her—Reliance on statement affirmed.

Nirmal Singh v. State of Rajasthan, 1972 CrLJ 580 : 1972 AIR (SC) 945 : 1972(3) SCC 781

Section 32—Dying declaration—Form of—Absence of details—Effect of—It is not a requirement of law that declaration must cover the whole incident to enable the Court to assess the evidentiary value of the declaration.

There is no substance in this contention because in order that the Court may be in a position to assess the evidentiary value of a dying declaration, what is necessary is that the whole of the statement made by the deceased must be laid before the Court, without tampering with its terms or its tenor. Law does not require that the maker of the dying declaration must cover the whole incident or narrate the case history. Indeed, quite often, all that the victim may be able to say is that he was beaten by a certain person or persons. That may either be due to the suddenness of the attack or the conditions of visibility or because the victim is not in a physical condition to recapitulate the entire incident or to narrate it at length. In fact, many a time, dying declarations which are copiously worded or neatly structured excite suspicion for the reason that they bear traces of tutoring.

Munnu Raja and another v. The State of Madhya Pradesh, 1976 CrLJ 1718 : 1976 AIR (SC) 2199 : 1976 SCC (Cr) 376 : 1976 CrLR (SC) 54 : 1976 Jab LJ 599

Section 32—Dying declaration—Form of—Mention of details in statement does not lead to inference that the statement is fabricated even if in some cases it may arouse suspicion.

Tehal Singh and others v. State of Punjab, 1979 CrLJ 1031 : 1979 AIR (SC) 1347 : 1979 SCC (Cr) 722 : 1978 CrLR (SC) 660

Section 32—Dying declaration—Form of—The persons writing down the declaration using his own language but the substance remained of the deceased—No inference can be drawn that something other than what was stated by the deceased had been recorded.

Kulwant Singh stated in his evidence that he put questions to Harmel Singh and recorded the answers of Harmel Singh. No doubt he stated that he recorded what Harmel Singh stated `in his own way'. It does not mean that he recorded something other than what Harmel Singh stated. All that it means is that the language was his but the substance was what Harmel Singh stated. We do not think that any infirmity is attached to the dying declaration on this account.

Tehal Singh and others v. State of Punjab, 1979 CrLJ 1031 : 1979 AIR (SC) 1347 : 1979 SCC (Cr) 722 : 1978 CrLR (SC) 660

Section 32—Dying declaration—Form of—Manner of recording—It is preferable that the dying declaration is recorded in the form of questions and answers.

Rabi Chandra Padhan and others v. State of Orissa, 1980 CrLJ 1257 : 1980 AIR (SC) 1738 : 1979 CAR 380 : 1979 CrLR (SC) 633 : 49 Cut LT 88

Section 32—Dying declaration—Form of—Declaraton not recorded in question-answer form but otherwise found to be clear—Validity of.

The form by itself is not important. The statement is clear. Because of the mere fact that the entire thing is not recorded by way of separate questions and answers, the value of the dying declaration is not detracted.

Ganpat Mahadeo Mane v. State of Maharashtra, 1993 CrLJ 298 : 1993 AIR (SC) 1180 : 1992 CrLR (SC) 738 : 1992 (3) Crimes 633 : 1993 Supp (2) SCC 242

Section 32—Dying declaration—Identification of accused—The first person whom deceased requested to take him to hospital not mentioning about the name of the accused—Anxiety of deceased to be taken to hospital first—No inference can be drawn that identity of assailant was not known to the deceased.

It would be wholly unjustifiable to put the involuntary exclamation of the deceased on the same par as a dying declaration and to reject the dying declaration recorded by the Sub Inspector later in the presence of the Medical Officer on the ground that the deceased did not name his assailant while crying out `save me, one person has stabbed me'.

D.W. 1 said in his evidence that when he questioned the deceased as to who had stabbed him, he said that one man had given him a knife blow and that he should be taken to the hospital immediately. From this casual question of the driver of the carriage and and the answer of a person who had been seriously injured and who was anxious to be taken to the hospital, it is too much to infer that the deceased did not know the name of the assailant and therefore, was unable to mention the name to D.W. 1. The High Court was, therefore, right in not attaching any importance to the evidence of D.W. 1.

Habib Usman v. The State of Gujarat, 1979 CrLJ 708 : 1979 AIR (SC) 1181 : 1979(3) SCC 358 : 1979(3) Mah LR 256

Section 32—Dying declaration—Implication of accused—Omission of names of accused persons—Absence of proper corroboration—Conviction is not justified.

A court is entitled to convict on the sole basis of a dying declaration if it is such that in the circumstances of the case it can be regarded as truthful. On the other hand if on account of an infirmity, it cannot be held to be entirely reliable, corroboration would be required.

It must be first remembered that though the names of the appellants' fathers were known to Modsingh and others who accompanied him to the Police Station, their fathers' names and present residence have not been mentioned. It is rather unusual for Police Officers not to enquire and record in the first information the full name and address of the persons complained against. Secondly, the assault had taken place in a jungle on a dark night which may cause mistaken identity. Thirdly, neither Modsingh nor any of his relations had given any cause to the appellants, personally, to plan and execute a murderous attack on him. Fourthly, there were other persons bearing the appellants' names in the same village and admittedly they were on inimical terms with the deceased. Fifthly, the deceased had named Hatesingh also as one of the assailants although it has now turned out in the evidence of Umraodas, P.W. 1 that the deceased and Hatesingh had cordial relations with each other. In these circumstances, sufficient corroboration would be required for acting on the dying declaration.

In the result it must be held that the learned Sessions Judge had rightly acquitted the appellants and the High Court was not justified in interfering with the order of acquittal. The Order of conviction and sentence is, therefore, set aside.

Gopal Singh and another v. The State of Madhya Pradesh and another, 1972 CrLJ 1045 : 1972 AIR (SC) 1557 : 1972 SCC (Cr) 513 : 1972 CAR 175

Section 32—Dying declaration—Improvement—More details given in second declaration recorded later—It does not detract the truthfulness of state ment made in the first declaration.

Surat Singh and another v. State of Punjab, 1977 CrLJ 347 : 1977 AIR (SC) 705 : 1976 SCC (Cr) 605 : 1977 CrLR (SC) 53

Section 32—Dying declaration—Improvement—Two dying declarations—First recorded by police immediately after deceased regained consciousness after attack, second recorded by Magistrate—Names of all accused stated in second dying declaration—Dying declarations corroborated by eye-witnesses—Treating second dying declaration as improvement over first one High Court acquitted the accused persons—Order of acquittal passed by High Court set aside and conviction and sentence passed by Sessions Court restored.

In his first dying declaration which was originally taken as FIR, the deceased named A-1 to A-6, A-8 and A-9 specifically and further stated that there were 5 or 6 other persons of the village. It is significant to note that in this dying declaration also the deceased had stated that the accused were armed with axes, spears and sticks and that he was beaten by all the three types of weapons and one of the accused had thrown a big stone on his legs. He had also referred to the presence of his wife and his brother-in-law P.Ws. 1 and 2 inside his hut and their request not to beat him. The eye-witnesses have consistently stated that it was A-13 who had thrown the stone on the legs of the deceased. In the second dying declaration Exh. P. 5 which was recorded by the Munsif-Magistrate at about 10 a.m., half an hour after his statement was recorded by the Police, he specifically named A-1 to A-13 as the persons who had beaten him. He referred to A-1 to A-5, A-7 to A-10, A-13 and A-14 as the persons who had given blows with the axes and spears. When he was asked by the Magistrate as to whether he had anything further to say, he stated that A-6 half caused a cut injury and that A-11 and A-12 had also beaten him.

Soon after the assault on him the deceased had become unconscious and that he regained consciousness at about 9.30 a.m. in the hospital after he was given medical treatment. As soon as he regained consciousness, his statement came to be recorded by the Sub-Inspector who was already in the hospital by that time. There is nothing on record to show that in between the recording of the statement of the deceased by the Police and the dying declaration by the Magistrate any one was allowed to go near the deceased. The evidence of the Magistrate and the doctor rules out the presence of any

one else at the time of recording of the second dying declaration Exh. P. 5. In our opinion, further details given by the deceased could not have been treated as an improvement.

The evidence of the eye-witnesses and the two dying declarations clearly establish that A-1 to A-4, A-6 to A-10 and A-13 and even the accused acquitted by the trial Court were members of the unlawful assembly.

We, therefore, allow the State appeal, set aside the judgment and order of acquittal passed by the High Court so far as A-1 to A-3, A-7 to A-10 and A-13 are concerned and confirm the order of conviction and sentence passed against them by the Sessions Court. Conviction and sentence of A-4 and A-6 are confirmed.

Pratapaneni Ravi Kumar alias Ravi and another v. State of Andhra Pradesh, 1997 CrLJ 3505 : 1997 AIR (SC) 2810 : 1997 SCC (Cr) 1198 : 1997(2) Crimes 32 : 1997 (35) All Cr C 254 : 1997 (3) CCR 5

Section 32—Dying declaration—Improvement in subsequent dying declaration does not affect the validity of earlier dying declaration.

Sreerama Murthy v. State of A. P., 1998 CrLJ 4063 : 1998 AIR (SC) 3040 : 1998 SCC (Cr) 1432 : 1998(4) Rec CrR 80 : 1998(3) Curr CrR 153

Section 32—Dying declaration—Inconsistency—Manner of causing injury with the spear—Different version given by the eye-witnesses who were declared hostile—Witnesses not actually stating anything about the spear blow by the accused—No inconsistency can be inferred.

Bhola Turha v. State of Bihar, 1998 CrLJ 1102 : 1998 AIR (SC) 1515 : 1998 SCC (Cr) 846 : 1998 CAR 83 : 1998(1) Crimes 72 : 1998(1) BLJR 424

Section 32—Dying declaration—It must be recorded in question-answer form but failure to do so by itself it is not sufficient to reject the same.

Generally, the dying declaration ought to be recorded in the form of questions-answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend

assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the abovementioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted.

Ram Bihari Yadav v. State of Bihar and others, 1998 CrLJ 2515 : 1998 AIR (SC) 1850 : 1998 SCC (Cr) 1085 : 1998 CrLR (SC) 562 : 1998 (2) Pat LJR 169 : 1998(2) Rec CrR 563

Section 32—Dying declaration—Mental fitness—Certificate by Doctor about consciousness of patient during the period of her statement as recorded—Magistrate also certified the statement —Contradiction with the earlier version recorded by the doctor at the behest of accused does not affect the statement—Dying declaration rightly relied for conviction.

The doctor certified that the patient remained conscious during the period her statement was recorded. The Judicial Magistrate recorded a certificate that the statement of Sheema was recorded by him and it contained true version of her statement and she had thumb marked the same. We have been taken through the text of the dying declaration. We are satisfied that in view of the doctor's certificate, there is no infirmity in the recording of the dying declaration by the Magistrate and the same inspires confidence.

It was accused Surinder Kumar who brought his wife Sheema to the hospital and he remained present while the deceased was examined by the doctor. It is nowhere mentioned in the record that what was recorded by the doctor was stated by the deceased. It is evident that what was recorded by Dr. Tandon could not be the version of Sheema herself. Had it been so the doctor may not have used the word “alleged” while recording that the patient received injuries while cooking food on gas-stove. Dr. Tandon did not mention anywhere on the record about the state of mind of Sheema. It was nowhere recorded whether she was conscious or not. It is difficult to believe that the doctor made his deposition in the Court on the basis of his memory. It is more probable that

what was recorded by Dr. Tandon was at the instance of the husband who was accompanying his wife at the time of her examination by Dr. Tandon.

Surinder Kumar and another v. State of Haryana, 1992 CrLJ 3660 : 1992 AIR (SC) 2037 : 1992 SCC (Cr) 907 : 1992 CAR 303 : 1992 Cr LR (SC) 589 : 1992(2) Crimes 182

Section 32—Dying declaration—Mental fitness—Certification by two doctors—Death due to burn injuries 12 days after the incident—Statement of deceased cannot be rejected.

Om Parkash v. State of Punjab, 1992 CrLJ 3935 : 1993 AIR (SC) 138 : 1992 SCC (Cr) 848 : 1992 CAR 273 : 1992 Cr LR (SC) 639 : 1992 (3) Crimes 581

Section 32—Dying declaration—Mental fitness—Dying declaration recorded by respectable doctor who specifically stated that deceased was not tutored—Deceased was fully conscious and in proper state of mind to give statement—Dying declaration containing thumb impression of deceased—Evidence of eye-witnesses reliable—Minor discrepancies in evidences of witnesses did not effect prosecution case by and large—Order of acquittal of trial Court against weight of evidence—Order of conviction recorded by appellate Court held proper.

