DIGEST OF NEW CASE LAW

MONIR'S PRINCIPLES AND DIGEST OF THE LAW OF EVIDENCE

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Section 3—Evidence of Independent Witness.

The Supreme Court observed that the bus conductor remembered the incident in view of the fact that they boarded the last trip from Rayachoti and on the next morning P.W. 1 boarded the said bus at 5.30 a.m. for going to the Police Station and during the talk with P.W. 1 he was informed about the murder of the deceased. The Supreme Court held that he is an independent witness not connected with the accused or the witnesses and there is no reason to doubt his evidence.

Kathakalava Naga Subba Reddy v. *Public Prosecutor, A.P. High Court,* AIR 2000 SC 3480.

Section 3—Evidence of a child witness.

The Supreme Court did not subscribe to the plea that the evidence of a child witness is generally unworthy of credence. The court did not agree with the argument that the evidence of a child witness would always stand stigmated. It is not the law that if the witness is a child his evidence shall be rejected even if, it is found reliable. The law is that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring.

Panchhi v. *State of U.P.*, AIR 1998 SC 2726.

Section 3—Evidence of eye-witness.

The Supreme Court observed that minor embellishment there may be but variations by reasons therefor should not render the evidence of eye-witnesses unbelievable. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within the set pattern is unproductive and pedantic exercise. In the present case the prosecutrix categorically stated that she was dragged from road down the path which was 20 feet away from the road. The F.I.R. mentioned the place of occurrence as road. The Supreme Court observed that the discrepancy of shifting of place of occurrence from main road to 20 feet away from it is minor as such a mention was based upon recording the complaint by the advocate after hearing prosecutrix who was at that time nervous, hesitant and scared. The Supreme Court held that the discrepancy is trivial and does not amount to any contradiction and it does not render the prosecution evidence doubtful.

State of Himachal Pradesh v. *Lekh Raj,* AIR 1999 SC 3916 : (2000) 1 SCC 247 : 2000 Cri LJ 44.

Section 3—Evidence of truthful witness.

The Supreme Court observed that only such omission which amount to contradiction in material particulars can be used to discredit the testimony of the witness when the version given by the witness in court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. Even if there is a contradiction of statement of a witness on any material point that is no ground to reject the whole of the testimony of such witness. The Supreme Court added that where on analysis of the statement of witness under Section 161 of the Criminal Procedure Code and the deposition during investigation shows that there is no material improvement much less contradiction in the deposition made before the trial Court and the so called improvements which in fact details the narrations extracted by the Public Prosecutor and the defence counsel in the course of his examination-in-chief and cross-examination such contradictions would not be fatal for prosecution.

Narayan Chetanram Choudhary v. *State of Maharashtra,* AIR 2000 SC 3352 : (2000) 8 SCC 457 : 2000 SCC (Cri) 1546.

Section 3—Testimony of a child (11 years old).

In a case 'B' was arrested in connection with abducting and killing of children. A boy aged 9 years who escaped from abduction attempt twice stated that he knew the accused 'B' he being the uncle of his classmate. The body had narrated both the efforts by 'B' to his parents whose initial reaction was not to treat it seriously. Only on hearing about 'B's arrest that the boy and his family members realised how narrowly their child escaped. The Supreme Court observed that in such circumstances the rejection of testimony of the boy and his father was not proper.

The evidence of P.W. 41 has been found reliable by the trial court but the High Court disbelieved her testimony on the sole ground that it is not possible for a child of that age (11 years) to remember what happened three years ago. The Supreme Court observed that it was rather unfortunate that the Division Bench of the High Court said so. PW-41 had seen the deceased last while they were playing together and later the dead body of the deceased was recovered. One thing which the child of that age could have never forgotten would have been the last occasion they had played together. The reasoning of the High Court in rejecting her testimony was not only unreasonable it reflected a poor understanding of how children would react and retain.

State of Maharashtra v. *Damu,* AIR 2000 SC 1691 : (2000) 6 SCC 269 : 2000 Cri LJ 2301.

Section 3—Post event conduct of a witness.

The Supreme Court observed that post event conduct of a witness varies from person to person. It cannot be a cast-iron reaction to be followed as a model by every one witnessing such event. Different persons would react differently on seeing any violence and their behaviour and conduct would, therefore, be different. The court added that it had not noticed anything which can be regarded as an abnormal conduct of P.W. 9.

Rammi v. *State of Madhya Pradesh*, AIR 1999 SC 3544 : (1999) 8 SCC 649.

Section 3—Trustworthiness of a witness.

The Supreme Court observed that in view of the fact that she was deposing before the High Court with respect to the events which had taken place over a period of three years some inconsistencies of a minor nature can be regarded as natural. She has given more details while deposing before the Sessions Court, but they are not improvements of such nature as would create any doubt regarding their trustworthiness. She had not made any attempt to hide or conceal the part played by her. The Court added that having carefully scrutinised her statement we find that she has given full and correct version of the incident. Her evidence before the court was also consistent. The Supreme Court held that both the courts below were justified in accepting her evidence and recording conviction of the appellant.

A submission was made that her evidence against Krishnendu has not been believed by the High Court and by implication it would mean that she had not told the truth. The Supreme Court observed that the High Court did not accept her evidence because it was of the view that it was unsafe to rely upon it in the absence of the independent corroboration and the non-acceptance of her evidence against Krishnendu did not introduce any infirmity in her evidence or create any doubt regarding her reliability as a witness.

Ranadhir Basu v. *State of West Bengal*, AIR 2000 SC 908 : (2000) 3 SCC 161 : 2000 Cri LJ 1417.

Section 3—Judicial scrutiny of depositions of witnesses.

The Supreme Court observed an offender who attempts to mislead others need not necessarily arm with ready, fool-proof explanation to any cross-question from his listeners. Quite often such offenders might try to advance explanations which strike them momentarily when they are compelled to explain incongruous aspects. If the explanation offered by the offender appeared incredible to the listeners that is hardly a ground to conclude that the offender would not have given such explanation.

The Supreme Court added that depositions of witnesses whether prosecution or defence or court witnesses are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.

State of U.P. v. *Babu Ram,* AIR 2000 SC 1735 : (2000) 4 SCC 515 : 2000 Cri LJ 2457.

Sections 3 and 101-104—Direct evidence and circumstantial evidence.

The Calcutta High Court observed that in a case which involves determination of the question whether there has been surrender of old lease and creation of a fresh lease apart from the direct evidence the circumstantial evidence have a great role to play. While appreciating the evidence brought on records by the parties the court in a case of this nature must also necessarily take into consideration the normal human behaviour as also its experience in such matters. The court in a case of this nature arrive at a finding on the basis of the consideration of abstract burden of proof but on consideration of the entire materials on record at a finding on the basis as to in whose favour the preponderance of probability lies. It is also trite law that the question of onus of proof loses its importance when both sides have adduced evidence.

Tarak Nath Sha v. *Bhutoria Brothers Pvt. Ltd.,* AIR 1998 Cal 31.

Section 3—Veracity of evidence of the witnesses.

The Court observed that if independent persons were not willing to tell the the police that they had seen the incident, the prosecution cannot be blamed for not examining independent persons as eye-witnesses and veracity of evidence of the witnesses examined as eye-witnesses cannot be doubted on that ground. The court further observed that the High Court was not justified in disbelieving the evidence of the eye-witnesses on this ground.

The F.I.R. was lodged by the brother of the deceased and as soon as he had seen the assault on his brother he had started running away from that place to save his life. Under these circumstances it was too much to expect that he should have noticed the presence of two witnesses and assume that they had seen the incident. Though the fact that their names did not appear as eye-witnesses in the F.I.R. was a relevant circumstance, the evidence of each of these two witnesses was required to be appreciated on its own merits.

The Court added that the High Court disbelieved the deceased's brother's evidence also on the ground that his brother-in-law who was

also an advocate and who had accompanied him to the police station had not signed the complaint. It is difficult to appreciate how on such a ground the evidence of the deceased's brother could have been disbelieved. The brother was the complainant. There was no reason for his brother-in-law to sign that complaint. It is also difficult to appreciate how the High Court could regard the advocate as a material witness and draw an adverse inference against the prosecution for not examining him as a witness.

State of Bihar v. *Ram Padarth Singh,* AIR 1998 SC 2606.

Section 3—Evidentiary value of a deposition.

Discussing the evidentiary value of a deposition in a dacoity case the Supreme Court observed that the investigating officer has stated in his evidence that immediately on being informed he had gone to the Village and at that time he had noticed that the lights on both the electric poles were burning. This part of his evidence has remained unchallenged in cross-examination. It was no body's case that the light was so insufficient that from a distance of 30 paces a person standing near the electric pole could not be identified. The reason given by the High Court that because the dacoits were wearing khaki uniforms and were wearing hats they could not have been identified appears to be more in the nature of a surmise, as it was not even suggested to any witness that because of the hats worn by the dacoits there was shadow on their faces and, therefore, it was not possible to recognise them. The court added that it was difficult to appreciate the reasoning of the High Court. If the witnesses were able to recognise the colour of the clothes worn by the dacoits, surely they could have recognised their faces also of those who were known to them. The accused had come from the north-western direction and even if it is assumed that their caps could have cast shadow over their faces while they were passing by the north-western electric pole then light from the other pole would have fallen on their faces. The court added that the High Court was wrong in discarding the evidence of the eye-witness on the ground that his conduct in going to the tube-well of the deceased and then to the Police Station was unnatural.

State of U.P. v. *Bhoora,* AIR 1998 SC 254.

Section 3—Formally proving the letters in evidence.

The Supreme Court observed that it was illegal on the part of the designated court to have used any part of the letters which were not adduced as evidence in the case through any problems known to law. Not even an affidavit has been filed by any one at least for formally proving the letters in evidence. Section 313 of the Criminal Procedure Code is intended to afford opportunity to an accused "to explain any circumstances appearing in the evidence appearing against him". It is true that an accused cannot be confronted during such questioning with any circumstance which is not in evidence. Section 313 of the

Code is not intended to be used as an interrogation. No trial court can pick out any paper or document from outside the evidence and abruptly slap it on the accused and corner him for giving an answer favourable or unfavourable. The court held that the procedure adopted by the judge using the said two letters, is not permitted by law. The court disapproved the course and dispelled the said letter *'book, bell and candle'*.

Kalpnath Rai v. *State,* AIR 1998 SC 201.

Section 3—Eye-witness' reaction on seeing a murder.

The Supreme Court observed that criminal Court should not expect a set reaction from any eye-witness on seeing an incident like murder. If five persons witness one incident there could be five different types of reactions from each of them. It is neither a tutored impact nor a structured reaction which the eye-witness can make. It is fallacious to suggest that a particular witness should have said this or that on seeing the incident. Unless the reaction demonstrated by on eye-witness is so improbable or so inconceivable from any human being being pitted in such a situation it is unfair to dub the reaction unnatural. (*Rana Pratap* v. *State of Haryana,* AIR 1983 SC 680; *Appabhai* v. *State of Gujarat,* AIR 1986 SC 696).

State of Karnataka v. *Yarappa Reddy,* AIR 2000 SC 185 (Cri. A. No. 248 of 1986, dated 14.9.1987 (Kant) Reversed.

Section 3—Testimony of a witness.

Discussing the reliability of the testimony of a witness the Supreme Court observed that unless the discrepancies and contradictions are so material and substantial and that too in respect of vitally relevant aspects of facts deposed, the witness cannot be straight-away condemned and their evidence discarded in its entirety.

Joseph v. *State of Kerala,* AIR 2000 SC 1608 : (2000) 5 SCC 197 : 2000 Cri LJ 2467.

Section 3—Credibility of an eye-witness.

The Supreme Court observed that the appellant has not been able to shake the credibility of the eye-witness. No material contradiction in the case of the prosecution has been shown to us. Under facts and circumstances, the non-examination of the Investigating Officer as a witness is of no consequence. It has not been shown what prejudice has been caused to the appellant by such non-examination.

Bahadur Naik v. *State of Bihar,* AIR 2000 SC 1582 : (2000) 9 SCC 153 : 2000 Cri LJ 2466.

Section 3—"Proved"—"not proved".

Section 3 provides that a fact is said to be 'proved' when, after considering the matter before it, the Court either believes it to exist,

or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists; a fact is said to be 'disproved' when, after considering the matter before it, the Court either believes it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist; a fact is said to be 'not proved' when it is neither proved nor disproved.

R. Puthunainar Alhithan v. *P.H. Pandian,* (1996) 3 SCC 624 : AIR 1996 SC 1599.

Section 3 and Hindu Marriage Act, 1955, Section 13—Fact 'not proved—'disapproved'.

The Supreme Court observed that a fact which is not proved does not necessarily mean it is a false one. Section 3 of the Evidence Act gives definitions of various words and expressions. The expression 'proved' is followed by the definition of "disapproved". A fact is said to be "not-proved" when it is neither proved nor disapproved. This is followed by the definition of 'disapproved'. A fact is said 'not proved' when it is neither proved nor disapproved. On the other hand, a fact is said to be disproved when, after considering matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man, ought under the circumstances of the particular case to act upon the, supposition that it does. The word 'disapproved' is normally said to be a false thing. It will thus be seen that a fact not proved is not necessarily a fact disproved. A fact which is not proved may be true or may be false. A doubt lingers about its truth. Merely because it is not proved, one may jump to the conclusion that it is disproved. A fact is disproved normally by the person who claims that an alleged fact is not true. For disproving a fact the burden is always on the person, who alleges that the fact is not true.

Naval Kishore Somani v. *Poonam Somani,* AIR 1999 AP 1.

Section 3—Value of a deposition.

Discussing the evidentiary value of a deposition of the defence was to show that this witness was not travelling by that bus as he stood contradicted when he stated that he was returning after purchasing "Gwarsa" fertiliser whereas the bill produced by him discloses that he had purchased urea on that day. This discrepancy in his evidence cannot be regarded as sufficient to doubt his presence in the bus.

Harcharan v. *State of Rajasthan,* AIR 1998 SC 244.

Section 3—Quality of evidence in Criminal Trials.

The Supreme Court observed that in the present case though

P.W. 3 has deposed that 10-15 persons were in the vicinity at the time of the occurrence, no independent witness was examined by the prosecution. There is nothing on evidence to show that there was any other eye-witness to the occurrence. Having examined all the eye-witnesses even if other persons present nearby were not examined the evidence of the eye-witness cannot be discarded. The Supreme Court held that the courts are concerned with quality and not quantity of evidence and in a criminal trial conviction can be based on the sole evidence of a witness if it inspires confidence.

Sheelam Ramesh v. *State of Andhra Pradesh,* AIR 2000 SC 118.

Section 3—Unregistered lease.

The Madras High Court observed that an unregistered lease deed can certainly be looked into for collateral purposes namely for the purpose of proving a party's character of possession. Mere marking the document does not prove any of the recitals of the document itself. The truth of the document has to be independently proved. It is always open to the opposite party to contend that he did not execute the document at all and that even for collateral purpose, it cannot be relied upon..

Konsaliya Ammal v. *Valliammal Ammal,* AIR 1998 Madras 287.

Section 3 and Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 50 and 54—Proof of unlawful possession.

The Supreme Court held that an illicit article seized from the person of an accused, during search conducted in violation of the safeguards provided in Section 50 of the Narcotics and Psychotropic Substances Act, 1985, cannot by itself be used as admissible evidence of proof of unlawful possession of contraband on the accused. The Court added that a presumption under Section 54 of the Act can only be raised after prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50 of the Act. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.

State of Punjab v. *Baldev Singh,* AIR 1999 SC 2378 : (1999) 6 SCC 172 : 1999 Cri LJ 3672 (AIR 1974 SC 334, Distinguished).

Section 3—Evidence of Police Officer.

In an incident taking place outside the village, an accused fired a shot from his pistol and caused death. The Supreme Court observed that there is no material on record on the basis of which it can be said that independent witness was available near the place of the incident and, therefore, on the ground that no independent witness has been examined by the prosecution, the evidence of the police

officer cannot be discarded when it is found to be reliable. The Supreme Court upheld the conviction by the High Court.

Ram Kumar v. *State (N.C.T.) of Delhi,* AIR 1999 SC 2259 : (1999) 9 SCC 149 : 1999 Cri LJ 3522.

Section 3—Non-examination as prosecution witness.

The Supreme Court observed that when any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have seen anything. If the court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against the non-examination of such person as prosecution witness. Merely on surmises the court should not castigate a prosecution for not examining other persons of the locality as prosecution witness. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also.

State of Rajasthan v. *Teja Ram,* AIR 1999 SC 1776 : (1999) 3 SCC 507.

Section 3—Witness to be reliable.

The Supreme Court observed that on re-examining the evidence of P.W. 1, 3 and 4 it did not find anything elicited in their cross-examination to impeach their testimony. The sole ground of attack by the appellants was that the witnesses are relations of the deceased. The Supreme Court observed that there can hardly be a ground to discard their versions. No personal enmity has been alleged towards the accused persons. The Supreme Court held the Session Judge and the High Court rightly held the witnesses to be wholly reliable and based the conviction on their testimony. The mere relationship of the witness with the deceased is no ground to discard their testimony if it is otherwise found to be reliable.

Rachamreddi Chenna Reddy v. *State of A.P.,* AIR 1999 SC 994 : (1999) 3 SCC 97 : 1999 Cri LJ 1445.

Section 3—Difference between 'not proved' and 'false'.

The Supreme Court observed that the appellants seek to place reliance on that portion which has been quoted hereinbefore where the High Court proceeds by saying even assuming it to be so. This part of the case falls away from the written agreement of sale which would be admissible under Section 92 of the Indian Evidence Act. The Supreme Court added that there is difference between 'not proved' and 'false'.