The dying declaration recorded by Dr. Nema should not be discarded. Dr. Nema, a disinterested and respectable doctor, has specifically stated that he had ensured that the deceased was not tutored or assisted by anyone present and the deceased was fully conscious and in a proper state of mind to make the dying declaration. There is no evidence to the effect that the deceased in view of the injury sustained by him could not have made any statement or dying declaration. There is positive and reliable evidence that he was conscious for quite some time after receiving the injury and was in a position to communicate. As a matter of fact, even the learned Additional Sessions Judge has also held that, the dying declaration recorded by Dr. Nema, was recorded in proper manner containing the thumb impression of the deceased, Surendra Kumar and the same was otherwise a dying declaration in the true sense. The presence of some of the eye-witnesses at the railway platform witnessing the occurrence has also been admitted by one of the hostile witnesses as recorded by the High Court. We do not find any reason to hold

that the said persons had deposed falsely and their evidences deserve to be discarded. The said witnesses had said in no uncertain term that the appellants inflicted the injury and with knife in hand immediately rushed and boarded the train. It appears to us that the learned Additional Sessions Judge gave undue importance to minor discrepancies which did not affect the prosecution case by and large. In the aforesaid circumstances, we do not find any reason to interfere with the judgment passed by the High Court.

Vinay Kumar v. State of Madhya Pradesh, 1994 CrLJ 942 : 1994 AIR (SC) 830 : 1994 SCC (Cr) 719 : 1993(3) Crimes 1055

Section 32—Dying declaration—Mental fitness—Probability—Certification of fitness by doctor in spite of patient being in gasping condition—Effect of.

The doctor was fully aware of the condition and certified that the patient was in a fit condition to give a dying declaration and has deposed that she was conscious and was in a fit condition to give the dying declaration. The fact that the pulse was not palpable and blood pressure unrecordable and the patient was in a gasping condition would not necessarily show that the patient's condition was such that no dying declaration could be recorded. We see no reason for rejecting the testimony of the doctor.

State of Haryana v. Harpal Singh and others, 1978 CrLJ 1603 : 1978 AIR (SC) 1530 : 1978 CrLR (SC) 466 : 1978 (4) SCC 465

Section 32—Dying declaration—Mental fitness—Short statement given by deceased to receive injury of the abdomen—No possibility of deceased becoming unconscious immediately—The truthfulness of dying declaration cannot be doubted.

There was no injury which may have affected the brain or the heart and the only serious injuries are on the abdomen which will not make the deceased unconscious immediately. Moreover, the deceased has also given a short statement which is a proof of the manner in which the deceased was assaulted. The shortness of the statement itself, appears to be the guarantee of its truth. Even the doctors who examined the deceased do not say, that having regard to the injuries, the deceased would have become unconscious immediately. In this view of the matter we are fully satisfied a bout the truth of the dying declaration.

Surajdeo Oza and others v. State of Bihar, 1979 CrLJ 1122 : 1979 AIR (SC) 1505 : 1979 SCC (Cr) 519 : 1979 CrLR (SC) 1570

Section 32—Dying declaration—Mental fitness—Doctor asking all the necessary questions—The deceased becoming semi- unconscious on the last question—The dying declaration cannot be said to be incomplete.

Antarjami could not answer the last question which was "what more you want to say", because he became semi-unconscious and was unable to answer any further question. A perusal of the entire dying declaration would clearly show that the doctor had asked all the necessary questions that could be asked from the deceased and the last question was merely in the nature of a formality. It is obvious that having narrated the full story there was nothing more that the deceased could add. We are therefore unable to hold that the present dying declaration is an incomplete one.

Kusa and others v. State of Orissa, 1980 CrLJ 408 : 1980 AIR (SC) 559 : 1980 Cr LR (SC) 200 : 1980 SCC (Cr) 289 : 1980(3) Mah LR 138

Section 32—Dying declaration—Mental fitness—Doctor conducting post mortem opining that in view of nature of injury death to be likely to be instantaneous—Injury sufficient to cause shock to prevent the deceased from talking—The view that dying declaration could not be ascribed to the deceased, is not unreasonable.

The doctor, P.W. 13, expressed the opinion that after receiving this injury the victim would not be able to talk and death might be instantaneous. He also said that the injury would have caused great shock and part of the body would have been paralysed. Cutting of the spinal cord would have affected the blood circulation and the central nervous system. Coma would follow due to shock. We are of the view that the nature of the injury was such that whether death was instantaneous or not, the shock would have been such that the deceased would not have been in a position to talk. The evidence of P.Ws. 1, 7 and 8 that he repeated to each one of them the statement attributed to him cannot, therefore, be accepted. We cannot say that the learned Sessions Judge took an unreasonable view in coming to the conclusion that the deceased would not have made the dying declaration ascribed to him.

Padman Meher and another v. State of Orissa, 1980 CrLJ 1507 : 1981 AIR (SC) 457 : 1980 CrLR (SC) 681 : 1981 SCC (Cr) 362

Section 32—Dying declaration—Mental fitness—Determination of—Necessity of positive proof.

A statement, written or oral, made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, becomes admissible under Section 32 of the Evidence Act. Such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case. In the instant case, the dying declaration has been properly proved. It is significant to note that in the course of cross-examination of the witness proving the dying declaration, no questions were put as to the state of health of the deceased and no suggestion was made that the deceased was not in a fit state of health to make any such statement. The doctor's evidence also clearly indicates that it was possible for the deceased to make the statement attributed to her in the dying declaration in which her thumb impression had also been affixed.

Ramawati Devi v. State of Bihar, 1983 CrLJ 221 : 1983 AIR (SC) 164 : 1983 CrLR (SC) 160 : 1983 CAR 169 : 1983 SCC (Cr) 169 : 1983 Pat LJR 27 : 1983 Guj LH 337

Section 32—Dying declaration—Mental fitness—Gun shot injury—The deceased is strong man of six ft. of height—Medical opinion that deceased could remain conscious till his end—No suggestion gave to person recording the dying declaration—Its validity cannot be challenged.

The pleura, liver and lung of the deceased were all punctured on the right side of the body; that the twelfth rib was fractured; that 400 c.c. of blood had been collected in the right chest cavity besides two litres of blood in the abdominal cavity and that there was a hole on the sternum and extensive

laceration of both lobes of the liver and gall bladder. PW-4 has opined that the injured might have died instanteneously or some time thereafter.

Though the nature of the injuries may lead to an inference that the probability of the victim becoming unconscious could not be completely ruled out, it could also be safely inferred that the victim who was 33 years old with robust constitution might have been fully conscious till his end, however, as the faculty of memory and speaking could not be said to have been impaired the victim, if not had become unconscious could have given these two dying declarations. It is pertinent to note that nothing has been elicited from PW-4 regarding the capability of the deceased making any declaration. Not even a suggestion is made by the defence either to PW-2 who recorded the second dying declaration Ext. Ka-3 or to PW-4 who conducted necropsy that the victim after receipt of these injuries could not have given the dying declarations. Therefore, the question whether the deceased had given the dying declarations or not would depend upon the reliability and acceptability of the testimony of PWs 2 and 5.

After carefully going through the evidence of PWs 2 and 5 and the contents of Ext. Ka-11 and Ext. Ka-3 we are of the firm view that the credibility of these two witnesses is not in any way shaken despite the fact that these witnesses have been subjected to incisive and searching cross-examination.

We, therefore, have no compunction in placing much reliance on Exts. Ka-3 and Ka-11 which are free from any infirmity and which are with a stamp of truth and reliability.

Vinod Kumar v. The State of U.P., 1991 CrLJ 360 : 1991 AIR (SC) 300 : 1991 SCC (Cr) 664 : 1990 CAR 268 : 1990 CrLR (SC) 624 : 1990(3) Crimes 715

Section 32—Dying declaration—Mental fitness—Proof of—Deceased answered the relevant questions in coherent manner—Doctor certified that he was conscious and in fit mental condition—Ample corroboration by evidence of injured eye-witnesses—Certain incorrect particulars regarding motive do not affect statement.

The deceased answered the relevant question in a coherent manner. Further, the doctor also certified that he was in a conscious state and good mental condition during recording of the dying declaration. Assuming that there are

certain incorrect particulars regarding the motives, that by itself, in our view, will not affect the dying declaration which had been duly recorded. As already mentioned, in the dying declaration, he mentioned only the names of three appellants. Even assuming there was some infirmity, there is ample corroboration to the dying declaration from the evidence of PWs 1, 3 and 4. Out of whom PWs 1 and 3 are the injured witnesses.

Nawab Ali Jhinnu v. State of Uttar Pradesh, 1994 CrLJ 2191 : 1994 AIR (SC) 1607

Section 32—Dying declaration—Mental capacity—Husband alleged to have poured petrol on body of his wife and lit fire—Oral dying declaration made to her mother—In absence of certificate showing deceased to be medically fit dying declaration recorded by doctor cannot be relied upon—Order of acquittal recorded by High Court cannot be said to be unreasonable.

During the dead hours of the night the occurrence took place when Sarita Sahu, her mother and father were fast asleep. The father of Sarita Sahu (now dead) when got up, he saw the blaze of fire and called his wife, Balmati Sahuani (P.W. 4). It is true that P.W. 4 asserted in her evidence that she saw the accused when she got up but, however, her statement does not inspire confidence in us. Both these witnesses asserted that Sarita Sahu told them that accused had poured petrol and set her on fire. It is difficult to accept this evidence having regard to the extensive burn injuries sustained by Sarita Sahu who died during the same night. If the evidence of these two witnesses is left out then the story of the prosecution as regards the alleged oral dying declaration disappears. Coming to the dying declaration (Ext. 4), recorded by Dr. Premananda Pattanaik (P.W. 1) we find that he has admitted in his evidence that when Sarita Sahu was brought to the dispensary she first was given an injection and thereafter her statement was recorded. He further stated that she was conscious at that time. He also admitted that she died within 15 minutes after recording her dying declaration. It is relevant to note that Dr. Premananda Pattanaik (P.W. 1) has not certified that she was in her full senses and was medically fit to make a statement although he had certified that she was conscious. Having regard to the fact that she had sustained extensive burn injuries and died within 15 minutes immediately

after recording the statement, it appears to us that she might not be in a proper and fit condition to make a statement as regards her cause of death. The High Court did not feel it safe to rely upon the dying declaration (Ext. 4) recorded by Dr. Premananda Pattanaik (P.W. 1). Having regard to the facts and circumstances of the case we also do not think it safe to rely upon the dying declaration (Ext. 4). The view taken by the High Court cannot be said to be unreasonable one.

State of Orissa v. Parasuram Naik, 1997 CrLJ 4404 : 1997 AIR (SC) 3569 : 1997 SCC (Cr) 1177 : 1997 Cr LR (SC) 624 : 1997 (3) Crimes 230 : 1997 (3) Raj LW 389

Section 32—Dying declaration—Mental fitness—Injuries to brain of deceased impairing the functions of his brain—The dying declaration made by such person cannot be relied.

State of Rajasthan v. Teja Ram and others, 1999 CrLJ 2588 : 1999 AIR (SC) 1776 : 1999 SCC (Cr) 436 : 1999(2) Raj LW 276 : 1999(2) Cal LT 106

Section 32—Dying declaration—Mental fitness—The doctor certifying the fit condition of deceased to make statement on the application and not on the dying declaration itself, would not render the declaration suspicious.

Harjit Kaur etc. v. State of Punjab, 1999 CrLJ 4055 : 1999 AIR (SC) 2571 : 1999 SCC (Cr) 1130 : 1999 CAR 348 : 1999(3) Rec CrR 700 : 1999 (39) All CrC 453

Section 32—Dying declaration—Mental fitness—Parents of deceased stating the deceased to be not mentally sound—Court cannot ignore such evidence—If the Court has even the slightest doubt about the mental fitness, reliance on <%8>such declaration would be unsafe.

Dandu Lakshmi Reddy v.State of A.P., 1999 CrLJ 4287 : 1999 AIR (SC) 3255 : 1999 SCC (Cr) 1176 : 1999(3) Raj LW : 1999(17) OCR 409 : 1999(3) Rec CrR 764

Section 32—Dying declaration—Mental fitness—Necessity of declaration—Certificate by doctor certifying that the maker of declaration was conscious—Serious infirmity in declaration depicting lack of clarity of thought—Doubtful fitness of state of mind— Conviction on the basis of such dying declaration is not permissible.

The prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K. Vishnupriya Devi (PW 10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that "patient is conscious while recording the statement". In view of these material omissions, it would not be safe to accept the dying declaration (Ex. P14) as true and genuine and was made when the injured was in a fit state of mind. From the judgments of the Courts below, it appears that this aspect was not kept in mind and resultantly erred in accepting the said dying declaration (Ex. P14) as a true, genuine and was made when the 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. This distinction was overlooked by the Courts below.

We find some more infirmities in the dying declaration (Ex. P14). In the dying declaration, Smt. Venkata Ramana had stated that A-1 to A-3 poured the kerosene on her and thereafter she also poured kerosene on herself. Then she stated "they have burnt me with a lighted match stick". It is difficult to understand as to why she poured the kerosene on herself. It has also come on the record that on the earlier occasion, Smt. Venkata Ramana (since deceased) had tried to commit suicide. In her dying declaration (Ex. P14) she had stated "I had not taken food for days". These circumstances again are pointer to the fact that Smt. Venkiata Ramana (since deceased) was disappointed and frustrated in her married life. It is in these circumstances, we find it difficult to accept the dying declaration wherein all the three appellants alleged to have committed the crime. It is difficult to understand as to why three persons poured the kerosene and again all the three persons burnt her with a lighted matchstick. The above statements in the dying

declaration raises a reasonable doubt as to whether she was in a fit disposing state of mind at the time when the dying declaration was recorded.

Paparambaka Rosamma and others v. State of Andhra Pradesh, 1999 CrLJ 4321 : 1999 AIR (SC) 3455 : 1999(3) Crimes 125 : 1999(2) Andh LT (Cr) 345 : 1999(17) OCR 515 : 1999(4) Rec CrR 104

Section 32—Dying declaration—Mental fitness—Certificate by doctor certifying fit state of mind of the declarant—Merely because doctor was not examined and he had not made any endorsement on the dying declaration is not reason to discard the declaration recorded by the Magistrate.

The Magistrate who recorded the dying declaration has been examined as a witness. She has categorically stated in her evidence that as soon as she reached the hospital in the Surgical Ward of Dr. Shukla, she told the doctor on duty that she is required to take the statement of Dhanuben and she showed the doctor the Police yadi. The doctor then introduced her to Dhanuben and when she asked the doctor about the condition of Dhanuben, the said doctor categorically stated that Dhabuben was in a conscious condition. It further appears from her evidence that though there has been no endorsement on the dying declaration recorded by the Magistrate with regard to the condition of the patient but there has been an endorsement on Police yadi, indicating that Dhanuben was fully conscious. In view of the aforesaid evidence of the Magistrate and in view of the endorsement of doctor on the Police yadi and no reason having been ascribed as to why the Magistrate would try to help the prosecution, we see no justification in the comments of Mr. Keshwani that the dying declaration should not be relied upon in the absence of the endorsement of the doctor thereon. In this particular case, the police also took the statement of the deceased which was treated as F.I.R., and the same can be treated as dying declaration. The two dying declarations made by the deceased at two different point of time to two different persons, corroborate each other and there is no inconsistency in those two declarations made. In this view of the matter, we have no hesitation to come to the conclusion that the two dying declarations made are truthful and voluntary ones and can be relied upon by the prosecution in bringing home the charge against the accused persons and the prosecution case must be

held to have been established beyond reasonable doubt. Consequently, we have no hesitation in rejecting the first submission of Mr. Keshwani. In this connection, it may be appropriate for us to notice an ancillary argument of Mr. Keshwani that there has been an inordinate delay on the part of the Magistrate to record the dying declaration and, therefore, the same should not be accepted. As we find from the records, the incident took place at 4 a.m. and the Magistrate recorded the dying declaration at 9 a.m., in our opinion, it cannot be said that there has been an inordinate delay in recording the statement of the deceased. Mr. Keshwani had also urged that when the Magistrate recorded the dying declaration, the deceased had been surrounded by her relations and, therefore, it can be assumed that the deceased had the opportunity of being tutored. But we fail to understand how this argument is advanced inasmuch as there is no iota of evidence that by the time the Executive Magistrate went, the deceased was surrounded by any of her relations. No doubt the Magistrate herself has said that three or four persons were there near the deceased whom she asked to go out but that they were the relations of the deceased, thereis no material on record.

Koli Chunilal Savji and another v. State of Gujarat, 1999 CrLJ 4582 : 1999 AIR (SC) 3695 : 1999(4) Crimes 280 : 1999(4) Curr CrR 74 : 1999(2) Guj LH 859 : 1999 CrLR (SC) 773

Section 32—Dying declaration—Metnal fitness—No categorical statement by the doctor that deceased would have been unconscious after receipt of the injury—Declaration can not be doubted— Corroboration by evidence of father and wife of deceased which did not suffer from any infirmity—Conviction of accused under Section 302 IPC, affirmed.

The cattle belonging to the appellants trespassed into the field of the deceased and damaged the crops. A quarrel arose Zthat ultimately led to the present occurrence. P.W. 1 who is the father of the deceased and P.W. 5 who is no other than the wife of Kamal Kishore, one of the deceased persons would be the last persons, in such a situation, to implicate the appellants falsely leaving out the real culprits. Both the courts below have discussed the evidence of P.Ws. 1 and 5. We have also perused the same. P.W. 1 in the first information report itself has mentioned about the earlier dying declaration

and has also given the necessary details. Nothing significant has been elicited in his cross-examination. Likewise, P.W. 5 deposed that she also reached the place of occurrence and found Chandra Shekhar lying unconscious and that her husband Kamal Kishore was conscious and on being asked, he told her that the six appellants attacked him and beat him. Thereafter Kamal Kishore was taken to the hospital. In the cross-examination she has affirmed the same and her evidence does not suffer from any infirmities. The Doctor who examined Kamal Kishore, on being cross-examined, no doubt stated that ordinarily injuries found on the head of Kamal Kishore could cause unconsciousness but it could not positively be said that they would have caused immediate unconsciousness. Relying on this admission, the learned counsel submitted that it is not safe to rely on the oral dying declarations. It must be noted that the Doctor did not categorically state that Kamal Kishore would have been unconscious immediately after receipt of the injuries and could not have been in a position even to speak that much. We have carefully examined the evidence of P.Ws. 1 and 5 and also the reasons given by both the courts below and we are satisfied that no interference is called for.

Vishram and others v. State of Madhya Pradesh, 1993 CrLJ 304 : 1993 AIR (SC) 250 : 1993 CrLR (SC) 59 : 1992(3) Crimes 904 : 1993 Supp (2) SCC 274

Section 32—Dying declaration—No possibility of tutoring—Medical fitness certified by the Doctor—Executive Magistrate recorded the declaration in question and answer form—Dying declaration rightly relied for conviction.

Smt. Paniben v. State of Gujarat, 1992 CrLJ 2919 : 1992 AIR (SC) 1817 : 1992 SCC (Cr) 403 : 1992 CAR 149 : 1992 CrLR (SC) 334 : 1992 (1) Crimes 1180 : 1992 (1) CCR 1100

Section 32—Dying declaration—Omission—Name of accused not mentioned in declaration but duly recorded in FIR within an hour of occurrence and duly corroborated by other witnesses—Accused is not entitled to benefit of doubt.

Tirath Ram v. State of U.P., 1980 CrLJ 825: 1979 AIR (SC) 1440 : 1982 CAR 27 : 1979 CrLR (SC) 508(2) : 1980 UP CrC 169

Section 32—Dying declaration—Omission—Absence of names of eye witnesses from the dying declaration do not render it infirm for reliance.

Rabi Chandra Padhan and others v. State of Orissa, 1980 CrLJ 1257 : 1980 AIR (SC) 1738 : 1979 CAR 380 : 1979 CrLR (SC) 633 : 49 Cut LT 88

Section 32—Dying declaration—Oral declaration—The witness claiming to have heard the declaration not stating about the same at the earliest opportunity—The story narrated by witness is inherently improbable.

Baldev Raj v. State of Himachal Pradesh, 1980 CrLJ 385 : 1980 AIR (SC) 346 : 1980 CAR 83 : 1980 SCC (Cr) 491 : 1980 Cr LR (SC) 74 : 82 Pun LR 349 : 1980 All CrC 71

Section 32—Dying declaration—Oral declaration—The oral dying declaration is no doubt an important piece of evidence, but it should be free from all infirmities.

Ramsai and others v. State of Madhya Pradesh, 1994 CrLJ 138 : 1994 AIR (SC) 464 : 1994(1) Pat LJR 79

Section 32—Dying declaration—Possibility of bias—Evidence clearly spelling out that deceased had been discussing about incident with his brother and friends before recording of statement—Dying declaration not containing signature of deceased—Neither time of recording nor the date mentioned there in—Statement impregnated with number of suspicious circumstances and creating doubt is not sufficient to base conviction of accused.

State of U.P. v. Shishupal Singh, 1994 CrLJ 617 : 1994 AIR (SC) 129 : 1992 SCC (Cr) 957 : 1993(1) Mah LR 431

Section 32—Dying declaration—Principles governing recording and appreciation of dying declarations.

The principles governing dying declaration, which could be summed up as under:

(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) This 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 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 sonscious 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.

Smt. Paniben v. State of Gujarat, 1992 CrLJ 2919= 1992 AIR (SC) 1817 : 1992 SCC (Cr) 403 : 1992 CAR 149 : 1992 CrLR (SC) 334 : 1992 (1) Crimes 1180 : 1992 (1) CCR 1100

Section 32—Dying declaration—Probative value—Minor discrepancy does not affect the declaration—Corroboration by preceding utterances of the deceased to others about the culprit—Dying declaration should not be rejected.

The value of the dying declaration made to the Judicial Magistrate can be estimated from the preceding utterances of the deceased. Nobody can possibly contend that the Judicial Magistrate had concocted a dying declaration and falsely ascribed to the deceased.

Ext. P-12 is the document recorded by PW-12 Judicial Magistrate which contains detailed narration of the incident. Of course PW-12 put questions to her and both the questions and their answers were recorded by him in Ext. P-12. The Sessions Judge expressed a doubt that the Judicial Magistrate would have ascertained whether the deceased was in a fit condition to make

the declaration. But that doubt was not entertained by the Magistrate himself because he said clearly that he found the deceased in a fit condition to make the statement. In fact when the Judicial Magistrate was examined in the Court he said in clear terms that he ahd satisfied himself that the deceased was in a fit condition to make the statement. Of course that aspect was not separately highlighed by him in Ex. P-12. It does not declarant was in a fit dondition. The impression of the Magistrate is seen reflected in Ext. P-12 reading the questions put be him and the answers given by the injured to each one of them. Not even one answer would show that her congnitive faculties were then impaired.

One of the main reason to sidestep Ext. P-12 is that the deceased told the Magistrate that the incident had happened "outside the house". We do not think that much can be read into it as the word "house" used by her need not necessarily be interpreted as the entire building. It could be an interior area of the building or it could be the defect of selecting the equivalent English word for what she used in her own direct. Even if it is so, it does not matter and on that account the identity of the assailants is not blurred. The exact post where she was set ablaze, whether just outside the building or inside, does not affect the credibility of her dying declaration.

We have no doubt that the trial Court committed serious error in rejecting the sturdy dying declaration given by the deceased to the Judicial Magistrate and also in rejecting the other dying declarations spoken to by PW-2 Ramamurthy, PW-3 Dasari Varamma (sister of the deceased), PW-12 Sub-Inspector of Police and PW-8 Dr.B. Vishwanathan.

Vajrala Paripurnachary v. State of Andhra Pradesh, 1998 CrLJ 4031 : 1998 AIR (SC) 2680 : 1998 SCC (Cr) 1468 : 1998 (37) All CrC 413 : 1998(3) Curr CrR 125

Section 32—Dying declaration—Procedure of recording—Minor discrepancies in two dying declarations—Second dying declaration recorded by Magistrate after obtaining certificate from doctor—After recording dying declaration Magistrate obtained further certificate from doctor—Dying declaration in question and answer form—Absence of direct question to

deceased whether she was in fit state of mind to make statement is not a ground to be discard the dying declaration.

The minor discrepancies in the two dying declarations were not sufficient to invalidate either of the two dying declarations. Even if the first dying declaration recorded by the police officer is not taken into consideration, we do not find any reason to discard the second dying declaration recorded by the Taluka Magistrate. Such dying declaration was recorded by Taluka Magistrate after obtaining a certificate from the doctor that the deceased was in a fit state of mind to make the statement. Even after recording such dying declaration, the learned Magistrate obtained a further certificate from the doctor that the deceased was in fit state of mind to make the statement. The distinction sought to be made out by the learned Sessions Judge that the `fit state of mind' and `conscious state of mind' were not the same thing, is too hyper-technical in the facts and circumstances of the case. The learned Magistrate put the questions to the deceased and then recorded the statement. It will be wholly unjustified to hold that simply becaue the Magistrate did not put a direct question to the deceased as to whether she was in a fit state of mind to make the statement, the dying declaration was required to be discarded. There is no manner of doubt that the deceased was suffering from great physical pain because of extensive burn injuries but on that score alone it could not be presumed that she was not in a fit state mind to make the statement particularly when the doctor had certified both before and after the statment that she had a state of mind to make the statement.