A. Abdul Rashid Khan v. *P.A.K.A. Shahul Hamid,* (2000) 10 SCC 636.

Section 3—Conviction of an innocent person.

The Supreme Court observed that the time-tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of appellants lifelong liberty without having at least a reasonable level of certainty that the appellants were the real culprits which has not been established in the present case.

Rang Bahadur Singh v. *State of U.P.*, (2000) 3 SCC 454 : AIR 2000 SC 1209 : 2000 Cri LJ 1718 : 2000 All LJ 860.

Section 3—Oral evidence.

The Supreme Court observed that the revenue revisional authority examined all aspects in detail. The oral evidence led by the parties on either side was general and consistent with documents was accepted and rightly so. The High Court did not find any merit in the writ petition with reference to the material facts on record. The Supreme Court held that the impugned order does not call for any interference.

Komal v. *Dy. Director of Consolidation, Deoria*, (2000) 6 SCC 457 : AIR 2000 SC 2541 : 2000 All LJ 2330.

Section 3—Proof for motive.

Discussing the necessity of proof for motive the Supreme Court observed that if the case of the prosecution with reference to motive for the accused to commit an offence is considered, there will be little difficulty in rejecting the same. No doubt proof of motive is not necessary to sustain a conviction but when the prosecution puts forward a specific case as too motive for the crime, the evidence regarding the same has got to be considered in order to judge the probabilities. It is well settled that motive for a crime is a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person but it cannot fill up the lacuna in the evidence.

Omwati v. *Mahendra Singh*, AIR 1998 SC 249.

Section 3—Court to reappraise the evidence.

The Supreme Court observed that the High Court being the first appellate Court is within its jurisdiction to reappraise the evidence but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the creditability of the evidence of the witness. Corroboration of evidence with mathematical niceties cannot be expected in criminal cases and trivial discrepancies ought not to obliterate an otherwise acceptable

evidence. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within the set pattern is unproductive and a pedantic exercise. The Supreme Court added that the court can sift the chaff from the corn and find out the truth from the testimony of the witness. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness and if this element is satisfied they sought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.

Leela Ram v. *State of Haryana*, AIR 1999 SC 3717 : (1999) 9 SCC 525.

Section 3—Relevancy and admissibility of evidence.

Discussing the relevancy and admissibility of evidence to establish the charge in terms of Section 3, Evidence Act, the Supreme Court observed that in the instant case the germane question was not as to in connection with what offence, during the investigation the evidence had come to light, but whether the evidence so collected is relevant and admissible to establish the charge in the present case and it is not the submission that the evidence so let in was irrelevant or inadmissible.

Ronny alias *Ronald James Alwaris* v. *State of Maharashtra*, (1998) 3 SCC 625 : AIR 1998 SC 1251.

Section 3—Perpetrators of the crimes.

Discussing the appreciation of evidence in a criminal case the Supreme Court observed that in a country like India where it is difficult to find a witness who has not made any embellishment or exaggeration, and, therefore, in such case the court would be justified in separating the chaff from the grain. But where the evidence consists only of chaff as in the present case, the question of separating the chaff from the grain would not arise. Then again where, all the eye witnesses suffer from the same infirmities the question of one corroborating the other would not arise. If a witness is partly reliable then one may look for corroboration to the reliable part of the ocular version of a witness. But if a witness is wholly unreliable the question of corroboration does not arise. It is no doubt true that the incident with which we are concerned in the present case was a ghastly one and on account of communal frenzy several people belonging to one community were burnt alive by some others but unless and until the prosecution evidence conclusively establishes those others as perpetrators of the crimes, it is not possible for a court of law to record conviction on mere conjectures and hypothesis.

Mohd. Iqbal M. Shaikh v. *State of Maharashtra*, (1998) 4 SCC 494.

Sections 3 and 5—Probative value of evidence.

Clarifying the phrases "relevancy" and "admissibility" and the distinction between these two terms as well as the meaning of "probative value of evidence" the Supreme Court observed that more often the expression "relevancy and admissibility" are used as synonyms but their legal implication are distinct and different for often facts which are relevant may not be admissible, for example, communication made by spouses during marriage or between an advocate and his client though relevant are not admissible. Similar is the case with facts which are admissible but may not be relevant, for example questions permitted to be put in cross-examination to test the veracity or impeach the credit of a witness, though not relevant are, admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case.

Ram Behari Yadav. v. *State of Bihar,* (1998) 4 SCC 517 : AIR 1998 SC 1850.

Section 3—Promissory estoppel.

The Supreme Court observed that on the basis of scientific material now obtained by this court from three highly reputed sources this is certainly not a fit case for directing grant of no objection certificate by the Pollution Control Board. The principle of promissory estoppel applied by the Appellate Authority on the ground that once building permission and permission for change of land use were granted the appellant Board could not refuse 'no objection certificate'. After amendment to Section 25 (1) of the Water (Prevention and Control of Pollution) Act, 1974, the prohibition now extends to "establishment" of the industry or taking of steps for that process and, therefore, before consent of the Pollution Board is obtained neither can the indusry be established nor can any steps be taken to establish it. The Supreme Court held that the appellate authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of a letter of intent by Central Government, a case for applying principle of 'promissory estoppel' applied to the facts of the case. There could be no estoppel against a statute and the industry could not seek a 'no objection certificate' after violating the policy decision of the Government.

A.P. Pollution Control Board II v. *Prof. M.V. Nayaudu,* (2001) 2 SCC 62.

Section 3—Statement of a hostile witness.

The Supreme Court observed that the statement of a hostile witness is not to be rejected simply on the ground that the witness is hostile. If some portion of the statement of a hostile witness inspires confidence it can be relied upon. A hostile witness cannot be termed

as wholly reliable witness. A witness who is not wholly reliable cannot lend corroboration to the statement of the plaintiff who is highly interested in the case.

Ashok Kumar Uttamchand Shah v. *Patel Mohammad Aswal Chanchad,* AIR 1999 Gujarat 108.

Sections 3, 7, 45—Criminal trial and circumstantial evidence.

Bloodstain was noted by the Forensic Science Laboratory on the motorcycle seized by the police pursuant to the information received from A-1 (Sharad Dhakar) during his interrogation. The said blood-stain was found to be of 'O' group (The blood group of the deceased was also 'O'). This circumstance though established by the prosecution is not decisive enough to point to the involvement of that accused in the murder of the deceased. If there were other circumstances, apart from recovery of some jewellery belonging to the deceased from the possession of this accused, perhaps the aforesaid circumstance relating to the blood-stain found on the motorcycle would have lent support to an inference against him. The Supreme Court held that it is difficult to reverse the order of acquittal passed in favour of A-1 in respect of major counts of offence and dismissed the appeal filed by the State.

Manish Dixit v. *State of Rajasthan,* (2001) 1 SCC 596 : 2001 SCC (Cri) 235 : AIR 2001 SC 93 : 2001 Cri LJ 133.

Sections 3, 16 and 27—Motive based on direct evidence.

The Supreme Court observed that motive is equally relevant where a case is based on direct evidence as well as where it is based on circumstantial evidence. The present case is not a case of complete dearth of motive. The respondent himself said about the motive and his sister confirmed it. Such a motive may appear to some persons as inadequate for liquidating one's own parents. But any rancour burgeoning in the mind of the offender can foment wicket thoughts which may even flame up to a flash point, and it cannot be said that the motive factor has weakened the prosecution. The Supreme Court added that an offender who attempts to mislead others need not necessarily arm with a ready foolproof explanation to any cross-question from his listeners. Quite often such offenders might try to advance explanations which strike them momentarily when they are compelled to explain incogruous aspects.

The Supreme Court also observed that the Court cannot overlook the realities that the investigating officer, who is otherwise a police officer, has to attend to umpteen engagements and even in the investigation of a particular case itself he may have to observe a number of formalities, even if it is assumed that he had only one case to investigate at that time.

The Supreme Court further added that no witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the deposition of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.

The Supreme Court held that in terms of Section 27, Evidence Act that the accused cannot be disbelieved merely on the ground that he was not interrogated on the spot where he was present and instead he was interrogated later on and then on the basis of his statement the crime articles were recovered.

State of U.P. v. *Babu Ram,* (2000) 4 SCC 515; AIR 2000 SC 1735 : 2000 Cri LJ 2457 : 2000 All LJ 1439 [Cri A. Nos. 498, 506 of 1993 and Ref. No. 3 of 1993, 23.4.1994 (All), Reversed].

Section 4—Conclusive proof—fraud or collusion.

The Supreme Court observed that when the enactment (Kerala Land Reforms Act, 1963) enjoined that any evidence would be treated as conclusive proof of certain factual position or legal hypothesis the law would forbid other evidence to be adduced for the purpose of contradicting or varying the aforesaid conclusiveness. This the court added, is the principle embodied in Section 4 of the Evidence Act when it defined 'Conclusive proof'. The court also observed that the interdict that the court will not allow evidence to be adduced for the purpose of disproving the conclusiveness, will not prevent a party who alleges fraud or collusion from establishing that the document is vitiated by such factors, and except regarding the said limited sphere the conclusiveness of the document would remain beyond the reach of controvertibility.

Cheeranthoodika Ahmmedkutty v. *Parambur Mariakutty Umma,* (2000) 2 SCC 417 : AIR 2000 SC 1853.

Sections 5 and 3—Swift progress of trial proceedings.

The Supreme Court observed that it is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. Resultantly the appellate or the revisional court when the same question is recanvassed could take a different view on the admissibility of that, material and in such cases the appellate court would be deprived of the benefit of that evidence because it is not on record of the trial court. Such practices when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings must be recast and remoulded to give way for better substitutes which would help acceleration of trial proceedings.

The practice which can be a better substitute is whenever an objection is raised during evidence taking stage regarding admissibility of any material or item of oral evidence the trial court can make a note of such objections subject to such objections being decided at the last stage in the final judgment. The above procedure if followed will have two advantages. First is that the time of the trial court during evidence taking stage would not be wasted on account of raising such objections and that court can continue to examine the witnesses. The second is that the superior court when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court can determine the correctness of the view taken by the trial court regarding that objection without bothering to remit the case to the trial court again for fresh disposal.

Bipin Shantilal Panchal v. *State of Gujarat,* (2001) 3 SCC 1 : AIR 2001 SC 1158 : 2001 Cri LJ 1254 : 2001 SCC (Cri) 417.

Section 6—Victim's identification admissible.

The Supreme Court observed that the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so inter-twined with each other by proximity of time and space that the statement of the deceased became part of the same transaction and is therefore, admissible under Section 6 of the Evidence Act. The Supreme Court came to the conclusion that his statement indicating that the injured told him that his nephew had fired on him would become admissible under Section 6 of the Evidence Act.

Sukhar v. *State of Uttar Pradesh,* AIR 1999 SC 3883 : (1999) 9 SCC 507.

Section 6—Inference of guilt of accused.

The Supreme Court observed that in order to justify an inference of guilt, the circumstances from which such an inference is sought to be drawn, must be incompatible with the innocence of the accused. The cumulative effect of the circumstances must be such as to negate the innocence of the accused and to bring home the offence beyond any reasonable doubt. Where accused on being asked offers no explanation or the explanation offered is found to be false, then that itself forms an additional link in the chain of circumstances to point out guilt. If all circumstances are taken into consideration which must be held to have been proved beyond reasonable doubt, the conclusion is irresistible that all these circumstances point towards the guilt of the accused and inconsistent with his innocence. The High Court committed serious error in acquitting the accused respondent of the charge under Section 302 of the Indian Penal Code.

The Supreme Court set aside the impugned judgment of the High Court and convicted the accused-respondent under Section 302, Indian Penal Code and sentenced him to imprisonment for life.

Vasa Chandrasekhar Rao v. *Ponna Satyanarayana,* (2000) 6 SCC 286 : AIR 2000 SC 2138 : 2000 Cri LJ 3175.

Section 8—Criminal absconding.

The Supreme Court observed that absconding by itself need not necessarily lead to an inference of culpable mind against the absconder. The disappearance of A-2 from the locality was contemporaneous with the apprehension of A-1. Even after resorting to legal measures to trace out A-2 he remained underground until he was caught unawares. The Supreme Court added that the broad features of absconding of A-2 cannot be side-stepped as an innocuous circumstances. Of course absconding by itself has no decisive implication, nevertheless it has utility to form link to concatenate the full chain.

Manish Dixit v. *State of Rajasthan,* (2001) 1 SCC 596 : AIR 2001 SC 93 : 2001 Cri LJ 133.

Section 8—Circumstantial evidence, motive and grudge.

Discussing the circumstantial evidence, motive, grudge and its proportionality to the horrendous nature of the crime the Supreme Court observed that the accused has his own grudge towards the deceased. The intensity of that grudge was known only to himself or perhaps the deceased also. If the accused has decided to kill his sister-in-law in such a savage manner by throwing her from the balcony that itself would indicate the superlative degree of gravity of his wrath towards her. With such a mind simmering with acerbity he would as well have thought to subject her to excruciating mental pain by devastating her womanhood in the manner it was done to her. So the degree of woefulness of the onslaught is not enough to militate against the horrendous nature of the crime. The court did not agree with the view of the High Court that the story narrated by the accomplice lacked probability as he is an accomplice and his narration would be incriminating to him also.

State of T.N. v. *Suresh,* (1998) 2 SCC 372.

Section 9—Modes of identification.

The Supreme Court observed that at that time P.W. 2 may have been stunned when firing was resorted to by Tuna Singh and his two acquitted co-accused as it was done at the spur of the moment. The act of Shivjee Singh in immobilising the deceased while lying down and let Kedar Singh chop off his head should have been an act comparatively slower and by that time P.W. 2 had gathered his wits and identify the assailants. It has also to be observed that even on a

full dark night there is never total darkness. There can be other means to identify another through the shape of his body, clothes, gait, manner of walking etc. Identification is possible by voice too. There is positive evidence that the temple light was on with the aid of which P.W. 2 claims to have identified the assailants. The occurrence took place at about 8 p.m. a time in the month of September when normally a place of worship becomes a visiting point. Thus neither can the presence of P.W. 2 at the spot be doubted nor can his ability to identify the assailants be questioned. His testimony was rightly believed by the court below.

Kedar Singh v. *State of Bihar,* AIR 1999 SC 1481.

Section 9—Test Identification Parade.

In *Budhsen* v. *State of U.P.,* (1970) 2 SCC 128 : AIR 1970 SC 1321, the learned counsel for the appellant relied upon the decision and contended that the evidence of identification parade does not constitute by itself substantive evidence which is governed essentially by the provisions of Section 162 of the Code of Criminal Procedure. In that case, the Court took view that on the facts established, the test identification parade could not be considered to provide safe and trustworthy evidence on which conviction could be sustained.

Ram Nath Mahto v. *State of Bihar,* (1996) 8 SCC 630; *Budhsen's* case distinguished.

Section 9—Test identification parade—Evidence of.

The Supreme Court observed that looking into the attending circumstances and the totality of the evidence produced in court that the test identification parade of accused No. 2 was not conducted properly and suffered from unexplained delay he is entitled to the benefit of doubt. The court added that motive in a criminal case based upon ocular testimony of witness is not at all relevant. Where the direct evidence regarding the commission of crime offence is worthy of credence and can be believed, the question of motive becomes more or less academic. Motive may be relevant in a case based upon circumstantial evidence only, being one of the circumstances.

Rajesh Govind Jagesha v. *State of Maharashtra,* AIR 2000 SC 160.

Section 9—Failure to hold the test identification parade.

The Supreme Court observed that in the instant case it is clear that the failure to hold the test identification parade even after a demand by the accused is not always fatal and it is only on of the relevant factors to be taken into consideration along with other evidence on record. If the claim of the ocular witnesses that they knew the accused already is found to be true, the failure to hold a test identification parade is inconsequential. The court added that where

in a murder case the eye-witnesses knew the accused previously and also that one of the witnesses was related to the deceased and in the F.I.R. lodged after fifteen minutes of the occurrence of the incident the name of the accused was mentioned and there were no allegations of enmity between the accused and the eye witness, the application for holding test parade which was made by the accused more than a month after the incident was not *bona fide*. The court held that failure to hold a test identification parade inspite of an order to that effect by the Session Court was not fatal to the prosecution.

Surendra Narain alias *Munna Pandey* v. *State of U.P.*, AIR 1998 SC 192.

The Supreme Court held that the failure to hold the test identification parade even after a demand by the accused is not always fatal and it is only one of the relevant factors to be taken into consideration along with other evidence on record. If the claim of the ocular witness that they knew the accused already is found to be true, the failure to hold test identification parade is inconsequential. The court added that on the facts of the case, application for test identification parade on his surrender by the accused after such a long time does not appear to be *bona fide*. The court held in view of the evidence on record which was accepted by the courts below and non argument of the point before the trial court of the High Court, there is no doubt that the failure to hold identification parade inspite of an order passed by the sessions court is not fatal to prosecution.

Surendra Narain alias *Munna Pandey* v. *State of U.P.*, (1998) 1 SCC 76.

See : Pammi alias *Brijendra Singh* v. *Government of M.P.*, (1998) 2 SCC 700; *Ronny* alias *Ronald James Alwares* v. *State of Maharashtra*, (1998) 2 SCC 625 : AIR 1998 SC 1251.

The Supreme Court observed that the Division Bench of the High Court has correctly found that evidence of eye-witness in this case is not to be jettisoned merely due to the failure of the investigating officer to conduct test identification parade. This is not a case where the witnesses were seeing the appellant for the first time. No body has a case that a particular witness had not seen the appellant prior to the occurrence. In fact the witness mentioned the names of some of the assailants including this appellant in the first information statement which he lodged soon after the occurrence Another two witnesses stated that they knew the appellant earlier. If their evidence is found believable than there is no warrant for the reasoning that failure to hold test identification parade had vitiated the evidence of these three eye-witnesses.