Goverdhan Raoji Ghyare v. State of Maharashtra, 1993 CrLJ 3414 : 1993 CrLR (SC) 633 : 1993(3) Crimes 241 : 1993 Supp (4) SCC 316

Section 32—Dying declaration—Recording by Police—This does not by itself render inadmissible.

Tapinder Singh v. State of Punjab and another, 1970 CrLJ 1415 : 1970 AIR (SC) 1566 : 1971(1) SCR 599 : 1970 (2) SCC 113

Section 32—Dying declaration—Recording of—Requisitioning of Magistrate—No steps taken by investigating officer to requisition services of Magistrate—Dying declaration recorded by investigating officer excluded from consideration.

The investigating officer who recorded that statement had undoubtedly taken the precaution of keeping a doctor present and it also appears that some of the friends and relations of the deceased were also present at the time when the statement was recorded. But, if the investigating officer thought that Bahadur Singh was in a precarious condition, he ought to have requisitioned the services of a Magistrate for recording the dying declaration. Investigating officers are naturally interested in the success of the investigation and the practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged. We have therefore excluded from our consideration the dying declara<%4>tion. Ex. P-2 recorded in the hospital.

Munnu Raja and another v. The State of Madhya Pradesh, 1976 CrLJ 1718 : 1976 AIR (SC) 2199 : 1976 SCC (Cr) 376 : 1976 CrLR (SC) 54 : 1976 Jab LJ 599

Section 32—Dying declaration—Recording of—Exculpatory statement—Deceased suffered burn injuries upto 70%—No attempt made by Police Officer to look for Magistrate—Thumb impression of the deceased not obtained on the statement—Doubtful mental fitness—Police Officer recording the statement contrary to the rules—Dying declaration is not acceptable.

The justification advanced by the police officer for not looking for a Magistrate does not appear to be easily convicting. At any rate, when the doctor was available, he should have been requested to record the dying declaration and P.W. 17 should not have taken the job on himself. We are prepared to prefer the evidence of the doctor to the police officer in this regard and we, therefore, hold that the police officer did not request the doctor to record the statement and had volunteered to do so all by himself.

There is not any positive evidence that the palms had been affected so badly that Sudha was not in a position to use any of her fingers. Nor is there clear evidence that the left hand thumb had been so affected that a full impression was not available to be taken. Mr. Singh has argued with emphasis that Sudha must have used both her hands to extricate herself from her wearing apparel when the same was burning and thus both the palms and the fingers

including the tips must have been burnt. We do not think in the absence of evidence, such a submission should be accepted to explain away either a signature or thumb impression in the dying declaration.

The certificate of D.W. 1 that Sudha was in a fit condition to make a declaration cannot be given full credit.

We also find that under the relevant Rules applicable to Delhi area, the investigating officer is not to scribe the dying declaration. Again, unless the dying declaration is in question and answer form it is very difficult to know to what extent the answers have been suggested by questions put. What is necessary is that the exact statement made by the deceased should be available to the Court. Considered from these angles, the dying declaration in question is not acceptable.

State (Delhi Administration) v. Laxman Kumar and others, 1986 CrLJ 155 : 1986 AIR (SC) 250 : 1986 SCC (Cr) 2 : 1985 CrLR (SC) 501 : 1985 CAR 304 : 1986 (1) Rec CrR 184 : 1986 Mad LJ (Cr) 86

Section 32—Dying declaration—Recording of—Investigation officer himself recording the dying declaration is not proper but it depends upon the facts and circumstances of each case.

The practice of Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged and it would be better to have dying declaration recorded by Magistrate. But no hard and fast rule can be laid down in this regard. It all depends upon the facts and circumstances of each case.

In this case, ASI belongs to the Police Station at Bhogpur. Upon intimation by wireless message that Balwinder Kaur was admitted in Ludhiana Hospital, he straightway went to that place. He met the Doctor and recorded her statement. The FIR was issued on the basis of that statement. It was then an offence under Section 307, IPC. The investigation went on accordingly at Bhogpur. The Police Station at Bhogpur is 92 kms from Ludhiana and we are told that Bhogpur is in a different district altogether. In these circumstances, we cannot find fault with the ASI for not getting the dying declaration recorded by a Magistrate.

State of Punjab v. Amarjit Singh, 1989 CrLJ 95 : 1988 AIR (SC) 2013 : 1989 SCC (Cr) 58, 1988 CAR 241 : 1988 CrLR (SC) 722 : 1988 (3) Crimes 295

Section 32—Dying declaration—Recording of—Necessity of—No attempt made to record the statement of deceased who was alive for 9 days after the incident—Such conduct cast doubt about the prosecution case.

The State of Assam v. Bhelu Sheikh and others, 1989 CrLJ 879 : 1989 AIR (SC) 1097 : 1989 SCC (Cr) 643 : 1989 CAR 153 : 1989 CrLR (SC) 335 : 1989 (1) Crimes 689

Section 32—Dying declaration—Recording by doctor—Veracity of —Doctor recording dying declaration on request of circle inspector on non-availability of Magistrate—Dying declaration recorded in English—Doctor stating he read out statement and explained to deceased who admitted it to be correct—Thumb impression of deceased affixed on declaration—Evidence of witnesses leading ample corroboration to dying declaration—Non mention of names of accused persons in injury certificate—Injury certificate does not amount to statement—Conviction of accused persons, affirmed.

P.W. 1 is a young doctor and a highly independent witness. There is no reason whatsoever for him to speak falsehood. The recording of Ex.P.1 by P.W. 1 is not in dispute. P.W. 1 has clearly stated that the injured gave the said statement and he duly recorded it an obtained his thum impression. P.W. 10, the Casualty Medical Officer who examined the injured and admitted him, asserted that Ex.P.1 was recorded by P.W. 1 as per his instructions P.W. 10 also deposed that he asked the Inspector to secure the presence of the Magistrate but he was told that the Magistrate was not available. Therefore the Circle Inspector requested him to record the dying declaration.

The learned counsel relying on this admission sought to contend that the deceased was not aware as to who stabbed him. We see no force in this submission. It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc.

Another doctor, who conducted the post-mortem. P.W. 20 deposed that he found that the condition of the injured was serious and that the Magistrate should be informed for recording the dying declaration. Relying on this admission made by P.W. 20, the learned counsel contended that the condition of the injured was serious and therefore it would not have been possible to record the dying declaration. The other submission is that since P.W. 20 made an entry that the Magistrate should be informed, it becomes doubtful that Ex. P.1 was already recorded and if, in fact, the same was already recorded, P.W. 20 would not have made such an entry. We do not find any substance in this submission. P.W. 20 does not say that he inquired (from) P.W. 10 whether any dying declaration was recorded already. Further the accident register itself reveals that P.W. 10 has already made an entry in the relevant column that the dying declaration was recorded. Therefore the entry made by P.W. 20 that he visited the hospital at about 9 p.m. would not in any manner affect the veracity of the evidence of P.Ws. 1 and 10 who are respectable doctors.

P.W. 1 knew Telegu, he should have recorded the dying declaration in the same language. P.W. 1 has clearly stated that he can read and write Telegu. Therefore there cannot be any doubt about the contents of the dying declaration which is recorded in English and what is more, P.W. 10 clearly stated that he read out the statement and explained to the injured, who admitted it to be correct. Having carefully examined the evidence of P.Ws. 1 and 10, we see absolutely no grounds to reject their evidence.

Apart from the dying declaration, Ex. P. 1 there is evidence of P.Ws. 2 to 4 also which has been relied upon by the High Court also. P.W. 2 after witnessing the occurrence immediately rushed to the Police Station and informed the Police. As a matter of fact his name was mentioned in the dying declaration itself. P.W. 4 deposed that he was selling groundnuts on a push-cart. He knew the accused and deposed that these accused persons attacked the deceased. The evidence of these two witnesses lends ample corroboration to the dying declaration. Therefore we see no ground to interfere with the findings of the High Court.

P. Babu and others v. State of Andhra Pradesh, 1993 CrLJ 3547 : 1993 CrLR (SC) 655 : 1993 (3) Crimes 567 : 1994(1) SCC 388

Section 32—Dying declaration—Recording of—Procedure—Mental fitness—Important requirements required to be observed when declarant is in the hospital.

In a case of this nature, particularly when the declarant was in the hospital itself, it was the duty of the person who recorded the dying declaration to do so in the presence of the doctor after duly being certified by the doctor that the declarant was conscious and in senses and was in a fit condition to make the declaration. These are some of the important requirements which have to be observed.

Mani Ram v. State of Madhya Pradesh, 1994 CrLJ 946 : 1994 AIR (SC) 840 : 1994 SCC (Cr) 1487 : 1994 Cal. Cr LR 118

Section 32—Dying declaration—Recording by Magistrate—Necessity of—There is no requirement of law that such a statement must necessarily be made to a Magistrate.

A statement, written or oral, made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, becomes admissible under Section 32 of the Evidence Act. Such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the <%4>basis of a dying declaration in the light of the facts and circumstances of the case.

Shabir Mohmad Syed v. State of Maharashtra, 1997 CrLJ 4416 : 1997 AIR (SC) 3803 : 1997 SCC (Cr) 1226 : 1997 (35) All Cr C 515 : 1997 (3) Rec Cr R 273

Section 32—Dying declaration—Reliance for conviction—Death from burns caused by fire set by the husband after sprinkling the kerosene oil—No

cogent reason put forward against the correctness of dying declaration—Conviction for murder affirmed.

Tarachand Damu Sutar v. The State of Maharashtra, 1962 AIR (SC) 130 : 1962(1) CrLJ 196 : 1962(2) SCR 775 : 64 Bom LR 74 : 1962 All WR (SC)

Section 32—Dying declaration—Reliance—Corroboration by medical evidence and injuries—Omission to mention name of one accused is not the reason to discard the declaration.

Ghurphekan and others v. The State of U.P., 1972 CrLJ 746 : 1972 AIR (SC) 1172 : 1972 (3) SCC 361

Section 32—Dying declaration—Sanctity of—Bride burning—Sanctity attached to dying declaration—Person who is on verge of death would not commit sin of implicating some body falsely.

Harbans Lal and another v. State of Haryana, 1993 CrLJ 75 : 1993 AIR (SC) 819 : 1992 CrLR (SC) 802 : 1992 (3) Crimes 758 : 1993 Supp (4) SCC 641

Section 32—Dying declaration—Secondary evidence—Original dying declaration lost and not available—Clear evidence that a copy of dying declaration was made by the Head Constable who as also the Magistrate testified for the same—Dying declaration can be proved by the secondary evidence.

Aher Rama Gova and others v. State of Gujarat, 1979 CrLJ 1081 : 1979 AIR (SC) 1567 : 1980 SCC (Cr) 106 : 1979 CrLR (Sc) 513

Section 32—Dying declaration—Stage of—The statement given two months after the alleged incident and not under expectation of death—Reliance on such dying declaration is not proper.

In the present case, as aforesaid the dying declaration was after two months of the alleged incidence. It was not at a time when the deceased was expecting imminent death. Neither the post-mortem nor deposition of doctor carry any definite inference that the cause of death was on account of burning. There is conflict between two dying declarations, in one there is inter se inconsistency as revealed in the depositions of witnesses, in the other no naming of any accused, when made before a Magistrate. On such an evidence trial Court rightly declined to base a conviction. The High Court committed manifest error in placing reliance on it.

Kishan Lal v. State of Rajasthan, 1999 CrLJ 4070 : 1999 AIR (SC) 3062 : 1999(3) Rec CrR 735 : 1999(39) All CrC 555 : 1999(2) Raj LW 361

Section 32—Dying declaration—Successive declarations—First dying declaration recorded by doctor before arrival of police since condition of the victim was fast deteriorating—Victim was able to speak—He named the accused and weapon in their hands—Second dying declaration was recorded by police contains motive and manner of assault— Cannot be said as improvements in the statement—Conviction of accused affirmed.

Insofar as the first dying declaration is concerned, the need to record it arose because according to PW 2, the Police, though sent for, had not arrived and the condition of the victim was fast deteriorating. He, thus, took the step to record the statement of the deceased. No material has been brought on record from which it could be inferred that the deceased was unable to make any statement purported to have been made to the doctor. PW 2, rather, was emphatic that the deceased was in a position to speak and had disclosed to him the names of the accused persons as also the weapons in their hands which were employed to inflict fatal injuries on him. There is no reason to disbelieve him. On this statement alone, the conviction of the appellants can be maintained; let apart the dying declaration recorded by the Police. The later dying declaration, as said before, contains details pertaining to the motive and the manner of the ghastly occurrence. These cannot be termed to be improvements in the statement from what the statement was before the doctor, material base of the prosecution case remaining the same. Thus, in these circumstances, we are of the view that the High Court was perfectly justified in maintaining the conviction of the appellants for the offences charged and their sentence.