Pammi alias *Brijendra Singh* v. *Government of Madhya Pradesh*, AIR 1998 SC 1185.

Section 9—Necessity of the identification parade.

Discussing the necessity of the identification parade the Supreme Court observed that in case an accused is known to a witness by face only and not by name then the test identification parade will corroborate the evidence of identification in court. In the instant case the prosecution did not take any steps in this regard and no test identification parade was held. If the police shows the accused persons in police lock up to the identifying witnesses then the so called identification loses its value. If the accused has been shown to the identifying witnesses in the course of investigation then the so-called identification in court is of no consequence and cannot form the basis of conviction. If the witness was called to the police station while the accused persons were in police lock-up and the witness has been given the opportunity of seeing those persons in the police lock-up then the so-called identification made by the witness in court is of no consequence.

Mohd. Iqbal M. Shaikh v. *State of Maharashtra,* (1998) 4 SCC 494.

Section 9—Unreliable evidence.

The Supreme Court observed that the designated Court has already recorded a finding that there was a strong possibility that the suspects were shown to the witnesses. Under such circumstances when the accused were already known to the witnesses, their identification in the court by the witnesses was meaningless. The statement of the witnesses in the court identifying the accused in the court lost all its value and could not be made basis for recording conviction against the accused. Since conviction of the accused has been recorded by the designated court on wholly unreliable evidence, the same deserves to be set aside and the court set aside the order of conviction.

Shaikh Umar Ahmed Shaikh v. *State of Maharashtra,* AIR 1998 SC 1922.

Section 9—Chance and passerby witness.

The Supreme Court observed that all that the witnesses had seen was the beating of a persons who died later in the market and being removed in a rickshaw and there was no reason for them to apprehend that the person who was being beaten must have been killed, by the accused persons. The apathy of even the law-abiding citizens in reporting the outrages, to which they were witnesses, is too notorious to merit mention and merely because these witnesses had not reported the matter to the police it would not follow that they were not telling the truth. In fact chance and passerby witnesses of an incident taking place on a public road would be the best witnesses and the rejection of their evidence on ground that they were chance witnesses is not justified. The court observed that the same cannot be said

about their identification of A-2 as the other miscreant for they admitted that they saw him for the first time on that day. In view of the above admission and the absence of any T.I. parade held for identification of A-2 immediately after his arrest the court found it difficult to solely rely upon the identification on A-2 by the witnesses for the first time in court and that too after a lapse of almost one and a half years after the incident.

Raju v. *State of Maharashtra,* (1998) 1 SCC 169.

Section 9—Evidence of untrustworthy witness.

The Supreme Court observed that the so called identification parade also is of a peculiar nature and the witness in his evidence stated that the police asked him whether he could identify the persons who were on Scooter to which he replied in affirmative and then the two accused persons were shown for the purpose of identification and he identified them. The Supreme Court added that it failed to understand how the so called identification done in the aforesaid manner will assist the prosecution in any way and this cannot be held to be a test identification parade. The Supreme Court did not sustain the conviction on charge of murder and observed that the Session Judge as well as the High Court committed serious error by relying upon such untrustworthy witness.

Ahmed Bin Salam v. *State of Andhra Pradesh,* AIR 1999 SC 1617 : (1999) 4 SCC 111 : 1999 Cri LJ 2281.

Section 9—Evidence of a child witness.

In a case a prosecution witness 2 stated that the accused respondent was known to him. Another accused, Chaman Lal was not known to him earlier. Prosecution witness 2 did not mention in his statement under Section 161, Criminal Procedure Code that accused Ashok came along with the other two accused to the first floor and fired at him and also the fact that the accused Ashok and the other two accused were on the ground floor. The Supreme Court observed that these are material omissions and are fatal for the prosecution, and held that there was no identification by prosecution witness of accused Ashok and regarding accused Chaman Lal after the occurrence there was no test identification parade and for the first time prosecution witnesses identified the accused Chaman Lal in the Court.

The Court also observed that the law is well settled that evidence of a child witness must be evaluated carefully as a child may be swayed by what others tell him and is an easy pray to tutoring and wisdom requires that the evidence of a child witness must find adequate corroboration before it is relied on.

State of U.P. v. *Ashok Dixit,* (2000) 3 SCC 70 : AIR 2000 SC 1066 : 2000 Cri LJ 1436 : 2000 All LJ 700.

Section 9—Test identification—identification parade.

The Supreme Court observed that the purpose of test identification is to have corrobora-tion to the evidence of the eye-witnesses in the form of earlier identification and that substantive evidence of a witness is the evidence in the court. If that evidence is found to be reliable then absence of corroboration by test identification would not be in any way material. Where evidence is cogent, consistent and without any motive, it is no use to imagine and magnify theoretical possibilities with regard to the state of mind of the witnesses and with regard to their power of memorising the identity of the assailants. In the present case, identification in the court was out of 14 persons and that itself would lend credence to identification by the witness.

If the accused in exercise of his own volition declined to submit for test parade without any reasonable cause then he cannot be heard to say that in the absence of the test parade, dock identification was not proper and should not be accepted. The Supreme Court added that the justification given by the accused for not participating in the identification parade on the ground that the accused were shown by the police to the witnesses cannot be accepted.

The Supreme Court also observed that identification parade was held 7-8 years after the incident. The evidence and cross-examination of the witnesses established that they had gained an enduring impression about the identity of the accused during the incident and, therefore, the delay in trial and identification parade would not affect the evidence of those witnesses.

The Supreme Court further observed that in a criminal trial during identification parade it is neither necessary nor expected that all witnesses should identify the accused and the evidence of the witnesses cannot be compared.

Daya Singh v. *State of Haryana,* (2001) 3 SCC 468 : AIR 2001 SC 1188 : 2001 Cri LJ 1268.

Section 9—Test identification parade—absence of.

The Supreme Court observed that it cannot be held that in the absence of test identifi-cation parade the evidence of an eye-witness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case. The fact is that the eye-witnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad day light. The evidence of the eye-witnesses had remained well sustained on record.

Ramanbhai Naranbhai Patel v. *State of Gujarat,* (2000) 1 SCC 358 : 1999 Cri LJ 5013.

Section 9—Test identification parade—reasonably foolproof.

The Supreme Court observed that test identification parades have two objects. First to enable the witnesses to satisfy themselves that the person whom they suspect is really the one who was seen by them in connection with the commission of the crime. The second object is the satisfaction of the investigating authorities to ensure that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. It has to be ensured while conducting a test identification parade that the object of the parade is achieved. In case of dilution of modalities in a parade it should be seen that relaxation does not impair the purpose of the parade. In the present case the safeguards adopted by the Executive Magistrate were quite sufficient for ensuring the conduct of the parade in a reasonably foolproof manner.

State of Maharashtra v. *Suresh*, (2000) 1 SCC 471 : 2000 SCC (Cri) 263.

Section 9—Test identification parade—absence of.

The Supreme Court observed that the absence of test of identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement.

Identification parade may also not be necessary in a case where the accused persons are arrested at the spot. The evidence of identifying the accused person at the trial for the first time is, from its very nature inherently of a weak character. The identification parade even if held, cannot, in all cases, be considered a safe, sole and trustworthy evidence on which conviction of the accused could be sustained. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant. In the present case the identity of respondent was, admittedly, not established during the investigation and it is not clear as to how he was put on trial along with respondent. The Supreme Court held that Respondent 2 could not have been put up on trial and held guilty.

State of H.P. v. *Lekh Raj*, (2000) 1 SCC 247; AIR 1999 SC 3916 : 2000 Cri LJ 44.

Section 9—Identification by photo.

The Supreme Court held that identification by photo is admissible in evidence for framing charges. However, the evidence would become substantive evidence on identification by the witness of the accused in the Court.

Umar Abdul Sakoor Sarathia v. *Intelligence Officer, Narcotic Control Bureau*, (2000) 1 SCC 138 : AIR 1999 SC 2562 : 1999 Cri LJ 3972.

Section 9—Corroborative evidence.

The Supreme Court observed that it cannot be denied however, that though not fatal, absence of the corroborative evidence of prior identification in a T.I. parade makes the substantive evidence of identification in a court after a long lapse of time a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by other evidence. It has to be ascertained whether the other evidence adduced by the prosecution witnesses lend implicit assurance to the evidence of a witness regarding her identification of the appellants as the assailants. The court did not appreciate as to how the trial court came to the conclusion that the mother of the deceased had admitted that she had seen the accused a day before she testified in court. On the contrary, the above statement of the deceased mother does not in any way belie or weaken the prosecution case that she had seen the accused on the day of the incident and thereafter in court at the time she was being examined.

The court added that on a comprehensive review of the materials on record it was satisfied that the prosecution has been able to prove beyond all reasonable doubt that the accused was among the assailants as testified by the deceased's mother and fully corroborated by the dying declaration made by the deceased before her mother and another witness. The evidence of another witness also lends assurance to our conclusions. The court also added that so far as the other appellants are concerned they are entitled to benefit of doubt having regard to the fact that their identification in court for the first time was not corroborated by any identification in a T.I. parade either held nor by the dying declaration.

George v. *State of Kerala*, (1998) 4 SCC 605 : AIR 1998 SC 1376.

Section 10—Reception of evidence.

The Supreme Court observed that in dealing with Section 10 of the Evidence Act this court in *Sardul Singh* v. *State of Bombay*, AIR 1957 SC 747 : 1958 SCR 161, had opined that it is recognised on well-established authority that the principle underlying the reception of evidence of the statements, acts and writings of one co-conspirator as against the other is on theory of agency. Ordinarily, a person cannot be made responsible for the acts of others unless they have been instigated by him or done with his knowledge or consent. This section provides an exception to that rule, by laying down that an overt act committed by any one of the conspirators is sufficient (on the general principle of agency) to make it the act of all. But then the opening words of the section make it abundantly clear that such concept of agency can be availed of, only, after the court is satisfied that there is reasonable ground to believe that they have conspired to commit an offence or an actionable wrong. In other words only when such a reasonable ground exists, anything said, done or written by one of

them in reference to their common intention thereafter is relevant against others not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. In the instant case no charges were framed against the Jains for having entered into a criminal conspiracy amongst themselves (even though such was the allegation in the charge-sheet). The Court held that on perusal of the statements of witnesses the court found some of them to be irrelevant to the charges of conspiracy with which we are concerned, while others to the extent they can be translated into legally admissible evidence, only indicate that the respondent was known to the Jain Brothers. The above statement cannot be made a reasonable ground to believe that all of them conspired together.

Central Bureau of Investigation v. *V.C. Shukla* (1998) 3 SCC 410 : AIR 1998 SC 1406.

Section 10—Criminal conspiracy.

The Supreme Court observed that the High Court was right in holding that charge of criminal conspiracy against A2 had not been proved beyond doubt, and was rightly acquitted of the charge under Section 302 read with Section 120-B of the Indian Penal Code. However as the accused was found to have actively participated in causing disappearance of the dead body of the deceased knowing and having reason to believe that his murder has been committed by A1 was convicted and sentenced under Section 201 of the Indian Penal Code.

State of Kerala v *P. Sugathan,* AIR 2000 SC 3323 : (2000) 8 SCC 203 : 2000 SCC (Cri) 1474.

Section 10—Conspirators.

The Supreme Court observed that the question of using anything said, done or written by any one of such conspi-rators would arise only if the facts were to help to sustain the first limb of Section 10 of the Evidence Act *i.e.* there is reasonable ground to believe that two or more persons have conspired together to commit an offence. But it is open to the Court, even at this stage to consider the materials relating to what an accused would have said, done or written with reference to the common intention between the accused for the purpose of deciding whether there is reasonable ground to believe that the said accused would have been one of the conspirators.

State of Tamil Nadu v. *J. Jayalalitha,* (2000) 5 SCC 440 : AIR 2000 SC 1589 : 2000 SCC (Cri) 981.

Sections 10 and 24—Conspiring together.

The trial court had held that even if the confession was regarded as voluntary and true it could be used only against the accused and not against the other accused. The High Court found the trial court wrong on this point in view of Section 10 of the Evidence Act which

provides that where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of providing the existence of the conspiracy as far as the purpose of showing that any such person was a party to it. The High Court held as there was reasonable ground to believe that accused and the other accused had conspired together and, therefore, the confession made by the accused could be used against other accused also.

Ammini v. *State of Kerala,* (1998) 2 SCC 301.

Section 10—Conspirators as agents.

The Supreme Court observed that the only condition for application of the rule in Section 10 of the Evidence Act is that there must be reasonable ground to believe that two or more persons have conspired together to commit an offence [*State* v. *Nalini,* (1999) 5 SCC 253; 1999 SCC (Cri) 691; *Sardar Sardul Singh Caveeshar* v. *State of Maharashtra,* AIR 1965 SC 652, (1965) 1 Cri LJ 608]. The basic principle which underlies Section 10 is the theory of agency and hence every conspirator is an agent of his associate in carrying out the object of the conspiracy [*State of Gujarat* v. *Mohd. Atik,* (1998) 4 SCC 351; 1998 SCC (Cri) 936]. Section 10 permits "anything said, done, or written by any one of such persons in reference to their common intention" to be recorded as a relevant fact against each of the persons believed to have so conspired.

In the present case there are reasonable grounds to believe that all the four accused have conspired together to commit the offences of abduction and murders of children involved in this case. So what these accused have spoken to each other in reference to their common intention, as could be gathered from evidence on record can be regarded as relevant facts falling within the purview of Section 10 of the Evidence Act. The Supreme Court added that it is not necessary that a witness should have deposed to the fact so transpired between conspirators. A dialogue between them could be proved through any other legally permitted mode.

State of Maharashtra v. *Damu,* (2000) 6 SCC 269; AIR 2000 SC 1691 : 2000 Cri LJ 2301.

Sections 10 and 32 (3)—Common intention.

The Supreme Court observed that it is well settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between conspirators. If so, once the common intention ceased to

exist any statement made by the former conspirator thereafter cannot be regarded as one made "in reference to their common intention". In other words, a post-arrest statement made to a police officer, whether it is a confession or otherwise, touching his involvement in the conspiracy would not fall within the ambit of Section 10 of the Evidence Act. Thus the principle is no longer *res integra* that any statement made by an accused after his arrest, whether as a confession or otherwise cannot fall within the ambit of Section 10 of the Evidence Act.

State of Gujarat v. *Mohammed Atik,* (1998) 4 SCC 351 : AIR 1998 SC 1686.

Sections 11 and 106—*Alibi.*

It is well established that it is for the accused to prove the case of alibi to the hilt.

Hari Chand v. *State of Delhi,* (1996) 9 SCC 112.

Sections 11 and 106—Circumstantial evidence—Death of a married woman.

In the case of death of a married women caused by extensive burn injuries the chain of circumstantial evidence was found to be complete. Husband and wife were staying together. Broken bangles were found in the verandah and the dead body was found in the centre of the cot. There was delay in sending information to the father of the deceased. The accused had taken a false plea of *alibi.* The Supreme Court observed that the chain of circumstances is complete and the High Court was justified in reversing the order of acquittal of the trial court.

State of Rajasthan v. *Mahavir,* (1999) 1 SCC 199.

Section 13—Right to a property in dispute.

The Supreme Court observed that a judgment not *inter partes* is admissible as evidence under Section 13 of the Evidence Act as evidence of assertion of right to a property in dispute. The contention that judgments other than those falling under Sections 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. The court added that judgment rendered in earlier suits declaring title of the present appellant in land was admissible and could be relied upon by the appellant in the subsequent suit filed by the opposite party for grant of permanent injunction against the appellant in respect of the same land, even though the opposite party wan not a party to the earlier suit.

Tarumala Tirupati Devasthanams v. *K.M. Krishnaiah,* (1998) 3 SCC 331 : AIR 1998 SC 1132.

Srinival Krishnarao Kango v. *Naryan Devi Kango,* AIR 1954 SC 376 : 57 Bom LR 678; *Sital Das* v. *Sant Ram,* AIR 1954 SC 606; *Dinomoni*

Chowdhrani v. *Brojo Mohini Singh*, ILR (1895) 22 Cal 533 : 22 IA 60 (PC); *Collector of Gorakhpur* v. *Ram Sunder Mal*, AIR 1934 PC 157 : 61 IA 286 approved.

Section 15—Consumer Protection Act, 1986, Section 14.

The Supreme Court observed that in the instant case the discharge vouchers were admittedly executed voluntarily and the complainants had not alleged their execution under fraud, undue influence, misrepresentation or the like. In the absence of pleadings and evidence the State Commission was justified in dismissing their complaints. The National Commission however granted relief solely on the ground of delay in settlement of claim under the policies. The mere delay of couple of months would not have authorised the National Commission to grant relief particularly when the insurer had not complained of such delay at the time of acceptance of the insurance amount under the policy. The Court added that the Tribunal/ Commission can grant appropriate relief in case of deficiency of service. Delay in settlement of claim under a policy cannot be a ground for Tribunal to grant interest.

United India Assurance Co. Ltd. v. *Ajmer Singh Cotton and General Mills*, AIR 1999 SC 3027 : (1999) 6 SCC 400.

Section 17—Statement to the medical examiner.

The co-accused had made a statement to the medical examiner that the injuries on his fingers were caused by biting when he closed the month of the deceased to silence her. The accused also told the medical examiner that his left elbow and the other part of his left had were injured while taking the deceased to the kitchen while holding her from behind with left hand. Both the medical examiners had issued certificates on plain paper instead of the prescribed form. The High Court observed that it was well known that printed forms were in short supply in government hospitals in the district. There was nothing to show that the doctor had any reason to prepare false certificates. The High Court held that the evidence of the doctors and the certificates issued by them were true and the statements made by the accused and the co-accused to the doctors amounted to an admission and therefore admissible in evidence.

Ammini v. *State of Kerala*, (1998) 2 SCC 301.

Sections 17 to 21—"Admission" and "confession".

The Supreme Court observed that on a combined reading of Sections 17 to 21 of the Evidence Act it is manifest that an oral and documentary statement made by a party or his authorised agent, suggesting any inference as to any fact in issue or relevant fact may be proved against a party to the proceeding or his authorised agent as "admission" but, apart from exceptional cases (as contained in Section

21), such a statement cannot be proved by or on their behalf. On this point the distinction between "admission" and "confession" needs to be appreciated. Only voluntary and direct acknowledgment of a guilt is a confession but when a confession falls short of actual admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an "admission" under Section 21. "A statement made by an accused person if it is an admission, is admissible in evidence under Section 21 of the Evidence Act, unless the statement amounts to a confession and was made to person in authority in consequence of some improper inducement, threat or promise, or was made to a Police Officer or was made at a time when the accused was in the custody of Police Officer. If the statement was made by the accused, in the circumstances just mentioned its admissibility will depend upon the determination of the question whether it does not amount to a confession. If it amounts to a confession, it will be inadmissible but if does not amount to a confession it will be admissible under Section 21 of the Act as an admission provided that it suggests an inference as to a fact which is in issue in, or relevant to, the case and was not made to a Police Officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure. Secondly a statement made by an accused person is admissible against others who are being jointly tried with him only if a statement amounts to a confession. Where the statement, falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried.

Central Bureau of Investigation v. *V.C. Shukla,* (1998) 3 SCC 410 : AIR 1998 SC 1406.

Monir's Law of Evidence (New Edn. at pp. 205 and 206 approved; *Pakala Naryana Swami* v. *Emperor* AIR 1939 PC 37 (1939) : 40 Cri LJ 364 approved.

Section 18—Undue influence, fraud and misrepresentation.

The Calcutta High Court observed that the allegation of undue influence, fraud and misrepresentation admits of automatically, beyond any doubt, the genuineness of the signature on the said document by the donor. The abandonment of the plea of influence fraud cannot be done under the law at the appellate stage as the averments made in the pleading having effect of admission cannot be allowed to be abandoned without the same being explained away by cogent and proper evidence. Accordingly, by reason of inconsistent and contradictory case made out in the plaint and further admission, of the co-plaintiff and oral direct evidence adduced by the defendants, the court held that the the report and evidence of the finger print expert is of no assistance on the point of execution and registration of the deed of the gift in question. The admission of one of the parties having the same interest with that of another party who are fighting

jointly for the same interest squarely binds the other. This proposition of law, the court added, will be apparent from the provisions of Section 18 of the Evidence Act Which lays down that statements made by a party to the proceedings or by an agent to any such party, when the court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

Dulal Chandra Adak v. *Gunadhar Patra,* AIR 1998 Calcutta 150.

Sections 18 to 23—Admissions—Kinds of.

Admissions, the Supreme Court observed, generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admissions are of many kinds; they may be considered as being on the record as actual if they are either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly as between parties by agreement or notice.

Uttam Singh Duggal & Co. Ltd., v. *United Bank of India,* (2000) 7 SCC 120 : AIR 2000 SC 2740.

Section 24—Confession—True and voluntary.

Statement recorded by the magistrate which has been characterised as judicial confession is really not so because a perusal of the same shows that the applicant had not admitted his guilt in terms inasmuch as the statement as recorded states about assault on the deceased by mistake. It may however, be that the statement is not true. Now, if a statement is not true, that cannot be used even if the same were to be confessional in nature because the settled law is that for a confession to be used against the maker in a criminal trial the same has to be both true and voluntary.

State of Haryana v. *Rajinder Singh,* (1996) 8 SCC 77.

Section 24—Extra-judicial confession—delay in recording.

The Supreme Court observed that commission of an offence of a rape on a minor child and thereafter eliminating the victim girl from this World could not have been talked to or discussed with any or everybody so casually. There must be some cogent reason for making a confession of this nature. This piece of evidence, the Supreme Court added does not inspire confidence as to the creditability of the witness. The extra-judicial confession of the accused as regards his involvement in the crime is said to have been made after a delay of 20 days without any explanation whatsoever. The delay in recording extra-judicial confession before a person wholly unconnected with the police is always a matter of great suspect. The Supreme Court justified the High Court in rejecting the confessional statement. The Supreme Court upheld the judgment of the High Court that the charge

against the respondent has not been proved beyond reasonable doubt and his conviction cannot be sustained.

State of Punjab v. *Gurdeep Singh*, AIR 1999 SC 3724 : (1999) 7 SCC 714.

Section 24—Oral and documentary evidence.

The court observed that the evidence on record corro-borates the fact that the appellant was in immediate need of money to perform his sister's marriage and to secure the money he committed the crime of murder and both the courts below have accepted this part of the story and there was no reason to interfere with the finding. The appellant was not found in the village where he ordinarily ought to be and was absconding. The appellant went to the village Administrative Officer after a gap of four days and gave a confessional statement which was recorded. No explanation whatsoever was given by the appellant as to where he was during those four days. The courts below rightly held that the appellant was absconding during those four days and this would indicate beyond reasonable doubt that the appellant had a guilty mind. The Supreme Court held that after going through the judgments of the courts below and other oral and documentary evidence on record it was satisfied with the impugned judgments of the courts below and that they suffer from no infirmity.

Pakkirisamy v. *State of Tamil Nadu*, AIR 1998 SC 107.

Section 24—Confession was not voluntary.

Discussing the reliability of a confession the Supreme Court observed that if while remanding the accused to judicial custody the Judicial Magistrate thought it fit to keep him away from the police and the co-accused it is difficult to appreciate how such a direction can be regarded as circumstance indicating that the confession was not voluntary. So also it is difficult to appreciate how from the circumstances that the Judicial Magistrate had started recording the confession within a short time after the accused was produced before him an inference could have been drawn that he was not making the confession voluntarily. Merely because while the accused was retracting his confession and during his examination under Section 313, Criminal Procedure Code had alleged that he had made the confession under pressure and force from the police. The trial court ought to have appreciated that the confession was retracted four days after the accused was, released on bail. No such complaint was made by him while he was in judicial custody. The High Court has 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 the accused as to whether he was promised that he would be made an approver if he made a confession, the High Court held that this omission was of no significance as the accused

was clearly warned that if he made a confession it was likely to be used against him. In the absence of any requirement that separate reasons were required to be recorded for believing that the confession was made voluntarily and 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 court held that the High Court was right in placing reliance upon the confession of the accused.

Ammini v. *State of Kerala,* (1998) 2 SCC 301.

Section 24—Indian Penal Code, 1860, Section 300—Uncorroborated extra-judicial confession.

A veterinary doctor was killed and there was no eye-witness to the occurrence. An extra-judicial confession was made jointly by all the accused to prosecution witness 6. The Supreme Court observed that it is significant to note that the accused had no particular relationship or connection with prosecution witness 6 so as to confide in him and take his assistance for surrendering before the Police. The Supreme Court did not agree with the reasoning of the High Court and observed if really such a confession was made before prosecution witness 6 and told to prosecution witness 10 it was expected that in praying for the remand of the accused the prosecution witness 10 would refer to the same for that was the only material on which prosecution could primarily rely. The Supreme Court added that the Court is unable to accept the claim of prosecution witness 6 that the appellant and other accused made a confession of their guilt before him. The Supreme Court also observed that even if proceeded on the assumption that the prosecution has succeeded in proving the same it would not further its case in absence of proof of any other circumstances pointed to the guilt of the appellant. The Court added that the extra-judicial confession made jointly by all accused was suspicious, improbable and uncorroborated and the accused was entitled to acquittal.

Surinder Kumar v. *State of Punjab,* AIR 1999 SC 215 : 1999 SCC (Cri) 33 : 1999 Cri LJ 267. Cr. A. No. 281-D.B. of 1994, dated 10.12.1996 (Punj. & Har.) reversed.

Section 24—Extra-judicial confession to establish guilt.

In a case an extra-judicial confession was allegedly made before a witness who was a close relative of the accused. There was a delay of 20 days in recording his statement. The Supreme Court observed that the Investigating Officer has explained that he had summoned the witness but as he was not found his statement could not be recorded earlier. There is no material to infer that he had not gone to the police station even though he was informed. The evidence suffers from no infirmity and there is no reason to interfere with

the findings recorded by the Courts below that his evidence is sufficient and reliable to establish the guilt of the appellants.

Ram Khilari v. *State of Rajasthan*, AIR 1999 SC 1002 : (1999) 9 SCC 89 : 1999 Cri LJ 1450.

Section 24—Discrediting testimony of witness.

The Supreme Court observed that P.W. 5 is an independent witness and his testimony inspires confidence which has been relied upon by the trial court. There is no reason to disbelieve his statement insofar as it relates to the making of the extra-judicial confession by the appellant before him. The Supreme Court added that defence has utterly failed to bring on record any circumstance which could be made a basis for discrediting the testimony of the aforesaid witness. The effect of the statement of the accused before the witness would be tested in the light of other circumstances and the whole conspectus of the prosecution case.

Sanjay v. *State (N.C.T. of Delhi)*, (2001) 3 SCC 190 : AIR 2001 SC 979 : 2001 Cri LJ 1231.

Section 24—Confessional statement.

The Supreme Court observed that relying solely upon the alleged confessional statement of the appellant, the trial court convicted her for committing the murder of her brother-in-law and the High Court affirmed the conviction. The Supreme Court held that the statement so made by her cannot be said to be a confessional one as the circumstances in which she claimed to have caused the death of her brother-in-law would clearly exculpate her in view of Section 100 Indian Penal Code, in other words the statement of the appellant could not be entertained in evidence much less pressed into service to make it the basis of conviction.

Champa Rani Mondal v. *State of W.B.*, (2000) 10 SCC 608.

Section 24—Indian Penal Code, 1860, Sections 302 and 201—Extra-judicial confession.

The Supreme Court observed that the so called extra-judicial confession has to be excluded from purview of consideration for bringing home the charge. On the basis of materials on record the prosecution has not been able to establish any motive on the part of the accused for committing the crime. The so-called recovery of the wrist watch of the deceased on the basis of the statement made by the accused can hardly be said to be a clinching circumstance for coming to the conclusion that the prosecution case has been proved beyond reasonable doubt. The Supreme Court held that the prosecution case has not been proved beyond reasonable doubt as against the accused

and therefore, his conviction of the charge under Section 302 as well as Section 201 of the Indian Penal Code cannot be sustained.

C.K. Raveendran v. *State of Kerala*, AIR 2000 SC 369 : (2000) 1 SCC 225 : 2000 Cri LJ 497.

Section 24—Narcotic Drugs and Psychotropic Substances Act, 1985, Section 50 (1)—Confessional statement under threat and pressure.

The appellant stated that his confessional statement was made while being under custody, it was given under threat and pressure. The Supreme Court observed that by itself cannot be regarded as sufficient to hold that the confessional statement was made by the appellant under pressure or compulsion. No complaint was made by the appellant when he was produced before the Magistrate on the next day nor had be made any complaint thereafter till his statement came to be recorded under Section 313 Criminal Procedure Code. It was at the trial only that this allegation was made. The appellant did not state what was the nature of the threat given to him or the manner in which the pressure was brought on him. The Supreme Court upheld the trial court in holding that the confessional statement was voluntarily made and can be used against him. The confessional statement made by the accused corroborates the testimony of the intelligence officer.

Pon Adithan v. *Deputy Director, Narcotics Control Bureau, Madras*, AIR 1999 SC 2355 : (1999) 6 SCC 1 : 1999 Cri LJ 3663 : 1999 SCC (Cri) 1051.

Section 24—Extra-judicial confession—True and voluntary.

The Supreme Court observed that extra-judicial confession if true and voluntary can be used by the court to convict an accused for the commission of the crime alleged. Such a confession cannot be ignored when it is shown that it was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. It cannot always be termed as tainted evidence and corroboration of such evidence is by way of abundant precaution. It is not open to the Court to start with the presumption that extra judicial confession is always a weak type of evidence as it would mainly depend upon the nature and circumstances, time of making the confession and creditability of the witness. The retraction of an extra-judicial confession, a usual phenomenon in criminal cases by itself does not weaken the case of the prosecution. The Supreme Court added that before relying on the alleged confession the court has to be satisfied that it is voluntary and is not a result of inducement threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26 of the Act. The court is required to

look into the surrounding circumstances to find out if the confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may be true.

The Supreme Court held that in the present case there was sufficient evidence to hold that the appellant made a voluntary extra-judicial confession without undue influence pressure promise or inducement. The confession in fact was made instantaneously immediately after the occurrence to witnesses who are independent and reliable.

Gura Singh v. *State of Rajasthan,* (2001) 2 SCC 205 : AIR 2001 SC 330 : 2001 SCC (Cri) 323.

Sections 24 and 27—Value of extra-judicial confession.

Discussing the evidentiary value of extra-judicial confession the Supreme Court observed that there is no ambiguity in the statement which shows that the appellant killed his wife. Both the courts have found that the statement was made voluntarily by the appellant. The sequence of events shows that at the time when the appellant made the confession, neither he nor the military authorities had any knowledge of the recovery of the headless trunk of the appellants wife. The military authorities were in no way inimical to the appellant. The statement has been proved by one of the officers to whom it was made. A perusal of the evidence shows that the vague plea raised by the appellant that the statement was obtained from him on inducement and promise is not true and in such circumstances it is open to the court to rest its conclusion on the basis of such statement and no corroboration is necessary. The court added that there is a clinching circumstance against the appellant and that is the head of the deceased wife was recovered form another well situated in the land of another person and the said recovery was made at the instance of the appellant. The said fact of the head being in another well was within the exclusive knowledge of the appellant and if he had not committed the murder he could not have shown the well in which the head was found. The High Court was therefore perfectly justified in relying upon the statement of confession and the recovery of the head at the instance of the appellant for holding that the appellant was guilty of murder. The High Court has correctly relied on the crux of the statement of confession and proceeded on the footing that other details mentioned in the statement are not of much relevance and even if there is a variation between such details and the other evidence on record, it would be of no consequence.

The Supreme Court added that the main contention of the appellant is that, in the post-mortem examination the opinion expressed by the doctor is that the death occurred due to haemorrhage by cutting off the head and there was no evidence of strangling of the deceased by the appellant. Even if there had been any mark of

strangling, the same would not be visible as the neck was cut. Another important point to be kept in mind is when the post-mortem was carried out, the appellant had not made the confession on seeing the headless trunk, normally and naturally, the doctor would have proceeded to conduct the post-mortem on the footing that the death occurred on account of the chopping off of the head. In such a situation the doctor expressed an opinion that death was due to haemorrhage but it is seen that in the post-mortem report there is no reference to the symptoms which indicated such haemorrhage. The same reasoning would apply to the opinion of the doctor that the injuries found on the body were ante-mortem.

Vinayak Shivaji Rao Pol v. *State of Maharashtra,* (1998) 2 SCC 233 : AIR 1998 SC 1096.

Section 24—Statement outcome of consumption of liquor.

In a case the extra-judicial confession as deposed by a witness was not relied upon by the Session Judge. The High Court also came to the conclusion that it is difficult to rely upon the same. The witness had gone to an arrack shop and consumed liquor whereafter he disclosed the entire incident. The Supreme Court observed that such statement cannot be said to be voluntary and truthful one as it is the outcome of consumption of liquor both by the witness and the accused. The Supreme Court held that the so called extra-judicial confession has to be excluded from the purview of consideration for bringing home the charge.

C.K. Raveendran v. *State of Kerala,* (2000) 1 SCC 225 : AIR 2000 SC 369 : 2000 Cri LJ 497.

Section 24—Judicial or extra-judicial confession.

The Supreme Court observed that so far as the extra-judicial confession is concerned in the present case two confessions were made by the accused., at the panchayat. It the first confession no accused was named and it was stated in cross-examination that the name might not have been recorded by mistake. In the second confession the names of large number persons were referred to as to have confessed their guilt, including the appellant. It even included the names of persons who were not even the accused. The Supreme Court held that the alleged confession by a large number of persons is more in the nature of general and vague term and before a confession is relied on it must be clear and unequivocal whether it is a judicial or an extra-judicial confession. The trial court rightly rejected the confessions but, unfortunately the High Court very casually accepted them which cannot be sustained.

Kishan Lal v. *State of Rajasthan,* (2000) 1 SCC 310 : AIR 2000 SC 3062 : 1999 Cri LJ 4070.

Section 24 (4)—Extra-judicial confession not proved.

The Supreme Court observed that the conduct of this witness is inconsistent with the conduct of an ordinary human being. The witness who was suspecting that his wife was having illicit relations with the appellant makes it highly improbable that the appellant would take this witness into confidence to disclose about such a heinous crime. The witness before whom alleged extra-judicial confession was made did not disclose about the confessional statement to the police or anybody else for five days. The Supreme Court held that in view of these circumstances the extra-judicial confession was not proved.

Dwarkadas Gehanmal v. *State of Gujarat,* (1999) 1 SCC 57 : 1999 SCC (Cri) 12.

Sections 24, 25 and 26—Confession not made to Police Officer.