Swaran Singh and others v. State of Punjab, 1995 CrLJ 3630

Section 32—Dying declaration—Successive declaration—No possibility of tutoring by relatives who arrived later—Consistent successive declaration—Reliance on conviction affirmed.

The fact that the relatives may have come afterwards does not appear to be of any significance. Moreover we find no reason why the deceased should implicate the appellant falsely at the instance of his relatives. The oral

statement made by the deceased before Parveen Singh which was first in point of time is also consistent and straight-forward and has been deposed to by Parveen Singh who is an independent witness and bears no animus against the accused. The third statement of the deceased was made to P.W. 29 which has been reduced to writing and which fully corroborates the version given by the deceased in the other two dying declarations. Furthermore the dying declaration by the deceased to the Magistrate ex-32 contains a certificate of the doctor that the deceased was conscious from the beginning to the end at the time when the statement was recorded by P.W. 12. Similarly P.W. 24, Parveen Singh had also said that deceased was conscious when he made the statement before him. In these circumstances we are of the opinion that the Courts below were fully justified in acting on the dying declarations of the deceased.

Jorubha Juzer Singh v. State of Gujarat, 1980 CrLJ 314 : 1980 AIR (SC) 358 : 1980 CAR 90 : 1980 Cr LR (SC) 71 : 1980 SCC (Cr) 316

Section 32—Dying declaration—Survival of maker—Effect on evidentiary value—Statement given to a Magistrate by someone under expectation of death ceases to have evidentiary value under Section 32 of Evidence Act if the maker thereof survives.

There was some appreciable interval between the acts of incendiarism indulged in by the miscreants and the judicial Magistrate recording statements of the victims. That interval, therefore, blocks the statement from acquiring legitimacy under Section 6 of the Evidence Act.

Though the statement given to a Magistrate by someone under expectation of death ceases to have evidentiary value under Section 32 of the Evidence Act if the maker thereof did not die, such a statement has, nevertheless, some utility in trials. It can be used to corroborate this testimony in Court under Section 157 of the Evidence Act which permits such use being a statement made by the witness “before any authority legally competent to investigate”. The word “investigate” has been used in the section in a broader sense. Similarly the words “legally competent” denote a person vested with the authority by law to collect facts. A Magistrate is legally competent to record dying declaration “in the course of an investigation” as provided in Chapter

XII of the Code of Criminal Procedure, 1973. The contours provided in Section 164(1) would cover such a statement also.

Gentela Vijayavardhan Rao and another v. State of Andhra Pradesh, 1996 CrLJ 4151 : 1996 AIR (SC) 2791 : 1996 SCC (Cr) 1290 : 1996(3) Crimes 197 (SC) : 1997 (2) CCR 119

Section 32—Dying declaration—Survival of declarent—Effect of.

Immediately after PW 1 was taken to the hospital his statement was recorded by a recorded (sic) as a dying declaration which, consequent upon his survival, is to be treated only as a statement recorded under Section 164 Cr.P.C. and can be used for corroboration or contradiction. This statement recorded by the Magistrate at the earliest available opportunity clearly discloses the substratum of the prosecution case including the names of the appellants as the assailants and there is not an iota of materials on record to show that this was the upshot of his tutoring. On the contrary, this statement was made at a point of time when PW 1 was in a critical condition and it is difficult to believe that he would falsely implicate the appellants leaving aside the real culprits.

Sunil Kumar and others v. State of Madhya Pradesh, 1997 CrLJ 1183 : 1997 AIR (SC) 940 : 1997 (1) Crimes 238 (SC) : 1997 SCC (Cr) 879 : 1997 Cr LR (SC) 277 : 1997 (34) All Cr C 447

Section 32—Dying declaration—Survival of maker—Evidentiary value of statement—Declaration made before Magistrate cannot be treated as dying declaration—It can be only used to corroborate or contradict the maker.

At the time when PW-1 gave the statement he would have been under expectation of death but that is not sufficient to wiggle it into the cassette of Section 32. As long as the maker of the statement is alive it would remain only in the realm of a statement recorded during investigation.

The question is whether the Court could treat it as an item of evidence for any purpose. Section 157 of the Evidence Act permists proof of any former statement made by a witness relating to the same fact before “any authority legally competent to investigate the fact” but its use is limited to corroboration of the testimony of such witness. Though a police officer is legally competent to investigate, any statement made to him during such investigation cannot

be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a Magistrate is not affected by the prohibition contained in the said Section. A Magistrate can record the statement of a person as provided in Section 164 of the Code and such statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a Magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof.

Ram Prasad, v. State of Maharashtra, 1999 CrLJ 2889 : 1999 AIR (SC) 1969 : 1999 SCC (Cr) 651 : 1999(3) Crimes 96 : 1999(3) Bom LR 12 : 1999(2) Rec CrR 819

Section 32—Dying declaration—Suspicious circumstances—Brevity of declaration is a circumstance in favour of its truthfulness.

The substance of the matter was, as to who had stabbed the deceased. When the deponent was in severe bodily pain, and words were scarce, his natural impulse would be to tell the Magistrate, without wasting his breath on details, as to who had stabbed him. The very brevity of the dying declaration, in the circumstances of the case, far from being a suspicious circumstance, was an index of its being true and free from the taint of tutoring. The substratum of the dying declaration was fully consistent with the ocular account given by the eye-witnesses.

Jayaraj v. The State of Tamil Nadu, 1976 CrLJ 1186 : 1976 AIR (SC) 519 : 1976 CrLR (SC) 236 : 1976 CAR 176 : 1976 SCC (Cr) 293

Section 32—Dying declaration—Suspicious circumstances—The accused and deceased claimed to be together when he was set to fire after causing other injury—No possibility of deceased being conscious at the time of recording of alleged dying declaration before Head Constable—Conviction, set aside.

The doctor who held the autopsy of the deceased in his statement has not categorically stated that at the time when the deceased was burnt he was conscious or could give any coherent statement. The deceased was burnt and

a good part of the brain was also burnt and therefore the possibility is that he must have become unconscious. This is intrinsically supported by another important factor. The doctor found not only burns on the body of the deceased but also other injuries which could have been inflicted on him by lathis which had caused lacerations and haematoma. In his statement the deceased makes no mention at all of any such injuries although one of the injuries caused to him resulted in fracture of sternum. There is no reference at all to the manner in which the deceased could have got the fracture of the sternum. The cumulative effect of these circumstances therefore leads to the irresistible conclusion that the deceased was unconscious and never made any such statement. Once the dying declaration is disbelieved, then there remains no legal evidence on the basis of which the appellant could be convicted.

Kake Singh alias Surendra Singh v. State of Madhya Pradesh, 1982 CrLJ 986 : 1982 AIR (SC) 1021 : 1982 CAR 319 : 1982 SCC (Cr) 645 : 1982 CrLR (SC) 8 : 1982 Bihar CrC 97

Section 32—Dying declaration—Test of veracity—Bride burning—Four dying declarations made by deceased—A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declarations they should be consistent particularly in material particulars.

Smt. Kamla v. State of Punjab, 1993 CrLJ 68 : 1993 AIR (SC) 374 : 1993 CrLR (SC) 1 : 1992(3) Crimes 1088 : 1993(1) SCC 1

Section 32—Dying declaration—Truthfulness—Tests of—Necessity of corroboration.

The law with regard to dying declarations is very clear. A dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case, bearing in mind on the one hand, that the statement is by a person who has not been examined in court on oath and, on the other hand, that the dying man is normally not likely to implicate innocent persons falsely.

If the court is satisfied on a close scrutiny of the dying declaration that it is truthful it is open to the court to convict the accused on its basis without any independent corroboration.

The person who records a dying declaration must be satisfied that the dying man was making a conscious and voluntary statement with normal understanding; and the responsibility of the court is greater in holding that it was so made when in fact it is found that the man dies a few minutes afterwards.

Lallubhai Devchand Shah and others v. The State of Gujarat, 1972 CrLJ 828 : 1972 AIR (SC) 1776 : 1972 CAR 5 : 1971 (3) SCC 767

Section 32—Dying declaration—Truthfulness—Part of declaration found to be not correct—Evidentiary value of such dying declaration.

The rejection of a part of the dying declaration would put the court on the guard and induce it to apply a rule of caution. There may be cases wherein the part of the dying declaration which is not found to be correct is so indissolubly linked with the other part of the dying declaration that it is not possible to sever the two parts. In such an event the court would well be justified in rejecting the whole of the dying declaration. There may, however, be other cases wherein the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part. In the last mentioned cases the court would not normally act upon a part of the dying declaration the other part of which has not been found to be true, unless the part relied upon is corroborated in material particulars by the other evidence on record. If such other evidence shows that part of the dying declaration relied upon is correct and trustworthy, the court can act upon that part of the dying declaration despite the fact that another part of the dying declaration has not been proved to be correct.

Godhu and another v. State of Rajasthan, 1974 CrLJ 1500 : 1974 AIR (SC) 2188 : 1974 Cr LR (SC) 575 : 1975 (3) SCC 241

Section 32—Dying declaration—Truthfulness of—Recording by Station House Officer who did not possess the capacity of investigating officer as the investigation commence after recording of dying declaration which was taken as FIR—The declaration need not be looked upon with suspicion.

The statement, Ex. P-14, was made by Bahadur Singh at the police station by way of a first information report. It is after the information was recorded, and indeed because of it, that the investigation commenced and therefore it is wrong to say that the statement was made to an investigating officer. The Station House Officer who recorded the statement did not possess the capacity of an investigating officer at the time when he recorded the statement.

Munnu Raja and another v. The State of Madhya Pradesh, 1976 CrLJ 1718 : 1976 AIR (SC) 2199 : 1976 SCC (Cr) 376 : 1976 CrLR (SC) 54 : 1976 Jab LJ 599

Section 32—Dying declaration—Truthfulness—Corroboration—Few lapses in the declaration does not affect its veracity—Sufficient evidence of mental fitness of deceased—Corroboration by eye witness—Conviction on the basis of dying declaration affirmed.

There are a few lapses and a few questioned have been missed but by and large the deceased appears to give a complete narrative of the manner in which he was burnt. He has named the two accused in his dying declaration and also mentioned the enmity resulting from the partition suit.

There is, however, sufficient evidence to show that the deceased was fully conscious when he made the dying declaration before the Honorary magistrate. It is well settled that a dying declaration if be lieved by the Court, is sufficient to sustain a conviction.

If the truthfulness of a dying declaration is accepted, it can always form the basis of conviction of the accused. In the instant case we find that even though there was some enmity between the father and the son, yet if A-1 was not the real assailant it is most unlikely that his father would in his dying moment try to falsely implicate his own son. This circumstance, therefore, appears to be a sufficient guarantee of the truth of the dying declaration made by the deceased.

Having, therefore, considered the evidence of the eye-witnesses and the evidence furnished by the dying declarations we are satisfied that the High Court was right in reaching the conclusion that the prosecution had proved its case against the appellants beyond reasonable doubt.

Vithal Somnath More v. State of Maharashtra, 1978 CrLJ 644 : 1978 AIR (SC) 519 : 1978 CrLR (SC) 79 : 1978 SCC (Cr) 175 : 1978 SimLC 252

Section 32—Dying declaration—Truthfulness—Declaration recorded shortly after the assault and before the death—Absence of precise description of all instruments of offence and manner of inflicting injuries is not sufficient to discard the evidence.

The dying declaration in our opinion, could not be discarded merely on the ground that it does not give precise description of all the instruments of offence and also the precise description of the manner in which the injuries were inflicted and on this basis therefore it could not be contended that this dying declaration should be rejected as it is not consistent with the medical evidence. It is plain that substantially it is corroborated by medical evidence and also corroborated by the testimony of eye-witness.

Dalbir Singh and others v. State of Punjab, 1987 CrLJ 1065 : 1987 CAR 335 : 1987 SCC (Cr) 519 : 1987 CrLR (SC) 309 : 1987(2) Rec CrR 56 : 1987(2) Guj LH 383

Section 32—Dying declaration—Truthfulness—Agitation by the relatives of the deceased insisting upon recording of statement cannot lead to an inference that it was recorded under pressure as per the desire of relatives specially when the statement was recorded by the Magistrate in the absence of such relatives.

Harjit Kaur etc. v. State of Punjab, 1999 CrLJ 4055 : 1999 AIR (SC) 2571 : 1999 SCC (Cr) 1130 : 1999 CAR 348 : 1999(3) Rec CrR 700 : 1999 (39) All CrC 453

Section 32—Dying declaration—Tutoring—Possibility of—Presence of relatives around the deceased before the dying declaration was made, would not render his statement to be thrown out as tutored.

Habib Usman v. The State of Gujarat, 1979 CrLJ 708 : 1979 AIR (SC) 1181 : 1979(3) SCC 358 : 1979(3) Mah LR 256

Section 32—Dying declaration—Tutoring—Probability—No person state to have prompted the deceased—Near relatives nowhere in picture till the recording of statement—Omission of name of few accused would not render it untrustworthy.

In this case there is not the slightest suggestion that there was someone who would prompt the deceased. On the contrary, even though the deceased was taken on a cot to the police station which would imply that some persons must have lifted the cot and some others must have accompanied all the way to the police station, none appears to have interposed to prompt the deceased. The High Court has found that the nearest relation of the deceased is his brother who was nowhere in the picture because he was far away. In this background the omission of name of accused 1 from dying declaration Ext. 9 and that of both accused 1 and 8 in dying declaration Ext. 4 would in our opinion, not detract fr om the credibility of the dying declarations.

Rabi Chandra Padhan and others v. State of Orissa, 1980 CrLJ 1257 : 1980 AIR (SC) 1738 : 1979 CAR 380 : 1979 CrLR (SC) 633 : 49 Cut LT 88

Section 32—Dying declaration—Use of colloquial language—Effect of.

There is nothing abnormal or unusual in the same person using colloquial language while talking to one person and using refined language while talking to another person.

Barati v. State of U.P., 1974 CrLJ 709 : 1974 AIR (SC) 839 : 1974 (4) SCC 258 : 1974 CAR 178

Section 32—Dying declaration—Validity of—Detailed account of occurrence recorded in the statement despite serious conditions of deceased—Statement not attested by the wife of the deceased or Doctor—It cannot be taken into consideration.

In view of the detailed and extremely coherent nature of the dying declaration, we find it impossible to believe that the deceased even if conscious would have made such a detailed statement. We are, therefore, inclined to think that this statement smacks of concoction or fabrication in order to make the present case foolproof. At any rat, we find it wholly unsafe to rely on the dying declaration, particularly, when PW 12 did not take the necessary precaution of getting the dying declaration attested by the wife who was stated to be present there or the doctor who was alleged to be present in the hospital. Thus, the dying declaration has to be excluded from consideration.

Mohar Singh and others etc. v. State of Punjab, 1981 CrLJ 998 : 1981 AIR (SC) 1578 : 1981 CAR 323 : 1981 CrLR (SC) 322 : 1981 SCC (Cr) 638

Section 32—Dying declaration—Validity of—Mental fitness of deceased at the time of recording of statement, certified by the doctor inspite of serious burn injuries suffered by the deceased—No reason to disbelieve the evidence of doctor—Conviction on the basis of dying declaration, affirmed.

Suresh v. State of Madhya Pradesh, 1987 CrLJ 775 : 1987 AIR (SC) 860 : 1987 CAR 367 : 1987 CrLR (SC) 198 : 1987 SCC (Cr) 254 : 1987 (1) Crimes 385 : 1987 Jab LJ 351

Section 32—Dying declaration—Validity of—Merely because deceased lived for 20 days after making the statement does not affect the validity of statement as a dying declaration if it is otherwise validly recorded.

No doubt it has been pointed out that when a person is expecting his death to take place shortly he would not be indulging in falsehood. But that dos not mean that such a statement loses its value if the person lives for a longer time than expected. The question has to be considered in each case on the facts and circumstances established therein. If there is nothing on record to show that the statement could not have been true or if the other evidence on record corroborates the contents of the statements, the Court can certainly accept the same and act upon it.

Najjam Faraghi alias Najjam Faruqui v. State of West Bengal, 1998 CrLJ 866 : 1998 AIR (SC) 682 : 1997 CAR 406 : 1998(1) Raj LW 62 : 1998 SCC (Cr) 506 : 1997(4) Crimes 279

Section 32—Dying declaration—Validity of—Statement recorded by doctor and attested by another doctor who also certified the mental fitness of the deceased at the time of making the statement—Merely because the deceased had suffered 80% burn it cannot be inferred that she was not conscious to make the statement.

We find that both the Doctors have positively stated that she was conscious when she gave her statement. Merely because she had 80% burns, it cannot be inferred that she was not in a position to speak. No good reason has been urged for not believing the evidence of two doctors who have positively stated that she was conscious. Doctor Sehgal has stated that he had put questions to her to find out how she got burns and whatever she had stated was taken down in the words spoken by her.

Kamlesh Rani v. State of Haryana, 1998 CrLJ 1251 : 1998 AIR (SC) 1534 : 1998 SCC (Cr) 713 : 1998 Mad LJ (Cr) 250 : 1998 CAR 15 : 1998(1) Crimes 106

Section 32—Dying declaration—Validity of—Victim sustaining gun shot—Admitted to hospital—Head constable of Police recorded the statement for the purpose of registration of case—Death of victim—Statement recorded by Head Constable could be relied as dying declaration—Conviction held proper.

The Head Constable, on getting message from Dr. Gulati that a person with gun-shot injuries had been admitted in the Civil Hospital at Dabwali, immediately rushed to the said place and after making entry in the police register and after obtaining certificate from Dr. Gulati about the condition of the injured, took statement from the injured Nihal Singh for the purpose of registering a case. At the time of recording such statement, the said Head Constable had no intention to record the statement as dying declaration. On the contrary, he genuinely made an attempt to get dying declaration recorded by a Magistrate and for the said purpose he requisitioned the services of both S.D.J.M. and S.D.M. (C). Unfortunately, both the said Magistrates were not available in their respective house. Such facts have been clearly proved with reference to the records and also from the depositions given by P.W. 10 and P.W. 25. Simply because Dr. Gulati did not listen to the statement made by the injured Nihal Singh to Dharamvir, it cannot be held that the statement recorded by Dharamvir was unfounded and no reliance should be placed on the same. Dr. Gulati has attested the statement recorded by Dharamvir wherein it was specifically stated that the statement was read over to the patient who had admitted the same to be correct.

The trial Court has also gone wrong in proceeding on an erroneous view that the dying declaration was not admissible in evidence because the death was not due to the injuries sustained by the injured in the hands of the accused Bhagirath. Although ultimately toximia had developed because of peritonitis, all such complications are directly attributable to the injuries suffered by the deceased Nihal Singh by the gun shot in the hands of the accused.

There are some contradictions in the depositions of P.W. 19 and P.W. 20 but in our view such contradictions are not very material for which their depositions are to be discarded. Both the said witnesses have clearly stated that the accused Bhagirath had fired a shot from the pistol from a close range. Such deposition gets corroboration from the medical evidence as to the nature of the injuries suffered by the deceased and also from the dying declaration given by the deceased Nihal Singh.

In our view, the High Court has rightly placed reliance on the dying declaration on the basis of which conviction against the accused Bhagirath is warranted. The statements contained in the said dying declaration also get corroboration from other evidences adduced in the case. Hence, the order of conviction and sentence passed against the accused Bhagirath by the High Court are just and proper and the same need not be interfered with.

Bhagirath v. State of Haryana, 1997 CrLJ 81 : 1997 AIR (SC) 234 : 1996(4) 139 (SC) : 1997 SCC (Cr) 345 : 1997(1) Rec.Cr.R 13

Section 32—Dying declaration recorded by police—Such declaration though admissible, it is better to leave out unless the prosecution satisfies the Court as to why it was not recorded by the Magistrate or doctor.

Although a dying declaration recorded by a Police Officer during the course of the investigation is admissible under Section 32 of the Indian Evidence Act is view of the exception provided in sub-section (2) of Section 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declarations out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a Magistrate or by a Doctor.

The practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. We do not mean to suggest that such dying declarations are always untrustworthy, but, what we want to emphasize is that better and more reliable methods of recording a dying declaration of an injured person should be taken recourse to and the one recorded by the Police Officer may be relied upon if there was no time or facility available to the prosecution for adoption any better method.

Dalip Singh and others v. State of Punjab, 1979 CrLJ 700 : 1979 AIR (SC) 1173 : 1979 (4) SCC 332: 1979 CrLR (SC) 81

Section 32—Statement—Meaning of—Absence of definition—Ordinary meaning of the term `statement' has to be resorted to i.e. something which is stated is a Statement.

The word `statement' is not defined in the Act. We have, therefore, to go to the dictionary meaning of the word in order to discover what it means. Assistance may also be taken from the use of the word `statement' in other parts of the Act to discover in what sense it has been used therein.

The word `statement' has been used in a number of sections of the Act in its primary meaning of `something that is stated' and that meaning should be given to it under Section 157 also unless there is something that cuts down that meaning for the purpose of that section. Words are generally used in the same sence throughout in a statute unless there is something repugnant in the context.

A `statement' under Section 157 means only `something that is stated' and the element of communication to another person is not necessary before `something that is stated' become a statement under that section. In this view of th e matter the notes of attendance would be statements within the meaning of Section 157 and would be admissible to corroborate.

Bhogilal Chunilal Pandya v. State of Bombay, 1959 AIR (SC) 356 : 1959 CrLJ 389 : 1959 Supp (1) SCR 310 : 61 Bom LR 746 : 1959 Mad LJ (Cri) 105

Section 32 – Dying declaration – Recording of by Police Officer – Evidentiary value – While recording dying declaration said Police Officer did not possess capacity of an Investigating Officer as investigation had not commenced by than – Dying declaration held admissible in evidence under Section 32(1) of Act.

Gulam Hussain and another vs. State of Delhi, 2000 Cri.L.J. 3949 (S.C.): 2000 (3) Crimes 142 : 2000 (3) Rec Cri R 714 : 2000 Cri LR (S.C)634 : 2000 (29) All Cri R 2235 : 2000 SCC (Cri) 1343 : 2000 (3) Cur Cri R 111 : 2000 (41) All Cri C 464 : AIR 2000 SC 2480

Section 32 – Dying declaration – Reliability – Death by burning – Accused persons arrested immediately after recording of statement of deceased – Material facts stated in statement corroborated by various witnesses and circumstances – Statement was recorded immediately after occurrence –

General criticism of defence not sufficient to discard dying declaration – Dying declaration can be made basis for convicting accused.

Gulam Hussain and another vs. State of Delhi, 2000 Cri.L.J. 3949 (S.C.): 2000 (3) Crimes 142 : 2000 (3) Rec Cri R 714 : 2000 Cri LR (S.C)634 : 2000 (29) All Cri R 2235 : 2000 SCC (Cri) 1343 : 2000 (3) Cur Cri R 111 : 2000 (41) All Cri C 464 : AIR 2000 SC 2480

Section 32 – Dying declaration – Reliability – Witnesses to said dying declaration who are real brothers of deceased not supported prosecution version – Magistrate not assigned any reason for not recording dying declaration himself – He dictated the dying declaration to police officer – But said Police Officer has stated that he had not recorded it – Recording of dying declaration not proved.

Gulam Hussain and another vs. State of Delhi, 2000 Cri.L.J. 3949 (S.C.): 2000 (3) Crimes 142 : 2000 (3) Rec Cri R 714 : 2000 Cri LR (S.C)634 : 2000 (29) All Cri R 2235 : 2000 SCC (Cri) 1343 : 2000 (3) Cur Cri R 111 : 2000 (41) All Cri C 464 : AIR 2000 SC 2480

Statement u/s 162

Section 162 - Inquest report - Contents - Recital in inquest report regarding the time of death of the deceased - Evidentiary value.

The recital in the inquest report regarding the time of death of the deceased as 10.30 P.M. on 12-6-1989 has no utility whatsoever now. Firstly, because the said recital in the inquest report is only a reproduction of what witnesses would have told the investigating officer. It falls within the sweep of the interdict contained in Section 162 of the Code of Criminal Procedure (for short `the Code') and hence could not be used for any purpose (except to contradict its author). The mere fact that such a recital found a place in the inquest report is not enough to save it from the prohibition provided in the section.

Periasami and another v. State of Tamil Nadu, 1997 CrLJ 219 : 1996(4) Crimes 39 : 1997 SCC (Cr) 121 : 1997(1) Rec Cr R 362 : 1996 Cr LR (SC) 684

Section 162 - Investigation - Statement of witnesses - It cannot be used as substantive evidence - It can be used only to contradict the witnesses.

Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by Section 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of Section 32(1) of the Indian Evidence Act or permitted to be proved under Section 27 of the Indian Evidence Act. Section 145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, 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. The Court below were clearly wrong in using as substantive evidence statements made by witnesses in the court of investigation.

Hazari Lal v. The State (Delhi Admn.), 1980 CrLJ 564 : 1980 AIR (SC) 873 : 1980 Cr LR (SC) 242 : 1980 SCC (Cr) 452 : 1980 Mad LJ (Cr) 756

Section 162 - Non-compliance - Signing of statement - Testimony of witness given in Court is not liable to be rejected merely because his signatures were obtained on the testimony recorded in the course of investigation.

It merely puts the Court on caution and may necessitiate indepth scrutiny of the evidence. But the evidence on this account cannot be rejected outright. Section 162 of the Code of Criminal Procedure does not provide that evidence of a witness given in the Court becomes inadmissible if it is found

that the statement of the witness recorded in course of the investigation was signed by the witness at the instance of the investigating officer. Such is not the effect of contravention of Section 162 Code of Criminal Procedure.