The Supreme Court observed that the power conferred by Section 164 of the Criminal Procedure Code could be exercised only by a Judicial Magistrate. Even a police officer on whom power of a Magistrate has been conferred is forbidden from recording a confession. Sub-sections (2) and (4) deal with procedure which such Magistrate has to follow while recording inculpatory statements made by persons. Confession made to a Police Officer can be recorded by him without any of the constraints incorporated in Section 164 of the Code but the same is forbidden from use in evidence. The ban contained in Section 25 of the Evidence Act is an absolute ban. There is no such ban in regard to a confession made to any person other than the police officer except when such confession was made while he was in police custody. The inculpatory statement made by any person under Section 108 of the Customs Act is to a non police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody. The Court has to be satisfied in such cases that any inculpatory statement made by an accused person to a Gazetted Officer must also pass the tests prescribed in Section 24 of the Evidence Act. If such a statement is impaired by any of the vitiating premises enumerated in Section 24, Evidence Act, that statement becomes useless in any criminal proceedings. The Supreme Court held that a statement recorded by Customs Officer under Section 108 of the Customs Act is admissible in evidence. The Court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any premises envisaged in Section 24 of the Evidence Act. Such an exercise can be made only after the appeal is regularised by granting leave to appeal and since in the present case leave was declined on a wrong interpretation of law the impugned order has to be interfered with.

Assistant Collector, Central Excise v. *Duncan Agro Industries Ltd.,* (2000) 7 SCC 53 : 2000 SCC (Cri) 1275 : AIR 2000 SC 2901 : 2000 ELT 280.

Sections 25, 26—Whether confession voluntary and true.

It is true that a confession or admission of guilt made by a person accused of an offence before, or while in the custody of, a police officer is not admissible in a court of law according to Sections 25 and 26 of the Evidence Act but it is equally well settled that these rules of evidence do not apply to departmental enquiries—*see State of Mysore* v. *S.S. Makapur,* AIR 1963 SC 375 and *State of Assam* v. *M.K. Das,* AIR 1970 SC 1255—wherein the only test is compliance with the principles of natural justice—and, of course, compliance with the rules governing enquiries, if any. In this context, it is well to remember that in India, evidence recovered or discovered as a result of an illegal search is held relevant departing from the law in the United States. *See* The Judicial Committee of the Privy Council in *Kuruma* v. *The Queen,* (1955 AC 197), quoted approvingly by the Constitution Bench of the Supreme Court in *Pooran Mall* v. *Director of Inspection,* (1974) 1 SCC 345 at p. 365 : AIR 1974 SC 348 at p. 362.

Kuldip Singh v. *State of Punjab,* AIR 1997 SC 79, para 10.

Sections 25 and 26—Confession recorded under TADA Act, 1987, Section 15 is substantive evidence.

The Supreme Court observed that it is not possible to accept the contention that as the accused were in policy custody the confessional statements are neither admissible in evidence or are not reliable. Custodial interrogation in such cases is permissible under law to meet the grave situation arising out of terrorism unleashed by terrorist activities by persons residing within or outside the country. The defence contention that the guidelines suggested in *Kartar Singh* v. *State of Punjab,* (1994) 3 SCC 569 were not followed is without any basis because in present case confessional statements were recorded prior to the decision in that case, the said guidelines are neither incorporated in the Act nor in the Rules by Parliament. The Supreme Court added that this Court did not hold in *Kartar Singh's* case (*supra*) that if suggested guidelines are not followed then confessional statement would be inadmissible in evidence. Similar contention was also negatived by the Supreme Court in *S.N. Dube* v. *N.B. Bhoir,* (2000) 2 SCC 254 : AIR 2000 SC 776 : 2000 Cri LJ 830, by holding that a police officer recording the confession under Section 15 of Terrorist and Disruptive Activities (Prevention) Act, 1987 is really not bound to follow any other procedure, framed by the Bombay High Court for recording the confession by a Magistrate under Section 164 Criminal Procedure Code; the said guidelines do not by themselves apply to a recording of confession under Section 15 of 1987 Act and it is for the court to appreciate the confessional statement as a substantive piece of evidence and find out whether it is voluntary and truthful.

In *State* v. *Nalini,* (1999) 5 SCC 253, the Supreme Court negatived the contention that confessional statement is not a substantive piece

of evidence and cannot be used against the co-accused unless it is corroborated in material particulars by other evidence and the confession of one accused cannot corroborate the confession of another accused, by holding that to that extent the provisions of the Evidence Act including Section 30 would not be applicable. The Supreme Court added that Section 15 of the 1987 Act is an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not frustrate it and that the correct legal position is that a confession recorded under Section 15 of 1987 Act is a substantive piece of evidence and used against a co-accused also.

Lal Singh v. *State of Gujarat*, (2001) 3 SCC 221 : AIR 2001 SC 746 : 2001 Cri LJ 978.

Sections 25 & 27—Terrorist and Disruptive Activities (Prevention) Act, 1987, Section 15—Rules thereunder R. 15.

The Supreme Court observed that a confession recorded under Terrorist and Disruptive Activities (Prevention) Act 1987 before a Police Officer not below the rank of a Superintendent of Police even under police custody is admissible but not under other criminal trials. Section 15 of the 1987 Act and Rule 15 of Rules thereunder have taken full precaution to *see* that confessional statement is only recorded when the accused makes it voluntarily. Confession could only be recorded by a Police Officer of the rank of Superintendent of Police or above and such Police Officer has to record in his own handwriting, he has to clearly tell the accused person that such confession made by him shall be used against him and if such police officer after questioning comes to the conclusion that it is not going to be voluntary he shall not record the same. The Supreme Court added that the handcuffing of the appellant accused or another policeman being present in the room with the chain of his handcuff or armed guards present outside the room to be such to constitute that the appellants confession statement was not made voluntarily. The Supreme Court held that in the present case the confessional statement of the accused would not only be admissible but was voluntary and truthfully made by him on which prosecution could rely for his conviction.

Gurdeep Singh v. *The State (Delhi Administration)*, AIR 1999 SC 3646 : (2000) 1 SCC 498.

Section 27—Recovery of articles—nexus with the crime.

The Supreme Court observed that the accused during his interrogation made a statement in the presence of the *panchas* which led to the discovery of an axe, hoe, *lungi* and other clothes of the deceased. There is no evidence on record to show that these clothes belonged to the deceased. The Supreme Court held that it is because

of this lacuna in the prosecution case that it cannot be held that these clothes have any nexus with the present crime. The Supreme Court held that the prosecution has not conclusively established any nexus of these recovered articles with the present crime.

Dwarkadas Gehanmal v. *State of Gujarat*, (1999) 1 SCC 57 : 1999 SCC (Cri) 12.

Section 27—Disclosure statement.

The Supreme Court observed that neither any offence was registered against the accused when he was taken to the police station for interrogation nor was any accusation made against him. At the time of making the disclosure statement he was not in the custody of the police. The court held that Section 27 of the Evidence Act was not applicable in the instant case and the recovery should not have been treated as having been made on the basis of the disclosure statement of the appellant.

Manoranjan Singh v. *State of Delhi*, (1998) 3 SCC 523.

Sections 27, 114 (iii) and 106—Disclosure statements.

The Supreme Court observed that Section 27 of the Evidence Act is a proviso to Section 25 and 26 of the Act and renders information admissible on the ground of discovery of a fact pursuant to a statement made by a person in custody, is a guarantee of 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 that statement. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence. Under Section 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible.

The Supreme Court added that consequent upon disclosure statements made, the articles mentioned therein were actually recovered at their instance from the place where such articles had been hidden by them. The property recovered consequent upon making of the disclosure statements has been proved to be the property of the deceased stolen after the commission of the crime of robbery and murder. The Court held that the contention that the whole of the statement was hit by Sections 24 to 26 of the Act and Section 162 of the Code of Criminal Procedure cannot be accepted. Hyper-technical approach as projected by the defence would defeat the ends of justice and have disastrous effect.

The Supreme Court also observed that besides Section 27 of the Act, the courts can also draw presumption under Section 114 illustration (a) and Section 106 of the Act. Drawing a presumption

under Section 114 of the Evidence Act it can safely be held that the two accused persons were at least guilty of the offence of robbery punishable under Section 392 of Indian Penal Code. The Supreme Court held that on the basis of evidence in the case an whole conspectus of the case the trial court rightly concluded that the accused having a dagger used deadly weapon and killed the deceased while the other three accused who had participated in the crime indulged in robbery.

Sanjay v. *State (N.C.T. of Delhi),* (2001) 3 SCC 190 : AIR 2001 SC 979 : 2001 Cri LJ 1231.

Section 27—Investigation officer.

The Supreme Court did not agree to the submission that the said reasoning for dispelling the evidence which otherwise is a circumstance positively inculpating the respondent. An investigation officer may have his own reasons for not interrogating the accused as soon as he saw him. The court cannot overlook the realities that investigating officer, who is otherwise a Police Officer has to attend to umpteen engagements and even in the investigation of the particular case itself he may have to observe a number of formalities even if it is assumed that he had only one case to investigate at that time.

State of U.P. v. *Babu Ram,* AIR 2000 SC 1735 : (2000) 4 SCC 515 : 2000 Cri LJ 2457 : 2000 All LJ 1439.

Section 27—Statement of the accused inadmissible.

The Supreme Court observed that 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 Act. Any object can be concealed in places which are open or accessible to others. The Supreme Court added that 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,* AIR 1999 SC 1293 : (1999) 4 SCC 370 : 1999 Cri LJ 2025 [Cri. 4 No. 100 of 1998 D/25.7.1990 (Him. Pra.) Reversed].

Section 27—Discovery of fact.

In a case of child sacrifice a brass pitcher used for collecting blood of children was recovered at the instance of the accused. There was blood on the pitcher and it was for the accused to explain how it was. The Supreme Court observed that when the accused even denied

the seizure of the pitcher, such a denial in this context is not inconsequential. In another case a similar denial was treated by this court as sufficient to provide a 'missing link' to the chain of circumstances [*State of Maharashtra* v. *Suresh*, 2000 (1) SCC 471].

The Court added that no doubt the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered." In the present case the fact discovered by the investigating officer is that A3 had carried the dead body to the spot on motor cycle. The recovery of the dead body from the same canal was antecedent to the information which the investigating officer obtained". The broken glass piece was recovered from the same spot and that piece was found to be part of the tail lamp of the motor cycle of the accused it can safely be held that the investigating officer discovered the fact that the accused had carried the dead body on the particular motor cycle upto the spot. The Supreme Court held that in view of the said discovery of the fact that the information supplied by the accused that the dead body was carried on his motor cycle upto the particular spot is admissible in evidence. The information proves the prosecution case to the above mentioned extent.

State of Maharashtra v. *Damu*, AIR 2000 SC 1691, (2000) 6 SCC 269.

Section 27—Evidence of the Investigating Officer.

The Supreme Court observed that information leading to recovery of weapons is admissible evidence under Section 27 of the Evidence Act but admissibility alone would not render the evidence, pertaining to the above information reliable. While testing the reliability of such evidence the court has to *see* whether it was voluntarily given by the accused. The very purpose of re-examination is to explain matters which have been brought down in cross-examination. In the instant case there are material discrepancies in the evidence of the eye-witness and that of the investigating officer regarding the time when the police took the accused in custody. The Supreme Court added that the evidence of the investigating officer regarding recovery of weapons at the instance of the accused cannot be relied upon especially when the public prosecutor has avoided putting any questions in that regard to those witnesses when opportunity for re-examination was provided to him.

Rammi v. *State of Madhya Pradesh*, AIR 1999 SC 3544 : (1999) 8 SCC 649.

Section 27—Discovery—Concealment of weapon.

The Supreme Court observed that the Designated Court was inclined to believe the fact that the police officer who recorded the said information would have stopped eliciting from the accused

anything regarding the spot whereat the weapon was kept or at least the place where the spot is located, or at least some other idea regarding the place of such concealment of the weapon. The Designated Court pointed out that from the very same place a similar weapon was recovered first a couple of days ago pursuant to the information elicited from another accused by the very same police officer. The Designated Court found it difficult to place reliance on the recovery as pursuant to the information allegedly made by the accused. A doubt has been entertained that when the investigating officer recovered firearm from the very same place two days earlier he would have left the place without making a detailed search at all. The Supreme Court held that the reasons stated by the trial court cannot be dubbed as unreasonable and the court of appeal cannot interfere with an order of acquittal upholding that the said reasons are so unreasonable.

State of Maharashtra v. *Girish Ghanshyam Dube,* (2000) 9 SCC 400.

Section 27—Evidence regarding recovery.

In a case both the weapons stained with blood were recovered on the basis of a statement by the accused. The blood on one axe were of human blood but the serologist failed to detect origin of blood on the other axe due to disintegration of serum. The guess that the blood on the other axe would be of some other origin say animal blood is unrealistic and far fetched in the broad spectrum of the case. The effort of the criminal court should not be to prowl for imaginative doubts unless the doubt is of a reasonable dimension which a judiciously conscientious mind entertains with some objectivity, no benefit can be claimed by the accused. The Supreme Court held that the failure to detect the origin of blood on one of the axes does not mean that blood struck on axe would not have been human blood at all and the rejection of evidence regarding recovery on that score is not proper.

The Supreme Court also observed that if any Investigating Officer ignorant of Section 162 (1) of the Criminal Procedure Code obtains the signature of a person concerned on a statement it does not contaminate or vitiate the witness's testimony in the court. The prohibition contained in sub-section (1) of Section 162 is not applicable to any proceeding made under Section 27 of the Evidence Act. The Investigating Officer is not obliged to obtain signatures of an accused in any statement attributed to him while preparing seizure memo for 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. The Supreme Court held that the signature of the accused in seizure memo would not vitiate the evidence regarding recovery of axes.

State of Rajasthan v. *Teja Ram,* AIR 1999 SC 1776 : (1999) 3 SCC 507 : 1999 SCC (Cri) 436.

Section 27—Evidence of the Investigating Officer.

In a case the shirt worn by the deceased was recovered on the basis of a statement of accused specifying the place where he had concealed it. Pursuant to the said statement the shirt was recovered therefrom. The Supreme Court observed that the statement of the accused would fall within the purview of Section 27 of the Evidence Act and if it is believed it would show that the shirt was concealed by the accused. The Supreme Court held that it did not find any reason to disbelieve the evidence of the investigating officer regarding recovery of the shirt.

State of West Bengal v. *Mir Mohammad Omar*, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516

Section 27—Narcotic Drugs and Psychotropic Substances Act, 1985, Section 20 (b) (ii).

The only evidence against the appellant is the discovery stated to have been made by him or 7 gms of charas. The evidence clearly discloses that the police was already informed about the place where *charas* was concealed before the appellant had taken the Police to that place. The Supreme Court observed that the coconut tree from whose stem the charas was found was admittedly standing on the open space accessible to all and it is difficult to uphold the finding of the courts below that it was the appellant who concealed the charas there and that it was found only on the basis of the disclosure statement made by the appellant and therefore the conviction of the appellant will have to be set aside.

Krishan Mohar Singh Dugal v. *State of Goa*, AIR 1999 SC 3842.

Section 30—Confession made to an authorised officer.

The Supreme Court observed that it is well settled that the confession made by a person as against the co-accused cannot be used as substantive evidence. It can only be used as a corroborative piece. The Supreme Court held that in the absence of any reliable substantive evidence the confessional statement cannot be used for any purpose as against the co-accused.

The Court also observed that there is no legal requirement that a confession should be made to an authorised officer. Any person can give evidence in a court regarding a confession made by an accused to him. If such a confession was made to a Magistrate the law requires the same to be recorded in a manner prescribed in law. If a confession is made to any other person the court has to consider whether the evidence of that person can be believed which depends upon the credibility of the witness giving such evidence.

Sasi v. *State of Kerala*, (2000) 10 SCC 360.

Section 30—Confessional statement for framing of charges.

The Supreme Court observed that the approach of the designated court while dealing with the question of framing charges was perverse as at that stage the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (*de hors* those materials) that the prosecution may, adduce in the trial which would commence only after the charges are framed and the accused denies the charges. The designated court was, therefore, not at all justified in taking into consideration the confessional statement for framing of charges. The court added that in the instant case it is abundantly clear that the accused's statement is self exculpatory and hence inadmissible in evidence as 'confession'. Once it is left out of consideration, as it should be, the confessional statements of the other three accused, for what they are worth, cannot be made in the absence of any other material to connect one of the accused with the accusation levelled against him a basis for impugned charges in view of the law laid down in *Kashmira Singh*, AIR 1952 SC 169.

Suresh Budharmal Kalani alias *Pappu Kalani* v. *State of Maharashtra*, AIR 1998 SC 3258.

Section 30—Exculpatory statement—Evidentiary value.

Discussing the scope of evidentiary value of the statement of the accused recorded under Section 164 of the Evidence Act, the Supreme Court observed that there is no use of the said statement attributed to the third accused for two reasons, first that the said author of the statement has already been arraigned in the case and a charge has been framed against him. Secondly on a reading of the statement it shows that it is exculpatory in nature. The Supreme Court held that the said statement can only lie in store and no court can possibly treat it as evidence for deciding to proceed against another accused.

State of T.N. v. *J. Jayalalitha*, (2000) 5 SCC 440 : AIR 2000 SC 1589 : 2000 SCC (Cri) 981.

Section 30—Confession recorded by a Judicial Magistrate.

In a case a confession was recorded by a Judicial Magistrate at Ahmednagar whereas the accused was locked up in the sub-jail at Newasa where a Judicial Magistrate was available. Rejecting the contention why a Magistrate belonging to a distant place was asked to record the confession in preference to a Magistrate at a near place the Supreme Court observed that Newasa is a taluk located within the territorial limits of district of Ahmednagar. The Chief Judicial Magistrate Ahmednagar was asked to nominate a Magistrate within his jurisdiction for recording the confession. There could have been a variety of reasons for the Chief Judicial Magistrate for choosing a particular Magistrate to do the work. The Supreme Court held that

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when not even a question was put to the Magistrate who recorded the confession and the investigating officer as to why the Chief Judicial Magistrate, Ahmednagar did not assign the work to a Magistrate at Newasa, it is not proper for the High Court to have used that as a ground for holding that the voluntariness of the confession was vitiated.

State of Maharashtra v. *Damu,* (2000) 6 SCC 269 : AIR 2000 SC 1691 : 2000 Cri LJ 2301.

Section 30—Inculpative statement.

In a case a statement of the first accused was recorded by the Sub-Divisional Magistrate and proved through the said Magistrate as though it was a judicial confession. The High Court did not find any inculpative statement therein and declined to act on it as a confession. The Supreme Court observed that it agreed with the conclusion of the High Court that the said statement does not have even one limb of inculpative admission so far as the maker of the statement is concerned. The Supreme Court held that if it is not inculpative then the same cannot be used against a co-accused because Section 30 of the Evidence Act permits only a confession made by one accused to be taken into consideration against the co-accused also subject to the conditions laid down in the section. The Court also held that the statement made by the first accused can be treated as an admission and not a confession. The admission is self-exculpative of her guilty involvement in the murder of the deceased and if that is the true version, the first accused is totally innocent of the murder of the deceased.

Bishwa Nath Aggarwal v. *Meena Gupta,* (2000) 9 SCC 149 : 2000 SCC (Cri) 1182.

Section 32—Dying declaration—True and consistent.

It is settled law by a series of judgments of the Supreme Court that the dying declaration, if after careful scrutiny the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, is no legal impediment to form such dying declaration the basis of conviction, even if there is no corroboration, *vide Tarachand Damu Sutar* v. *State of Maharashtra,* (1962) 2 SCR 775 : AIR 1962 SC 130 : (1962) 1 Cri LJ 196; *Kusa* v. *State of Orissa,* AIR 1980 SC 559 : (1980) 2 SCC 207; *Meesala Ramakrishan* v. *State of A.P.* (1994) 4 SCC 182; *Goverdhan Raoji Ghyare* v. *State of Maharashtra,* 1993 Supp (4) SCC 316; *Gangotri Singh* v. *State of U.P.* 1993 Supp (1) SCC 327; *See* also *Betal Singh* v. *State of M.P.,* (1996) 4 SCC 203; *State of Punjab* v. *Amarjit Singh,* AIR 1988 SC 2013 : 1988 Supp. SCC 704; *Charipalli Shankararao* v. *P.P., High Court of A.P.,* 1995 Supp (4) SCC 24; *Paniben* v. *State of Gujarat,* AIR 1992 SC 1817 : (1992) 2 SCC 474; *See* also *State of Orissa*

v. *Bansidhar Singh*, (1996) 2 SCC 194; *State of Rajasthan* v. *Kishore*, (1996) 8 SCC 217.

The Supreme Court observed that 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 does 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 circumstance 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. In the instant case both courts have discussed the entire evidence on record and found the two dying declarations acceptable.

Najjam Faraghi alias *Nijjam Faruqui* v. *State of West Bengal*, (1998) 2 SCC 45 : AIR 1998 SC 682.

Section 32—Dying declaration—Proved beyond reasonable doubt.

The Supreme Court observed that it has gone through the statement of Jaswant Singh which has been treated to be a dying declaration under Section 32 (1) of the Evidence Act as well as the evidence of P.W. 1 who has given a vivid account as to how the occurrence took place. The statement of the deceased gave a brief sketch how the accused persons arrived at the scene of occurrence and started assaulting the prosecution party. At that stage no more was expected of a injured person who died the next day. The court observed that the omissions in the evidence of P.W. 1 vis-a-vis her earlier statement given to the police are not material. The Supreme Court added that it sees no reason to take a different conclusion then the one taken by the Session Judge as well as the High Court in coming to the conclusion that the prosecution case has been proved beyond reasonable doubt.

Laiju Singh v. *State of U.P.*, AIR 2000 SC 3594 : 2000 SCC (Cri) 1501.

Section 32—Dying declaration and medical certificate.

The Supreme Court observed that in the absence of a medical certificate that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making the declaration. In the instant case the certificate appended to the dying declaration at the end by the doctor did not comply with the requirements inasmuch as the doctor 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 expert at the end only says that "patent is conscious while

recording the statement" and in view of these material omissions the dying declaration could not be accepted as true and 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. The Supreme Court held that the statement in the dying declaration *i.e.,* accused poured kerosene on her and thereafter she also poured kerosene on herself and that "they have burnt me with a lighted match stick" 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 v. *State of Andhra Pradesh,* AIR 1999 SC 3455 : (1999) 7 SCC 695 [Cri A No. 662 of 1996, dated 26.3.1997 (Andhra Pradesh, Reversed].

Section 32—Dying declaration as an F.I.R.

The Supreme Court observed that the submission that the two dying declarations cannot be relied upon as the doctor has not been examined and the doctor has not made any endorsement on the dying declaration cannot be accepted. The Magistrate who recorded the dying declaration has been examined as a witness. 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 the patient was fully conscious. In view of this as also no reason having been ascribed as to why the Magistrate should try to help the prosecution there is no justification for not relying upon the declaration in the absence of endorsement of doctor thereon. The Police also took the statement of the deceased which was treated as an F.I.R. and the same can be treated as dying declaration. The two dying declarations made by the deceased at two different points of time to two different persons corroborate each other and there is no inconsistency in those two declarations. The Supreme Court held 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 person and the prosecution case must be held to have been established beyond reasonable doubt.

Koli Chunilal Savji v. *State of Gujarat,* AIR 1999 SC 3695 : (1999) 9 SCC 562.

Section 32—Admissibility of hearsay evidence.

The Supreme Court observed that a dying declaration 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 his death comes in question is relevant under Section 32 of the Evidence Act and is admissible in evidence. Though dying declaration is indirect evidence being a piece 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 dying declaration is question of fact and has to be determined on the facts of each case. In the instant case there is circumstantial evidence which corroborates the dying declaration viz. The statement of the witnesses that they found the victim in her room where the smell of kerosene was present, the statement of the doctor who conducted the post mortem after four days of the accident that he noticed the smell of kerosene from the scalp of the deceased, the statement of witnesses stating that the appellant delayed the opening of lock on one pretext or the other and the statement of the appellant that she died of an accident while igniting, the oven and that he had put water on her was belied from the evidence on record as no sign of water was found in the kitchen and that the ash in the oven was found intact. These facts the court observed lend assurance to the truth of the declaration of the deceased.

Ram Bihari Yadav v. *State of Bihar,* (1998) 4 SCC 517 : AIR 1998 SC 1850.

Section 32—Burn cases—Dying declaration recorded by a doctor.

A dying declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. 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 or weak and can be acted upon without corroboration if it is found to be otherwise true and reliable.

In the instant case the doctor stated that he found the deceased having 90% burns, that she was conscious, cooperative and oriented regarding time, place and person. The deceased made the statement in Hindi while the doctor recorded it in English he did not read over and explain the contents of the document to the deceased and he also did not obtain her signature or thumb impression on the document. No other person had attested the statement alleged to have been made by the deceased before the witness. The Medical Officer also in

charge of the ward endorsed stating that the deceased was not in a fit condition for making the statement. The Supreme Court held that on the facts and circumstances of the case it would not be safe to convict the accused solely on the basis of the dying declaration made by the deceased.

Jai Karan v. *State of N.C.T., Delhi,* AIR 1999 SC 3512 : (1999) 8 SCC 161.

Section 32—Burn cases—Dying declaration—site—inspection report.

A lady was taken to a hospital with burns. A Police Officer recorded her statement in the nature of a complaint which was later treated as a dying declaration. It was contended that no weight ought to be given to the statement as it was not attested by the doctor and neither was there any endorsement to show that the statement was made by the deceased when she was mentally and physically fit to make such a statement. The Supreme Court observed that the contention was misconceived as it proceeds on an erroneous assumption that what was recorded by the Police Officer was a dying declaration and since it was a complaint which was recorded it was not necessary for him to keep any doctor present or obtain any endorsement from him.

It was also contended that when she was taken to the hospital she was not replying to the questions properly as deposed by the first doctor who examined her. This contention the Supreme Court observed is also not correct because after receiving treatment she was in a fit condition to make a statement. No attempt was made in the cross-examination of the doctor to show that her condition had not improved. The defence contention that the statement was not recorded in question and answer form was also rejected because a complaint is required to be recorded in question and answer form even though there is possibility that later on it might be treated as a dying declaration. This dying declaration, the Supreme Court added receive corroboration from the site inspection report and also by the application referring to a compromise arrived at on the previous day.

Jai Prakash v. *State of Haryana,* AIR 1999 SC 3361.

Section 32—Dying declaration—Mental condition.

The Supreme Court observed that the High Court has sidelined such a noticeable discrepancy looming large as between 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 to one was wrong or that in the other was wrong. Both could be reconciled with each other only with such 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. The Supreme Court held that the High Court cannot sideline the difference in the version of the deceased as to what she was doing at the relevant point of time was not proper.

The Supreme Court added that another circumstances dissuading the court from giving any credence to the version of the deceased is that her father and another witness have said that the deceased was not mentally sound. A criminal court cannot ignore the said evidence of the parents of the deceased. If the court has even a slight doubt about the mental soundness of the author of the dying declaration it would be unsafe to base a conviction on such a statement, albeit its admissibility under Section 32 of the Evidence Act.

Dandu Lakshmi Reddy v. *State of A.P.*, AIR 1999 SC 3255 : (1999) 7 SCC 69.

Section 32—Reliability of a dying declaration.

Discussing the reliability of a dying declaration the Supreme Court observed that from all appearances and circumstances there is no doubt that the death in the instant case is a case of homicide. The first person to whom the deceased talked was her own brother and she told him that it was the appellant who did it. She gave the same version to her father and sister also. Her statement was recorded by the police who got it signed by her. In the hospital she told the same version to the doctor. The court added that in the instant case even in the absence of her dying declaration recorded by the judicial magistrate there is overwhelming evidence to show that the deceased had previously told everybody concerned that she was set fire to by the appellant. The value of the dying declaration made to the Judicial Magistrate can be estimated from preceding utterances of the deceased. No body, the court observed, can possibly contend that the Judicial Magistrate had concocted a dying declaration and falsely ascribed it to the deceased. In fact when the Judicial Magistrate was examined in the court he said in clear terms that he had satisfied himself that the deceased was in a fit condition to make the statement and not even one answer would show that her cognitive faculties were then impaired. The court held that the trial court committed serious error in rejecting the sturdy dying declaration given by the deceased to the Judicial Magistrate. The court upheld the judgment of the High Court setting the error of the trial court right thereby preventing miscarriage of justice.

Vajrala Paripurnachry v. *State of Andhra Pradesh*, AIR 1998 SC 2680.

Section 32—Dying declaration need not be in question-answer form.

The Supreme Court observed that the dying declaration need not be in question-answer form to be accepted. Having regard to the

sanctity attached to a dying declaration as it comes from the mouth of a dying person though unlike the principle of English law he need not be under apprehension of death, it should be in the actual words, of the maker of the declaration. If a dying declaration is not elaborate but consists of only few sentences and in the actual words of the maker, the mere fact that it is not in the 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 medically trained person is insisted upon. In the absence of a doctor to certify the above-mentioned factors if there is other evidence to show that the recorder of the statement has satisfied himself about these 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*, (1998) 4 SCC 517 : AIR 1998 SC 1850.

Section 32—Creditability of dying declaration.

The Supreme Court observed that it had examined the testimony of the these witnesses and there are serious discrepancies in their testimony with reference to the dying declaration, apart from the fact that they are closely related to the deceased being father grand mother and uncle. They made different statements with respect to the same declaration made by her to them. The trial court has in detail rightly recorded such discrepancies and did not believe the story of this oral dying declaration. The Court added that it is incredible to note that according to the complaint she regained consciousness on 6th November, 1976 and when she gave the first oral dying declaration she named accused therein. But in the second dying declaration dated 11th November, 1976 made before a Magistrate she did not name any of the accused even on specific question being asked by the Magistrate.

The two dying declarations gave two conflicting versions and there is *inter se* discrepancies in the deposition of the witnesses. In the dying declaration before a Magistrate on which possibly more reliance can be put she did not name any of the accused. The Supreme Court held that these two dying declarations do not bring home the guilt of the appellant and the High Court erred in placing reliance on it by erroneously evaluating them.

The Supreme Court observed that under the English law the admissibility of a dying declaration 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, when every motive for falsehood is silenced and the mind is induced by the most powerful consideration 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 creditability of such dying declaration weightage can be given depending on other relevant facts and circumstances of the case.

The Supreme Court held that the High Court has committed an error by setting aside acquittal of appellant and convicting him under Section 302 of Indian Penal Code. The finding recorded by the trial court were based on proper evaluation and proper appreciation of evidence on record.

Kishan Lal v *State of Rajasthan*, AIR 1999 SC 3062 : (2000) 1 SCC 310 : 1999 Cri LJ 4070.

Section 32—Genuineness of dying declaration.

The Supreme Court observed that the agitation by the relatives for recording statement cannot lead to an inference that the Sub-Divisional Magistrate who was an I.A.S. Officer had recorded the statement under pressure and as desired by the relatives of the deceased. There was no reason for him to do so. As regards the condition of the deceased, the witness has stated that he had first ascertained from the doctor whether the deceased was in a fit condition to make a statement and obtained an endorsement to that effect. Merely because the endorsement was not made on the dying declaration itself but on an application that would not render the dying declaration suspicious in any manner. The said endorsement made by the doctor was produced by him and it has become evidence in the case. The Court also observed that the two thumbs of the deceased were alleged to be burnt and whatever impressions could be taken was taken by the Sub-Divisional Magistrate. The medical evidence also stated that the deceased could not have put her thumb marks on dying declaration. The Court held that the alleged circumstances cannot create any doubt regarding the evidence of the Sub-Divisional Magistrate or the genuineness of the dying declaration.

The Supreme Court also observed that the reasons given by the trial Court and the High Court for not considering the first dying declaration as voluntary and true are quite convincing. The second dying declaration cannot be regarded as untrue merely because it is contrary to her statement made earlier. What she has stated in the second declaration appears to be more probable and natural.

Harjit Kaur v. *State of Punjab*, AIR 1999 SC 2571 : (1999) 6 SCC 545 : 1999 SCC (Cri) 1130.

Section 32—Re-appreciation of evidence.

In a case the High Court on re-appreciation of evidence came to the conclusion that the statement of deceased was not at all reliable. The High Court taking into consideration all factors concluded that the deceased had not given the statement as deposed by the Investigating Officer. The Supreme Court observed that there was no other evidence led by the prosecution against the respondents and held that the High Court was right in acquitting the respondents.

State of Karnataka v. *Narayan Babu Sanadi,* AIR 1999 SC 848.

Section 32—Oral dying declaration and medical evidence.

The Supreme Court observed that the evidence of the prosecution witnesses clearly establish beyond reasonable doubt that the deceased was conscious and in a fit state to make statements on the date of the incident. He expired only after more than 24 hours. No justifiable reason is pointed out to disbelieve the evidence of a number of witnesses as their evidence does not suffer from any infirmity which would render the dying declaration as doubtful or unworthy of the evidence (credence). The lapse on the part of the investigating officer should not be taken in favour of the accused may be such lapse is committed designedly or because of negligence. The Supreme Court added that the prosecution evidence is required to be examined *de hors* such omission to find out whether the said evidence is reliable or not. The Supreme Court held that, there is no reason to disbelieve the oral dying declaration as deposed by a number of witnesses and as recorded in the *fard-beyan* of the deceased. The *fard-beyan* was recorded by the Police Sub-Inspector on the scene of occurrence of the incident. The medical evidence of witnesses also corroborates the prosecution version. The Courts below have rightly convicted the accused for offence for murder.

Paras Yadav v. *State of Bihar,* AIR 1999 SC 644 : (1999) 2 SCC 126 : 1999 Cri LJ 1122.

Section 32—Dying declaration of a brain injured person.

The Supreme Court observed that even if the injured was able to matter something or even speak out something after sustaining severe and serious brain injuries, it is extremely unsafe to place any credence on such statements as the brain function of the injured would have impaired due to brain injury and, therefore, the dying declaration made by him cannot be relied upon.

State of Rajasthan v. *Teja Ram,* AIR 1999 SC 1776 : (1999) 3 SCC 507 : 1999 SCC (Cri) 436.

Section 32—Dying declaration and corroboration.

The Supreme Court observed that Section 32 of the Evidence Act, 1872 is an exception to the general rule of exclusion of hearsay

evidence. To attract the provisions of Section 32 the prosecution is required to prove that the statements was made by a person who is dead or who cannot be found or whose attendance cannot be procured without any amount of delay or expense or he is incapable of giving evidence and that such statement has been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Evidence Act. The submission that as the statement was recorded by the investigating officer which was treated as F.I.R. the same could not be treated as dying declaration and was inadmissible in evidence has no substance because at the time of recording the statement the Assistant Sub-Inspector did not possess the capacity of an investigating officer as the investigation had not commenced by then. Such a statement, the Supreme Court added, can be treated as dying declaration which is admissible in evidence under Section 32 (1) of the Evidence Act. The statement was voluntarily made by the deceased which was reduced to writing and has rightly been treated as a dying declaration after the death of the maker.

There is no rule of law or rule of prudence that a dying declaration cannot be accepted unless it is corroborated. In the present case upon a close scrutiny it must be held that the dying declaration is the truthful version of the occurrence which narrates the circumstances leading to the death of its maker. The said statement was made immediately after the occurrence and there is no reason to doubt about its veracity and correctness. The circumstances surrounding the dying declaration are clear and convincing which have been corroborated in material particulars. The Supreme Court held that the prosecution has proved its case beyond all reasonable doubt.