State of U.P. v. M.K. Anthony, 1985 CrLJ 493 : 1985 AIR (SC) 48 : 1985 SCC (Cr) 105 : 1985 CAR 29 : 1985 (1) Rec Cr R 87 : 1985 CrLR (SC) 41

Section 162 - Police officer - Meaning of - Officer of Railway Protection Force is not a Police Officer - Bar on use of statement recorded during investigation by Police has no application.

An officer of the Railway Protection Force making an inquiry under Section 8(1) of the Railway Property (Unlawful Possession) Act, 1966 is not a police officer conducting an investigation under the Criminal procedure Code. This being the true position the ban under Section162, Criminal Procedure Code against the evidential use of statements, including the prohibition against signing of statements recorded in the course of police investigation, is not attracted to statements recorded by an officer of the Force making an inquiry under Section 8(1) of the Act.

The State of Uttar Pradesh v. Vyas Tewari, 1981 CrLJ 38 : 1981 AIR (SC) 635 : 1981 SCC (Cr) 361 : 1981 CrLR (SC) 653 : 1980 CAR 368

Section 162 - Previous statement - Omission to mentioned the names of all the accused persons - Intervention by public prosecutor to concede the omission is not proper procedure - The witness must be confronted with the omission.

The question should have been framed in a manner to point out that from amongst those accused mentioned in examination-in- chief there were some whose names were not mentioned in the police statement and if the witness affirms this no further proof is necessary and if the witness denies or says that she does not remember, the investigation officer should have been questioned about it.

Muthu Naicker and others etc. v. State of Tamil Nadu, 1978 CrLJ 1713 : 1978 AIR (SC) 1647 : 1978 CrLR (SC) 378 : 1979 SCC (Cr) 14

Section 162 - Statement of witness - Evidentiary use - Inquest report - Non mention of name of witness - Since name of any witness not given in F.I.R. question of inclusion of name in inquest report does not arise -

Statement made to investigating officer while conducting inquest would be hit by Section 162 Cr.P.C. - It Can only be utilised for contradicting witnesses in the manner provided under Section 145 of the Evidence Act - Evidence Act, 1872 - Section 145.

On examining the inquest report we find that what has been stated to be the proved facts is the verbatim quoting of the F.I.R. by Bant Singh and since in the F.I.R. name of Jai Narayan or name of any witness had not been given to be eye-witness to the occurrence, question of inclusion of his name in the inquest report does not arise. That apart, any statement so made to the investigating officer while conducting inquest would be hit by Section 162 of the Code of Criminal Procedure inasmuch as this would be a statement in the course of investigation. Such a statement therefore can only be utilised for contradicting the witness in the manner provided by Section 145 of the Evidence Act and for no other purpose. This being the position of law.

Babu Singh v. State of Punjab, 1996 CrLJ 2503 : 1996 AIR (SC) 3250 : 1996 SCC (Cr) 730 : 1996(2) Crimes 213 (SC)

Section 162 - Statement to police - Discrepancies - Omission from statement if minor would not justify the inference that witnesses are liars - It must be kept in mind that the statement given to police are meant to be brief statements not in the nature of evidence.

Matadin and others v. State of U.P., 1979 CrLJ 1027 : 1979 AIR (SC) 1234 : 1979 SCC (Cr) 627 : 1979 CrLR (SC) 452

Section 162 and 154 - FIR - Vague information - Investigating officer visiting the village in the night on the basis of vague information about violence - No electric light in the village - No statement of any person recorded - FIR recorded at the Police Station on the statement of a witness is the earlier statement and not hit by Section 162 of the Code.

Pattad Amarappa and others v. State of Karnataka, 1989 CrLJ 2167 : 1989 AIR (SC) 2004 : 1990 SCC (Cr) 179 : 1989 CAR 231 : 1989 CrLR (SC) 603 : 1989 (3) Crimes 39

Section 162 and 172 - Admissibility of invest report - Statement of investigating officer as to what he saw and found is admissible but as to what heard from other is not admissible.

George and others v. State of Kerala and another, 1998 CrLJ 2034 : 1998 AIR (SC) 1376 : 1998(2) Crimes 27 : 1998 CrLR (SC) 305 : 1998 (36) All CrC 739 : 1998 SCC (Cr) 1232

Section 162 and 172 - Police diary - Disclosure of contents - Investigation - Judicial review - Ordinarily the Court should refrain from interfering with investigation at a premature stage of investigation.

Under the Code of Criminal Procedure, 1973, only a very limited use can be made of the statements to the police and police diaries, even in the course of the trial, as set out in Sections 162 and 172 of the Code of Criminal Procedure. The Division Bench, therefore, should have refrained from disclosing in its order, material contained in these diaries and statements, especially when the investigation in the very case was in progress. It should also have refrained from making any comments on the manner in which investigation was being conducted by the C.B.I., looking to the fact that the investigation was far from complete. Any observations which may amount to interference in the investigation should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. Of late, the tendency to interfere in the investigation is on the increase and Courts should be wary of its possible consequences.

Director, Central Bureau of Investigation and others v. `Niyamavedi' represented by its Member K. Nandini, Advocate and others, 1995 CrLJ 2917 : SCC (Cr) 558 : 1995(2) Crimes 252 : 1995(2) CCR 99

Section 162 and 172 - Statement of witnesses - Admissibility - Inquiry conducted under the directions of Supreme Court into the blinding of prisoners in prisons - The bar under the provision has no application.

The procedure to be followed in a writ petition under Article 32 of the Constitution in prescribed in Order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule 10 lays down that at the hearing of the rule nisi, if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court court may take such evidence or cause such evidence to be taken in such

manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act.

The bar against production and use of case diary enacted in Section 172 is intended to operate only in an inquiry or trial for an offence and even this bar is a limited bar, because in an inquiry or trial, the bar does not operate if the case diary is used by the police officer for refreshing his memory or the Criminal Court uses it for the purpose of contradicting such police officer. This bar can obviously have no application where a case diary is sought to be produced and used in evidence in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and particularly when the party calling for the case diary is neither an accused nor his agent in respect of the offence to which the case diary relates. Now plainly and unquestionably the present writ petition which has been filed under Article 32 of the Constitution to enforce the fundamental right guaranteed under Article 21 is neither an `inquiry' nor a `trial' for an offence nor is this Court hearing the writ petition a Criminal Court nor are the petitioners, accused or their agents so far as the offences arising out of their blinding are concerned. Therefore, even if the report submitted by Shri L.V. Singh as a result of his investigation could be said to form part of `case diary', it is difficult to see how their production and use in the present writ petition under Article 32 of the Constitution could be said to be barred under Section 172.

Khatri and others etc. v. State of Bihar and others, 1981 CrLJ 597 : 1981 AIR (SC) 1068 : 1981 SCC (Cr) 503 1981 BLJR 425

Statement u/s 164

Section 164 - Confession - Recording of - Statement by terrorist - Section 15 of TADA Act is not violative of Articles 14 & 21 of the Constitution - Guidelines laid down by Supreme Court for recording of statement..

As per Section 15(1), a confession can either be reduced into writing or recorded on any mechanical device like cassettes, tapes or sound tracks from which sounds or images can be reproduced. As rightly pointed out by the learned counsel since the recording of evidence on mechanical device can be tampered, tailored, tinkered, edited and erased etc. we strongly feel that there must be some severe safeguards which should be scrupulously observed while recording a confession under Section 15(1) so that the possibility of extorting any false confession can be prevented to some appreciable extent.

Sub-section (2) of Section 15 enjoins a statutory obligation on the part of police officer recording the confession to explain to the person making it that he is not bound to make a confession and to give a statutory warning that if he does so it may be used as evidence against him.

Section 15 of the TADA Act is neither violative of Article 14 nor of Article 21. But the Central Government may take note of certain guidelines which we have suggested and incorporated them by appropriate amendments in the Act and the Rules made thereunder.

Any confession or statement of a person under the TADA Act can be recorded either by a police officer not lower in rank than of a Superintendent of Police, in exercise of the powers conferred under Section 15 or by a Metropolitan Magistrate or Special Executive Magistrate who are empowered to record any confession under Section 164 (1) in view of sub-section (3) of Section 20 of the TADA.

We would like to lay down following guidelines so as to ensure that the confession obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any

vice but is in strict conformity of the well recognised and accepted aesthetic principles and fundamental fairness:

(1) The confession should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;

(2) The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay;

(3) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon;

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a Police Officer of equivalent rank, should investigate any offence punishable under this Act of 1987.

This is necessary in view of the drastic provisions of this Act. More so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorise only a police officer of a specified rank to investigate the offences under those specified Acts.

(5) The Police Officer if he is seeking the custody of any person for preindictment or pre-trial interrogation from the judicial custody, must file an **affidavit** sworn by him explaining the reason not only for such custody but also for the delay, if any, in seeking the police custody;

(6) In case, the person, taken for interrogation, on receipt of the statutory warning that he is not boud to make a confession and that if he does so, the said statement may be used against him as evidence, asserts respect his right of assertion without making any compulsion to give a statement of disclosure.

Though it is entirely for the Court trying the offence to decide the question of admissibility or reliability of a confession in its judicial wisdom strictly adhering to the law, it must, while to deciding the question should satisfy itself that there was no trap, no track and no importune seeking of evidence during the custodial interrogation and all the conditions required are fulfilled.

Kartar Singh v. State of Punjab, 1994 CrLJ 3139 : 1994 SCC (Cr) 899 : 1994 (1) Crimes 1031 : 1994(1) Rec Cr R 168

Section 164 - Confession - Voluntary nature - Corroboration - The Magistrate not taking all the precautions to ensure voluntary nature - Circumstantial evidence indicating about the guilt of accused - Conviction affirmed.

Before a confessional statement made under Section 164 of the Code of Criminal Procedure can be acted upon, it must be shown to be voluntary and free from police influence and that the confessional statement made by the appellant in the instant case cannot be taken into account, as it suffers from serious infirmities in that (1) there is no contemporaneous record to show that the appellant was actually kept in jail as ordered on Sept. 6, 1974 by Shri R.P. Singh, Judicial Magistrate, Gorakhpur, (2) Shri R.P. Singh who recorded the so-called confessional statement of the appellant did not question him as to why he was making the confession and (3) there is also nothing in the statement of the said Magistrate to show that he told the appellant that he would not be remanded to the police lock up even if he did not confess his guilt. It cannot also be gainsaid that the circumstantial evidence relied upon by the prosecution must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused.

Davendra Prasad Tiwari v. State of Uttar Pradesh, 1978 CrLJ 1614 : 1978 AIR (SC) 1544 : 1978 CrLR (SC) 519 : 1979 SCC (Cr) 95

Section 164 - Confession - Voluntary nature - Judicial custody of two days preceding confession held to be sufficient to shed fear or influence of the Police.

Shankaria v. State of Rajasthan, 1978 CrLJ 1414 : 1978 AIR (SC) 1399 : 1978 SCC (Cr) 576 : 1978 CrLR (SC) 150

Section 164 - Confession - Voluntary nature - Satisfaction of Magistrate - Necessity of - Duty to ensure that that confession was voluntarily made - Failure to record satisfaction or to testify orally is fatal to admissibility of confession.

To say that the accused was "in a position" or mood to give a voluntary statement, falls far short of vouching that upon questioning the accused, he (Magistrate) had "reason to believe that the confession is being voluntarily made", which under Section 164 is a sine qua non for the exercise of jurisdiction to record the confession. But that section does not make it obligatory for the Magistrate to append at the end of the record of the preliminary questioning, a certificate as to the anticipated voluntariness of the confession about to be recorded. But the law does peremptorily require that after recording the confession of the accused, the Magistrate must append at the foot of the record a memorandum certifying that he believes that the confession was voluntarily made. The reason for requiring compliance with this mandatory requirement at the close of the recording of the confession, appears to be that it is only after hearing the confession and observing the demeanour of the person making it, that the Magistrate is in the best position to append the requisite memorandum certifying the voluntariness of the confession made before him. If, the Magistrate recording a confession of an accused person produced before him in the course of police investigation, does not, on the face of the record, certify in clear, categorical terms his satisfaction or belief as to the voluntary nature of the confession recorded by him, nor testifies orally, as to such satisfaction or belief, the defect would be fatal to the admissibility and use of the confession against the accused at the trial.

It is not possible to hold that the Magistrate was ignorant of the different in the meaning of the words "hope" and "believe" and that he unwittingly chose the former, while in reality, he intended to express what was meant by the latter. There is every probability that the use of the word "hope", instead of "believe", in the memorandum.