Gulam Hussain v. *State of Delhi,* (2000) 7 SCC 254, AIR 2000 SC 2480 : 2000 Cri LJ 3949.

Section 32—Bride burning and dying declaration.

In a case of bride burning the deceased stated before the doctor that her husband had poured kerosene on her clothes and set her ablaze and the doctor made a note of it in the case papers. The Special Executive Magistrate after ascertaining deceased's fitness recorded her dying declaration to the same effect. The Supreme Court observed that the evidence of the doctor received support from contemporaneous documents. The doctor had no reason to falsely depose against the accused or to prepare false papers.

The Magistrate in his cross-examination admitted that the dying declaration was written by a constable as he could not write it himself because his hands were trembling. The Supreme Court held that merely because this fact was not mentioned in the dying declaration it cannot be regarded as suspicious. Similarly non-mention of time in the dying declaration cannot affect its genuineness when there was nothing to show that the Magistrate was not telling the truth.

Shripataro v. *State of Maharashtra,* (2000) 10 SCC 320.

Section 32—Handwriting proved.

The Supreme Court did not accept the defence plea that the letter by the deceased was not written on 13.3.1977, but on an earlier date. Even if it was written on an earlier date, it will not make any difference as it was proved to have been written by the deceased before her death. Her handwriting had been proved. The Court added that on 13.3.1977 the deceased is proved to have written to her father stating that she should be immediately taken back from the house of her in-laws otherwise she would be killed. The alleged discrepancy or overwriting on the top of the letter regarding its date in no way helps the accused persons.

State of U.P. v. *Hari Mohan,* (2000) 8 SCC 598.

Section 32 (1)—Death—includes suicide besides homicidal death.

The Supreme Court observed that Section 32 of the Evidence Act is an exception to the general rule of the exclusion of hearsay evidence. To attract the provisions of Section 32 for the purpose of admissibility of the statement of a deceased who is dead or who cannot be found or whose attendance cannot be procured without any amount of delay or expense or he is incapable of giving evidence and that such statement has been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32. Section 32 does not require that the statement ought to be admitted in evidence should have been made in imminent expectation of death. The words "as to any of the circumstances of the transaction which resulted in his death" in Section 32 must have some proximate relations to the actual occurrence. To make such statement as substantive evidence the person or the agency relying upon it is under legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the court and if it is verbal it would be proved by examining the person who heard the deceased making the statement.

The Supreme Court added that the death referred to in Section 32 (1) of the Evidence Act includes suicide besides homicidal death [*Sharad Birdhichand Sarda* v. *State of Maharashtra,* (1984) 4 SCC 116; *Hanumant Govind Nargundkar* v. *State of M.P.,* AIR 1952 SC 343; *Dharambin Singh* v. *State of Punjab,* Cri A. No. 98 of 1958 decided on 4.11.1958; *Rattan Gond* v. *State of Bihar,* AIR 1959 SC 18; *Manohar Lal* v. *State of Punjab,* 1981 Cri LJ 1373 (P & H)].

Kans Raj v. *State of Punjab,* (2000) 5 SCC 207, AIR 2000 SC 2324 : 2000 Cri LJ 2993.

Sections 32 and 35—Burden of proof.

The Rajasthan High Court observed that where the lower court, in an election petition, wrongly placed burden of proof as to her being of prescribed age on the date of the election and placed reliance on

school record for determining her age but it was not shown that the headmaster making entries had personal knowledge as to age of candidate or had special means of knowledge as to that, the court committed apparent errors on the face of record in placing burden of proof and in placing reliance on school record and High Court would interfere with finding as to age reached by lower court though interfere with finding as to age reached by lower court though school record was admissible under Section 35 of the Evidence Act, it was not entitled to be called direct-evidence.

Tara Devi v. *Sudesh Chaudhary*, AIR 1998 Raj 59.

Section 32 (1)—Dying declaration—circumstances of death.

The Supreme Court observed that Section 32 of the Evidence Act, 1872 is an exception to the general rule of exclusion of hearsay evidence. Sub-section (1) of Section 32 provides that when a statement (commonly known as dying declarations) is made by a person as to the cause of his death or as to any circumstances of the transaction which resulted in his death, being relevant is admissible in evidence. It has, however, to be proved that the statement sought to be admitted was made by a person who is dead or who cannot be found or whose attendance cannot be procured without an amount of delay and expense or is incapable of giving evidence and such statement should have been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Evidence Act. The Supreme Court added that due weight is required to be given to a dying declaration keeping in view the legal maxim *nemo moriturus praesumuntur mentiri, i.e.* a man will not meet his maker with a lie in his month. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of a statement as a fact.

The Supreme Court held that in the present case the statement of the prosecutrix does not directly state any fact regarding the cause of her death and at the most it could be stretched to say referring to the circumstances of the transaction resulting in her death.

Sudhakar v. *State of Maharashtra*, (2000) 6 SCC 671; AIR 2000 SCC 2602 : 2000 Cri LJ 3490.

Section 32—Delayed dying declaration.

The Supreme Court observed that in the present case the dying declaration was after two months of the alleged incident. It was not at the time when the deceased was expecting imminent death. There is a conflict between two dying declarations, in one of them is *inter se* inconsistency as revealed in the depositions of the witnesses in the other no naming of any accused, when made before a Magistrate. On such an evidence the trial court rightly declined to base a conviction. The Supreme Court held that the High Court committed a manifest

error in placing reliance on it.

Kishan Lal v. *State of Rajasthan,* (2000) 1 SCC 310 : AIR 1999 SC 3062 : 1999 Cri LJ 4070.

Section 34—Relevancy of the entry as evidence.

The Supreme Court observed that it is manifest from Section 34 of the Evidence Act that while its first part speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. To make an entry relevant thereunder it must be shown that it has been made in a book, that the book is a book of account and that the book of account has been regularly kept in the course of business. Even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. Keeping in view the purpose for which the Act was brought into the statute-book and its sweep, the words appearing in Section 34 have got to be given their ordinary, natural and grammatical meaning, more so, when neither the context nor any principle of construction requires their restrictive meaning. The court added that it is not enough merely to prove that the books have been regularly kept in the course of business and that the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts. Such entries though relevant were only corroborative evidence and it is to be shown further by some independent evidence that the entries represented honest and real transactions and that monies were paid in accordance with those entries. Even correct and authentic entries in books of account cannot without independent evidence of their trust-worthiness fix a liability upon a person. The court held that the statements of those persons who have admitted receipts of the payment as shown against them can at best be proof of reliability of entries so far as they are concerned and not others and in the instant case the statements of the witnesses cannot be regarded as independent evidence under Section 34 of the Act.

Central Bureau of Investigation v. *V.C. Shukla,* (1998) 3 SCC 410 : AIR 1998 SC 1406; *Hiralal Mahabir Pershad* v. *Mutsaddilal Jugal Kishore,* ILR (1967) 1 P&H 435; *Chandradhar Goswami* v. *Gauhati Bank Ltd.,* AIR 1967 SC 1058 : (1967) 1 SCR 898 : 37 Comp Cas 108; *M.S. Yesuvadiyan* v. *P.S.A. Subba Naicker,* AIR 1919 Mad 132 : 52 IC 704; *Beni* v. *Bisan Dayal* AIR 1925 Nag 445 : 89 IC 371; *Hira Lal* v. *Ram Rakha,* AIR 1953 Pepsu 113 approved.

Sections 32 and 157—Statement made before a police officer.

The Supreme Court observed that at the time when P.W.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 of

Evidence Act, 1872. As long as the maker of the statement is alive it would remain only in the realm of a statement recorded during investigation. It was held that if a person making a dying declaration survives his statement cannot be used as evidence under Section 32 of the Act.

The Supreme Court also observed that Section 157 of the Evidence Act permits proof of any former statement made by a witness relating to the same facts before 'any authority legally competent to investigate the fact' but its use is limited to corroboration of the testimony of such witness. A statement made before a police officer during investigation cannot be used to corroborate the testimony of the witness because of the clear interdict contained in Section 162 of the Criminal Procedure Code. However, a statement made to a Magistrate is not affected by the prohibition contained in that Section. A Magistrate can record a statement in terms of the provisions of Section 164 of the Code and such statement will either be elevated to the status of Section 32 of the Evidence Act if the maker of the statement subsequently dies or it would remain with 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 contradict him in terms of Section 155 of the Act.

Ram Prasad v. *State of Maharashtra,* AIR 1999 SC 1969.

Sections 32 and 33—Code of Criminal Procedure, 1973, Section 161—Admissibility of F.I.R. as dying declaration.

The Supreme Court observed that on appeal the High Court came to the conclusion that the F.I.R. as well as the statement given by the injured to the Investigating Officer is not admissible as dying declaration under Section 32 of the Evidence Act. The Supreme Court held the conclusion to be unassailable. The High Court further came to the conclusion that the statement of the injured under Section 161 of the Code of Criminal Procedure could not be held admissible in evidence under Section 33 of the Evidence Act and there is no infirmity in the said conclusion.

Sukhar v. *State of Uttar Pradesh,* AIR 1999 SC 3883.

Section 33—Code of Criminal Procedure, 1973, Section 299.

The Supreme Court observed that the procedure contemplated under Section 299, Criminal Procedure Code is an exception to the principle embodied in Section 33 of the Evidence Act inasmuch as under Section 33 the evidence of a witness which a party has no right or opportunity to cross-examine is not legally admissible. Being an exception it is necessary therefore, that all conditions prescribed must be strictly complied with. Before recording the statement of the witness produced by the prosecution the court must be satisfied that

the accused has absconded or that there is no immediate prospect of arresting him as provided under the first part of Section 299 (1) when the accused is arrested and put up for trial, if any such disposition of any witness is intended to be used as evidence against the accused in any trial, then the court must be satisfied that either the deponent is dead or incapable of giving evidence or cannot be procured without an amount of delay expense or inconvenience, which would be unreasonable.

The Court added that in the case in hand there is no grievance about non-compliance with any of the requirements of the first part of sub-section (1) of Section 299, Criminal Procedure Code. The High Court did record a conclusion on examining of the records of the proceedings that the witnesses were dead and, therefore their former statements under Section 299 could be treated as evidence. The Supreme Court observed that there is no infirmity with the said conclusion of the High Court and, therefore, the pre-conditions of Section 299 (1) have been complied with. Once the statement of those witnesses are considered and the Session Judge as well as the High Court have relied upon the same and based the conviction there is no infirmity requiring Supreme Courts intervention with the conviction and sentence recorded by the High Court. The Supreme Court held that the prosecution case has been proved beyond reasonable doubt.

Nirmal Singh v. *State of Haryana*, (2000) 4 SCC 41 : AIR 2000 SC 1416 : 2000 Cri LJ 1803.

Section 34—Banker's Book Evidence Act, 1891.

The Supreme Court observed that if the original books have not been produced it is not possible to know whether the entries relating to payment to rent are entries made in the regular course of business. It is only in the case of Banker's Book Evidence Act, 1891 that certified copies are allowed or the case may come under Section 65 (f) or (g) of the Evidence Act. Private extracts of the accounts in other cases can only be secondary evidence and unless a proper foundation is laid for adducing such secondary evidence under Section 65 or other provisions of the Evidence Act, the privately hand written copies of alleged accounts books cannot by themselves be treated as secondary evidence.

Ishwar Dass v. *Sohan Lal*, AIR 2000 SC 426 : 2000 (1) SCC 434.

Sections 34 and 114—Hotel register—not "Books of accounts".

The Supreme Court observed that the Sessions Court and the High Court have concurrently held that those circumstances were well established with reliable evidence. The first was proved by a register of Hotel Sanjay in which there is an entry made on 24.2.1994 that a person who styled himself as "Ramesh Chander Sharma" had

stayed in the hotel and the testimony of the hand-writing expert stating that the hand which wrote the said entry was that of Manish Dixit. Section 34 of the Evidence Act contains a rider that "such statements shall not alone be sufficient to charge any person with liability. The rider primarily pertains to pecuniary transactions. A register kept at the counter of a hotel is not covered by the expression "books of accounts". The other circumstance is that even it is presumed that a register kept in a hotel can be treated as a book of accounts, the entry therein cannot become the sole premise to charge a person with liability, Why did A-2 write a name in the register on a date which was the date immediately following the date of murder of Gulshan Makhija. He only knows why he did so. In the absence of any explanation from him it is open to the court to draw an inference that A-2 had some reasons to conceal his identity from the hotel people and hence he wrote a pseudonymous name in the register.

Manish Dixit v. *State of Rajasthan,* (2001) 1 SCC 596 : AIR 2001 SC 93 : 2001 Cri LJ 133 : 2001 SCC (Cri) 235.

Section 35—Admission registers are admissible.

The Kerala High Court observed that after the decision of the Supreme Court in *Umesh Chandra* v. *State of Rajasthan,* AIR 1982 SC 1057, there cannot be any doubt that the admission registers are admissible in evidence. The court below was right in accepting the case of the plaintiff and a defendant as regards their respective dates of birth. The court overruled the contention of appellants that it has not been shown that at the relevant time the plaintiffs and one defendant were minors.

Maniyamkandi Kunriraman v. *Machil Paramboth Vanaja,* AIR 1998 Kerala 24.

Sections 35, 38 and 81—Official Gazette and subordinate legislation.

The Supreme Court observed that it is an established practice that the publication in the Official Gazette, that is the Gazette of India is an ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned. The Gazette is admissible being the official record evidencing public affairs and the Court is required to presume its contents as genuine under Section 35 and 38 read with Section 81 of the Evidence Act, unless the contrary is proved. The Supreme Court held that there is no substance in the contention that the notification dated 4.2.1987 was not published in the Gazette on the same day. The said notification did come into force on the same day.

Union of India v. *Ganesh Das Bhojraj,* (2000) 9 SCC 461 : AIR 2000 SC 1102.

Section 35—Juvenile Justice Act, 1986, Section 8 (1)—Register of Births and Deaths.

The Supreme Court observed that the High Court fell in error in not holding the appellant to be below 16 years of age on the date of the commission of the offence. It is nobody's case that the entry in the Register of Births and Deaths is not a genuine entry even though it was recorded some time between 14.8.1978 and 8.11.1978 pertaining to the date of birth of 19.11.1972. Once that entry was recorded by an official in performance of his duties it cannot be doubted on the mere argument that it was not contemporaneous with the date of the suggested date of birth of the appellant. The entry is not alone but added thereto is a life insurance policy and the matriculation certificate likewise mentioning the date of birth of the appellant being 19.11.1972. The application filed by appellants father suggesting the date of birth as 19.11.1971 is false in view of overwhelming evidence to the contrary. The Supreme Court upset the impugned order of the High Court declaring the appellant to be a juvenile within the meaning of the Juvenile Justice Act, 1986. The Supreme Court allowed the appeal directing that the trial be regulated accordingly.

Santenu Mitra v. *State of West Bengal,* AIR 1999 SC 1587.

Sections 35 and 114 (iii)—Annual village papers—Wrong entries can be corrected..

The Supreme Court observed that the entries in the annual village papers create a presumption albeit rebuttable in favour of a person whose name is recorded. The Supreme Court added that it is clear that in the event of wrong entries in the annual village papers the same is liable to be corrected under Section 50 of the Madhya Bharat Land Revenue and Tenancy Act, 1950 and unless they are so corrected the presumption under Section 52 of the Act will govern the position.

Kasturchand v. *Harbilash,* (2000) 7 SCC 611.

Evidence Act and Admiralty Suit.

In a case an admiralty suit was referred to arbitration under Section 8 of Arbitration and Conciliation Act 1996. The order in the suit emphatically stated that all authorities concerned shall be bound by the order. The Supreme Court observed that the proceedings in the admiralty suit are proceedings *in rem* and any findings given therein will be conclusive upon the World.

Osprey Underwriting Agencies Ltd. v. *Oil and Natural Gas Corporation Ltd.*, AIR 1999 Bombay 173.

Section 44—Civil Procedure Code, 1908, Section 11—Judgment obtained by collusion.

The Supreme Court observed that to contend in a latter suit or proceeding that an earlier judgment was obtained by collusion it is

not necessary to file an independent suit for a declaration as to collusive nature or for setting it aside as a condition precedent. A contrary view would be against the provisions of Section 44 of the Evidence Act wherein it is provided that any party to a suit or proceeding may show that any judgment, order or decree which is relevant under Section 40, 41, and 42 and which has been delivered by a court not competent to declare it or was obtained by fraud or collusion. The Supreme Court observed that in the present case it cannot be said that it was not open to the statutory authorities under the Punjab Act to go into the collusive nature of earlier suit in the proceedings under Section 7 of the Punjab Village Common Land (Regulations) Act, 1961. The earlier suit was against the *panchayat* and was only a suit for injunction and not one on title and no question of title was gone into, nor decided the decision cannot be binding on the question of title. In terms of Section 11 of the Civil Procedure Code even if in an earlier suit for injunction there is an incidental finding on title, the same will not be binding in a latter suit or proceeding where title is directly in question unless it is established that it was necessary in the earlier suit to decide the question of title for granting or refusal of injunction.

Gram Panchayat, Naulakha v. *Ujjagar Singh,* AIR 2000 SC 3272; (2000) 7 SCC 543.

Section 45—Permission to lead secondary evidence.

The trial court, in a case, rejected the application filed under Section 65 of the Evidence Act seeking permission to lead secondary evidence as the application was not supported by any affidavit and also because the averments contained in the application were vague. The High Court did not interfere with the order of the trial court. The Supreme Court observed that though no fault can be found with the orders of the trial court and the High Court it appears appropriate to permit the appellant to file a fresh application in the trial court for seeking permission under Section 65 to lead secondary evidence supported by a proper affidavit giving full and necessary details, in the interest of justice.