Chandran v. The State of Madras, 1978 CrLJ 1693 : 1978 AIR (SC) 1574 : 1978 CrLR (SC) 455 : 1978 SCC (Cr) 528 : 1978 CAR 361

Section 164 - Confession - Voluntary nature - Satisfaction of Magistrate - It is not necessary for the Magistrate to inquire from the accused if he was making the statement under the promise of being made an approver when he had clearly warned him that the statement can be used against him.

Except the bare allegation there was no material on record to indicate that police had pressurised A-4 or had forced him to make the confession. The trial Court was not justified in considering the length of the confession as a suspicious circumstance. The confession was a complete record of the steps taken by the Magistrate, the questions put to the accused and the answers given by him. The High Court has also pointed out how other reasons given by the trial Court are also improper. While agreeing with the trial Court that the Judicial Magistrate had failed to inquire from A-4 as to whether he was promised that he would be made an approver if he made the confession, the High Court held that this omission was of no significance as A-4 was clearly warned that if he made a confession it was likely to be used against him. The High Court was also right in holding that the trial Court in relying extensively on the case diary had committed an illegality. The omission found by the trial Court as a result of that illegal effort were minor and did not justify the conclusion that the confession was not voluntarily made. In the absence of any requirement that separate reasons were required to be recorded for believing that the confession was made voluntarily it was not proper for the trial Court to doubt its genuineness on the ground that the reasons were not recorded separately though the satisfaction was recorded in the memorandum. The High Court was therefore right in placing reliance upon the confession.

Ammini and others v. State of Kerala, 1998 CrLJ 481 : 1998 AIR (SC) 260 : 1998 SCC (Cr) 618 : 1997 (4) Crimes 131 : 1998(1) Rec CrR 429 : 1998 CrLR (SC) 61

Section 164 - FIR - Delay - Prosecution failing to explain reasons for delay - The FIR should be looked upon with suspicion.

The attempt of the prosecution to explain away the delay has failed in the instant case since we have several different versions about the lodging of the

information with the police out post and the earlier versions of the crime said to have been given by Surjabai which were in writing appear to have been suppressed in this case. This extraordinary delay in giving the first information to the police in the present case which has not been properly explained cannot but be viewed with suspicion.

Ramji Surjya and another v. State of Maharashtra, 1983 CrLJ 1105 : 1983 AIR (SC) 810 : 1983 CrLR (SC) 338 : 1983 CAR 313 : 1983 SCC (Cr) 748 : 1983 All CrC 276

Section 164 - Scope of recording of statement - The provision does not empower a Magistrate to record statement on the request of any person unsponsored by investigating agency.

If a Magistrate has power to record statement of any person under Section 164 of the Code, even without the investigating officer moving for it, then there is no good reason to limit the power to exceptional cases. We are unable to draw up a dividing line between witnesses whose statements are liable to be recorded by the Magistrate on being approached for that purpose and those not to be recorded. The contention that there may be instances when the investigating officer would be disinclined to record statements of willing witnesses and therefore such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straightway approach a Magistrate for recording his statement under Section 164 of the Code. Even for such witnesses provisions are available in law, e.g. the accused can cite them as defence witnesses during trial or the Court can be requested to summon them under Section 311 of the Code. When such remedies are available to witnesses (who may be sidelined by the investigating officers) we do not find any special reason why the Magistrate should be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the Court with a request to record their statements under Section 164 of the Code.

On the other hand, if door is opened to such persons to get in and if the Magistrates are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the

Magistrate Courts for the purpose of creating record in advance for the purpose of helping the culprits.

Thus, on a consideration of various aspects, we are disinclined to interpret Section 164(1) of the Code as empowering a Magistrate to record the statement of a person unsponsored by the investigating agency.

Jogendra Nahak and others v. State of Orissa and others, 1999 CrLJ 3976 : 1999 AIR (SC) 2565 : 1999 CrLR (SC) 489 : 1999(3) Ker LT 43 : 1999(4) Bom CR 872

Section 164 - Statement of witness - Prior statement recorded under Section 164 Cr.P.C. - It is necessary to view their evidence with some initial distrust but it cannot be a rule of law to be applied in each case.

The statements of the two eye-witnesses recorded under Section 164, Cr.P.C. and therefore it was necessary to view their evidence with some initial distrust. We do not think that this can invariably be a rule of law. Sometimes the police gets the statements recorded in a routine manner. The other discrepancy pointed out is that the presence of A.S.I. itself has not been satisfactorily established. This approach of the trial Court, in our view is very erroneous. This is a case where the husband is alleged to have shot at the deceased and immediately the accused- husband was apprehended. The medical evidence corroborates the same. Now coming to the two eye-witnesses, they are independent witnesses and the report was given promptly in which all the details were mentioned.

Kanwar Pal Singh v. State of Haryana, 1994 CrLJ 1392 : 1994 AIR (SC) 1045 : 1994 SCC (Cr) 150

Section 164 - Statement recorded by Magistrate as a dying declaration - Consequently upon survival of the victim, it is treated only as statement under Section 164 - Can be used for corroboration or contradiction.

Immediately after PW 1 was taken to the hospital his statement was recorded by a recorded (sic) as a dying declaration which, consequent upon his survival, is to be treated only as a statement recorded under Section 164 Cr.P.C. and can be used for corroboration or contradiction. This statement recorded by the Magistrate at the earliest available opportunity clearly

discloses the substratum of the prosecution case including the names of the appellants as the assailants and there is not an iota of materials on record to show that this was the upshot of his tutoring. On the contrary, this statement was made at a point of time when PW 1 was in a critical condition and it is difficult to believe that he would falsely implicate the appellants leaving aside the real culprits.

Sunil Kumar and others v. State of Madhya Pradesh, 1997 CrLJ 1183 : 1997 AIR (SC) 940 : 1997 (1) Crimes 238 (SC) : 1997 SCC (Cr) 879 : 1997 Cr LR (SC) 277 : 1997 (34) All Cr C 447

Section 164(2) - Confession - Form of - Recording in utter disregard of the statutory provisions of sub-section (2) of Section 164 Cr.P.C. - Held, that High Court was not at all justified in entertaining the confession in evidence - It can not be made basis of conviction - Accused acquitted.

From the confessional statement (Exhibit P. 11) we find that the Magistrate (P.W. 8) first disclosed his identity and told him that he was not bound to make any confession and if he did so, it might be used as evidence against him. After administering the above caution the Magistrate recorded the confession and then made the memorandum required under sub-section (4) of Section 164, Cr.P.C. In our considered view, the confession so recorded is in utter disregard of the statutory provisions of sub-section (2) of Section 164, Cr.P.C. Under the above sub-section the Magistrate is first required to explain to the accused that he was not bound to make a confession and that if he did so, it might be used against him. Though this requirement has been complied with in the instant case, the other requirement which obligates the Magistrate to put questions to the accused to satisfy himself that the confession was voluntary so as to enable him to give the requisite certificate under sub-section (4), has not been fulfilled for, the learned Magistrate did not ask any question whatsoever to ascertain whether the appellant was making the confession voluntarily. In view of such flagrant omission to comply with the mandatory requirement of Section 164 (2), Cr.P.C. we must hold that the High Court was not at all justified in entertaining the confession as a piece of evidence, much less, a reliable one. Once the

confession is left out of consideration - as it has got to be - the only other piece of evidence to connect the appellant with the alleged offences are the recoveries allegedly made pursuant to his statement. Even if we proceed on the assumption that the evidence led by the prosecution in this behalf is reliable, still, considering its nature, we are unable to hold that it can made the sole basis for conviction even for the offence under Section 404, I.P.C.

Preetam v. State of Madhya Pradesh, 1996 CrLJ 4458 : 1997 AIR (SC) 445 : 1996 SCC (Cr) 1343 : 1996 (3) CCR 104

FIR S.157

Section 157—FIR—Evidentiary value—It is not a substantive evidence but can be used for corroborating or contradicting of its maker—No reliance can be placed on it when it is not tendered in accordance with law.

The first information report is not substantive evidence. It can be used for one of the limited purposes of corroborating or contradicting the makers thereof. Another purpose for which the first information report can be used is to show the implication of the accused to be not an afterthought or that the information is a piece of evidence res gestae. In certain cases, the first information report can be used under Section 32 (1) of the Evidence Act or under Section 8 of the Evidence Act as to the cause of the informant's death or as part of the informer's conduct. The High Court was wrong in holding that the first information report would be admissible under Section 157 of the Evidence Act. When the maker of the first information report was examined in court the report was not tendered by the prosecution in accordance with the provisions of the Evidence Act. The appellants were denied the opportunity of cross-examination on the first information report. The first information report was therefore wrongly relied upon in evidence.

Damodar Prasad Chandrika Prasad and others v. State of Maharashtra, 1972 CrLJ 451 : 1972 AIR (SC) 622 : 1972 (2) SCR 622 : 1972 (1) SCC 107

Section 157—Hearsay—Admissibility—Allegation of rape—The statement made by the victim to her husband immediately after the incident is admissible and has a corroborative value.

Sheikh Zakir v. State of Bihar, 1983 CrLJ 1285 : 1983 AIR (SC) 911 : 1983 CAR 334 : 1983 CrLR (SC) 413 : 1983 SCC (Cr) 761 : 1983 BLJR 450

Section 157—Hearsay—Admissibility—Recovery of firearms from the accused—Harsh sentence imposed on the basis of statement of Investigating Officer that the accused was involved with dacoit—Sentence reduced to one year's R.I.

It was stated by the Investigating Officer that he had received information that the appellant had been supplying ammunition to the dacoits. This was certainly hearsay evidence. It may explain why the accused was searched. But, what the Informer stated about the connection of the appellant with the dacoits was mere hearsay unsupported by any direct or admissible evidence. The High Court had also held that "in the circumstances of the case" the sentence of two years' rigorous imprisonment was deserved.

Ordinarily, this Court does not interfere on a question of sentence. But, as the High Court and the Courts below seem to have been affected by inadmissible evidence in awarding two years' rigorous imprisonment to the appellant against whom no previous conviction is shown, we think that the ends of justice would be met by reducing the sentence to one years' rigorous imprisonment.

Nathusingh v. The State of Madhya Pradesh, 1974 CrLJ 11 : 1973 AIR (SC) 2783 : 1974 (3) SCC 543 : 1973 CAR 427 : 1974 Mad LJ (Cri) 296

Section 157—Previous statement—Probative value—Statement made by witness to another person about the occurrence—No indication that witness was tutored or influences by anybody—Interregnum of few days between statement and incident without any possibility of tutoring does not affect probative value of the statement.

Section 157 envisages two categories of statements of witnesses which can be used for corroboration. First is the statement made by a witness to any person "at or about the time when the fact took place". The second is the statement made by him to any authority legally bound to investigate the fact. We notice that if the statement is made to an authority competent to investigate the fact such statement gains admissibility, no matter that it was made long after the incident. But if the statement was made to a

non-authority it loses its probative value due to lapse of time. Then the question is, within how much time the statement should have been made? If it was made contemporaneous with the occurrence the statement has a greater value as res justea and then it is substantive evidence. But if it was made only after some interval of time the statement loses its probative utility as res justea, still it is usable, though only for a lesser use.

We think that the expression "at or about the time when the fact took place" in Section 157 of the Evidence Act should be understood in the context according to the facts and circumstances of each case. The mere fact that there was an intervening period of a few days, in a given case, may not be sufficient to exclude the statement from the use envisaged in Section 157 of the Act. The test to be adopted, therefore, is this: Did the witness have the opportunity to concoct or to have been tutored?

State of Tamil Nadu v. Suresh (A-2) and another, 1998 CrLJ 1416 : 1998 AIR (SC) 1044 : 1998 SCC (Cr) 751 : 1998 CAR 22 : 1998 CrLR (SC) 239 : 1998(1) Mad LW (Cr) 17

Section 157—Statement—Meaning of—Absence of definition—Ordinary meaning of the term `statement' has to be resorted to i.e. something which is stated is a Statement.

The word `statement' is not defined in the Act. We have, therefore, to go to the dictionary meaning of the word in order to discover what it means. Assistance may also be taken from the use of the word `statement' in other parts of the Act to discover in what sense it has been used therein.

The word `statement' has been used in a number of sections of the Act in its primary meaning of `something that is stated' and that meaning should be given to it under Section 157 also unless there is something that cuts down that meaning for the purpose of that section. Words are generally used in the same sence throughout in a statute unless there is something repugnant in the context.

A `statement' under Section 157 means only `something that is stated' and the element of communication to another person is not necessary before `something that is stated' become a statement under that section. In this view

of the matter the notes of attendance would be statements within the meaning of Section 157 and would be admissible to corroborate.

Bhogilal Chunilal Pandya v. State of Bombay, 1959 AIR (SC) 356 : 1959 CrLJ 389 : 1959 Supp (1) SCR 310 : 61 Bom LR 746 : 1959 Mad LJ (Cri) 105