State of Rajasthan v. *Khemraj,* AIR 2000 SC 1759 : (2000) 9 SCC 241.

Section 45—Circumstantial evidence.

The Supreme Court observed that, as a general proposition it may be true that when the doctor has expressed two views, one that is favourable to the accused must be taken into account. But medical evidence cannot be considered in isolation. After all medical opinion is based on inferences drawn from various facts present. Hence their evidence must be taken in conjunction with all circumstantial evidence on record. In the instant case the entire circumstantial

evidence points to homicide only and the medical evidence is not to the contrary.

State of T.N. v. *P. Muniappan,* (1998) I SCC 515.

Section 45—Reliability of expert's evidence.

Discussing the reliability of expert's evidence the Calcutta High Court observed that both the parties have agreed that the suit should be decided under the powers of the court in term of Order 42, Rule 1, read with Order 41, Rule 24 of the Code of Civil Procedure. The reason for exercising the courts power is that both the courts below have relied on the evidence of the finger-print expert and nothing else though the other evidence materials were available. The settled principle of law reported in AIR 1962 Orissa 7 and AIR 1981 NOC 93, is that the evidence of the expert cannot outweigh the direct evidence. Moreover the evidential value of the hand-writing expert opinion is not a substantive one but a corroborative one. In the instant case there is no clear direct evidence adduced by either party nor there is any circumstantial evidence which can take the help of the corroborative evidence of the finger-print expert. The court below did not touch nor even considered the direct oral evidence. The courts below did not discard the evidence adduced by the defendants of the attestation and the execution and on one of these grounds alone the judgments of both the courts below are liable to be set aside.

Dulal Chandra Adak v. *Gunadhar Patra,* AIR 1998 Calcutta 150.

Section 45—Age of the victim.

In a case a doctor fixed up the age of a girl at 10 years on the date of her examination. This was testified to by the doctor on the strength of clinical examination conducted by him. But the doctor did not conduct other ossification test or any other pathological tests to reach at least the approximate age of the victim. The Supreme Court held that the doctors assessment regarding age is based on fragile premises.

Kamal Kishore v. *State of Himachal Pradesh,* AIR 2000 SC 1920 : (2000) 4 SCC 502 : 2000 Cri LJ 2292.

Section 45—Identity of the *corpus delicti.*

The Supreme Court observed that there was overwhelming evidence to show that the dead body on which autopsy was conducted was that of the victim. The sister of the victim who saw the dead body before it was cremated did not have any doubt that it was her brother. The nephew of the victim identified it as being of his uncle in the hospital. The specialist in Forensic Medicine who conducted the post-mortem examination did not find any evidence of circumcision on the dead body. Another doctor only a stripling in the profession who had just completed his internship deposed that the foreskin of gland penis

was rolled back. The Supreme Court observed that it did not think that such a slipshod observation regarding such a vitally important identification mark can be taken as a seriously observed feature particularly when the senior doctor did not observe any such thing. Similarly the age estimated by this novice medical practitioner without conducting any medical tests in that regard is hardly sufficient to conclude that the dead body was that of a person aged 40. Even otherwise the approximation of age made by looking at the dead body is not enough to offset the age spoken by the kith and kin of the deceased. The Supreme Court held that plea that the identity of the *corpus delicti* was not established cannot be allowed.

State of West Bengal v. *Mir Mohammad Omar,* AIR 2000 SC 2988 : (2000) 8 SCC 382 : 2000 SCC (Cri) 1516.

Section 45—Determination of time of death.

The evidence of two doctors indicated that the occurrence took place at night and not in the morning between 6 to 7 a.m. P.W. 2 who conducted the autopsy on the dead body in examination chief deposed that the death was possible on 6.9.1977 at 7 and 7½ a.m. But in his cross-examination he deposed that it may be possible that death occurred in the mid night of 5/6-7. 1977. Similarly P.W. 4 another doctor deposed in examina-tion chief that the injuries could be caused on 6.9.1977 between 6-7 a.m. but in cross-examination deposed that injuries could have been caused at any time after 10 a.m. The Supreme Court observed that by no stress of imagination it can be held that the occurrence did not take place between 6-7 a.m. on 6.7.1977. The Supreme Court agreed with the High Court that it is well known that doctor can never be absolutely certain on the point of time so far as duration of injuries are concerned.

Ram Swaroop v. *State of U.P.,* AIR 2000 SC 715 : 2000 Cri LJ 808 : 2000 All LJ 391 : (2000) 2 SCC 461.

Section 45—Opinion of the handwriting expert.

The Supreme Court observed that it is important to note that when the Investigating Officer made a search in the house of 4-A he found a slip of paper containing a few names of herbal articles. The slip was forwarded to the handwriting expert along with specimen handwritings collected from A-3 for comparison. The handwriting expert gave an opinion holding that the scribe who wrote the slip and the specimen manuscripts was the same. The Supreme Court added that from that description alone it cannot be gathered whether the office of the Assistant State Examiner of Documents would fall within the purview of Section 293 of the Criminal Procedure Code. The Supreme Court held that without examining the expert as a witness no reliance can be placed on his opinion.

State of Maharashtra v. *Damu,* AIR 2000 SC 1691 : (2000) 6 SCC 269 : 2000 Cri LJ 2301 : 2000 SCC (Cri) 1088.

Section 45—Typewriting identification.

The opinion of the typewriter expert is admissible under Section 45 of the Act and the contrary view taken by the trial court and the High Court in the present case is erroneous.

State (through C.B.I., New Delhi) v. *S.J. Chaudhery,* (1996) 2 SCC 428 : AIR 1996 SC 1491 : 1996 Cri LJ 1713.

Section 45—Finger prints.

The trial court disbelieved important evidence about finger prints on the ground that the earlier photographs of these finger prints were not clear enough to enable the expert to come to any definite conclusion and, therefore, it was doubtful whether the subsequent photographs were of the original finger prints. The Supreme Court observed that the High Court was right in severely criticising the trial court for their view. It was not even suggested by the defence that the co-accused finger prints were again taken by the Investigation Officer on those glasses. The finding of the trial court was speculative in nature. In the absence of any effective cross examination of the photographer his evidence that he was able to take better photographs on the second occasion could not have been disbelieved by the trial court.

Ammini v. *State of Kerala,* (1998) 2 SCC 301.

Section 45—Opinion of the post-mortem examiner.

The Supreme Court observed that all the circumstances have been considered in detail by both the courts and it has been found, that there is no substance in the contentions put forward by the defence. The opinion of the post-mortem examiner that the death was homicidal and not suicidal has been accepted by both the courts. The court did not find any justification to take a different view.

Najjam Faraqhi alias *Nijjam Faruqui* v. *State of West Bengal,* (1998) 2 SCC 45 : AIR 1998 SC 682.

Section 45—Ocular evidence and medical evidence.

Discussing the conflict between the ocular evidence and medical evidence the Supreme Court observed that the eye-witness had stated that the deceased sustained gunshot injury in the back whereas the medical evidence showed injuries in the chest. The witness and the deceased were travelling in the same rickshaw. The High Court has rightly pointed out that the witness having seen the exit wound on the back of the deceased bleeding thought that he had been hit in the back. The court rejected the contention about conflict in evidence on this score.

Surendra Narain alias *Munna Pandey* v. *State of U.P.,* (1998) 1 SCC 76.

Section 45—Opinion of the expert.

The Madras High Court observed that even though there is no bar for the court to compare the admitted signatures with the disputed signatures to come to its conclusion it would be prudent to require assistance of the expert witness. In fact all the judgments cited by both the parties related to signatures and not thumb impressions. It cannot be disputed that thumb impressions would stand on a different footing, when compared to signatures and the variations, in thumb impression cannot be easily judged by naked eyes. The court remanded the appeal back to the lower court for sending the documents for the opinion of the expert and thereupon take evidence if necessary only in the context of the opinion of the expert and record his findings thereon.

Bomma Naicken v. *Chinna Gounder,* AIR 1998 Madras 375.

Sections 45, 47 and 67—Identification of handwriting.

The Supreme Court formulated the legal position in regard to identification of handwriting and modes of proof therefor by observing that the modes of proof envisaged in Sections 45 and 47 of the Evidence Act are not exhaustive for proving the genuineness of authorship of a document. The court observed that it must be remembered that expert evidence regarding hand writing is not the only mode by which genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the hand writing must be proved to be that of the person concerned. In order to prove the identity of the hand writing any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and 47 of the Evidence Act. The former permits expert opinion of any person acquainted with such handwriting to be regarded as relevant evidence. Those and other provisions are subsumed under the title "opinion of third person when relevant". Opinion of third persons other than those enumerated in the fasciculus of provisions, would have been relevant. Among the permitted opinions those mentioned in Sections 45 and 47 are also included. So it cannot be said that identity of handwriting of a document can be established only by resorting to one of those two sections. These can be established. Citing an example, if a letter is seized from the possession of "A" and the letter contains the name of the sender and if such sendee happens to be "A" himself, those circumstances even without resorting to the mode indicated in Sections 45 and 47 of the Evidence Act, would be sufficient to draw an inference that author or even scribe of that letter is the sender "A" is the sendee of it.

Gulzar Ali v. *State of U.P.,* (1998) 2 SCC 192.

Section 45—Opinion of handwriting expert.

The Supreme Court observed that the opinion of the Assistant State Examiner of Documents in the present case that the scribe who

wrote the slip in question and specimen handwriting collected from the accused was the same. This the Supreme Court observed is only the opinion of the Assistant State Examiner of Documents and from that description alone it cannot be gathered whether his office would fall within the purview of Section 293 of the Criminal Procedure Code. The Supreme Court held that without examining the expert as a witness in the Court, no reliance can be placed on the slip alone.

State of Maharashtra v. *Damu,* (2000) 6 SCC 269 : AIR 2000 SC 1691.

Section 45—Scientific opinion evidence.

The Supreme Court observed that in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein, or in other words that he is skilled and has adequate knowledge of the subject. The experts evidence is not a evidence of facts but of an advisory nature by furnishing the judge with necessary scientific criteria for testing the accuracy of the conclusion so as to enable him to form his independent judgment by the application of that criteria to the facts proved by the evidence of the case. The scientific opinion evidence if intelligible, convincing and tested becomes a clear factor and often an important factor for consideration along with other evidence of the case. The Supreme Court held that the High Court was right in taking the view that the prosecution has failed to establish the charge against the accused person and rightly acquitted them of the same.

State of Himachal Pradesh v. *Jai Lal,* AIR 1999 SC 3318 : (1999) 7 SCC 280 : 1999 SCC (Cri) 1184.

Section 45—Advocates Act, 1961, Section 35.

In a case the Bar Council on consideration of the material came to the conclusion that the advocate has committed professional misconduct without calling for the opinion of the handwriting expert. The Supreme Court held that the established circumstantial evidence as well as the documentary evidence in the present case show that the allegation of the complainant were well substantiated and in such circumstances of the case, the Bar Council of India was justified in declining to summon the handwriting expert for finding the signatures of the advocate.

L.C. Goyal v. *Suresh Joshi,* AIR 1999 SC 2222 : (1999) 3 SCC 3767.

Sections 45 and 114 (iii) (e)—Official acts have been regularly performed.

The Supreme Court observed that no court could afford to ignore the report of the doctor who conducted autopsy with meticulous precision about all features noticed. The evidence of the doctor who

had conducted the autopsy was not even controverted by the defence as no question was put to him in the cross-examination by the defence. The Court has to proceed on the premises that whatever the doctor found on the dead body were the actual position noticed by him during autopsy. The Supreme Court held that the Session Judge has rightly accepted the evidence and no exception can be taken thereto.

The Supreme Court added that the official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused through cross-examination of witnesses or through any other materials to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case.

State Government of N.C.T. Delhi v. *Sunil*, (2000) 1 SCC 652.

Section 45—Evidence of an armourer.

The Supreme Court observed that the type of gun which was found from the appellant was 'Mujhal' or 'Toredar' gun. This type of a gun can be fired by first-filling it with gun powder and for such a weapon no further test firing was necessary in order to find out whether it was in a working condition or not. Once it was found by the police officer that the mechanism was in order it could be reasonably inferred that it was in working condition even in the absence of any evidence of an armourer or an expert of that type evidence of a police officer who is trained in handling guns can be accepted. The Supreme Court confirmed the conviction and order of sentence passed.

Jarnail Singh v. *State of Punjab*, AIR 1999 SC 321.

Section 45—Ballistic expert's opinion.

In a case the accused appellants caused the death of the deceased by firing on chest and leg of the deceased. Pistol of the accused was snatched by the eye witnesses but it was not sent for ballistic expert's opinion. The Supreme Court observed that it did not find anything brought out in the cross-examination of the witnesses to impeach their testimony in any manner so as to affect the substratum of the prosecution case. The Supreme Court held that the witnesses were wholly trustworthy and the courts below rightly relied upon their testimony to bring home the charge against the two accused appellants.

Ajay Singh v. *State of Bihar*, (2000) 9 SCC 730.

Section 45—Recovery—Commission of crime.

The Supreme Court observed that the blood-stained *chadar* was recovered about 5 days from the date of the arrest of the appellant,

which he concealed in a pitcher and kept in accused appellants house. But for the disclosure statement made by the appellant, the fact of the *chadar* belonging to him having blood stains could not have been discovered. The Supreme Court added that mere doubt sought to be created on the non mention of dimensions of bloodstains by itself is not sufficient as admittedly the accused is entitled to be benefit of only reasonable doubt. In the present case it must be held on facts that this circumstance is fully proved and does not create a doubt, much less a reasonable doubt so far as the commission of the crime by the accused is concerned.

Gura Singh v. *State of Rajasthan*, (2001) 2 SCC 205 : AIR 2001 SC 330 : 2001 SCC (Cri) 323.

Section 45—Post-mortem report.

A *'naiza'* is a spear or pike-like weapon causing incised wounds. In the present case the doctors did not say that the injuries could not be caused by *naizas*, what they said was that the incisions could be caused by sharp weapons, 'including a *gandasi* or a *'Kirpan'*. The word 'including' indicates that it could have been some other sharp weapon. In fact the narrowness and depth of the incised wounds as indicated in the post-mortem report supports the trial courts findings. The *naizas* recovered consequent on disclosure from places indicated were found by Forensic Science Laboratory to be covered with human blood. The Supreme Court held that the trial court was justified in taking that view and the High Court erred in observing that the doctor did not find any injury caused by the *naiza*. In the circumstances, participation of the two accused in murder of deceased is established.

Jaswant Singh v. *State of Haryana*, (2000) 4 SCC 484 : AIR 2000 SC 1833 : 2000 Cri LJ 2212.

Section 45—Chemical analysis of drugs.

In a case it was submitted that the seals on the packets produced before the court were very faint and could not be read properly. The Supreme Court observed that the report of the chemical analyser clearly establishes that the articles examined by him were the articles connected with this case. Neither was the report of the Chemical Analyser challenged nor was there any application given for examining him as a witness to establish that the seals on the samples were faint when received by him and it was not possible to say whose seals they were. The Supreme Court repelled the doubts raised by the accused as to whether the samples seized were the same as examined by the Chemical analyser.

Ashok Kumar v. *State of Haryana*, (2000) 2 SCC 592 : 2000 Cri LJ 3186.

Section 45—Evidence of chemical analyst.

The Supreme Court observed that the analyst who tested the contraband in the laboratory during cross examination said that he could not answer whether the contraband contained cow-dung also. In the certificate which he issued after analysis as well as in the examination-in-chief the witness has stated in definite terms that the contraband was *'charas'*. The Supreme Court held that the aforesaid isolated answer is hardly sufficient to destroy the probative value of the evidence of that witness.

Joseph Fernandez v. *State of Goa,* (2000) 1 SCC 707 : 2000 Cri LJ 3485.

Section 50—Specific Relief Act, 1863, Section 6—Suit for declaration of title and possession.

A suit for declaration of title and possession was based on compromise arrived at under Section 145, Criminal Procedure Code between two sets of dependents. The plaintiff claimed that in terms of the compromise the land was given to second set of defendants who are his predecessors in interest. It was alleged that the compromise was entered after order under Section 145, Criminal Procedure Code. The Supreme Court added if there was an order under Section 145 the effect would have been that possession of the disputed land would have been restored to the second set of defendants. The alleged compromise cannot be relied upon. The appellate court directed that the suit was liable to be set aside. In that event there would have been no occasion for the plaintiffs as successors-in-interest of the second set of defendants. The filing of the suit itself postulates that the possession of the land remained with the first set of defendants. The Supreme Court allowing the appeal set aside the judgment of the High Court and of the lower appellate court and restored the judgment of the trial court.

Jiria Devi v. *Chhatiya Devi,* AIR 2000 SC 3542.

Sections 50 and 60—Suit for partition.

In a suit for partition, plaintiff claimed to be daughter of one of the head members of genealogical branches of the parties. The Supreme Court observed that while taking of relationship the opinion of the witnesses is based upon either the relationship or knowledge as neighbour and accordingly the plaintiff is the daughter of Sanatan and that Brunda Bhanja had no daughter which rebutted the contention of one of the defendants and the defence evidence. The contradictions in the evidence are of trifle nature and does not shake the credibility of plaintiff's witnesses. The Supreme Court added that the appellate Court has rightly held that the evidence of prosecution witness 2 and 3 are the strongest piece of evidence under Section 50

of the Evidence Act to prove the *inter se* relationship inasmuch as the prosecution witnesses 2 and 3 claim the plaintiff as daughter of late Sanatan then their right over the property is proportionately minimised. The Supreme Court held that like the first appellate Court this Court concurs with the said finding and decision to hold that the plaintiff has proved her status as the daughter of late Sanatan.

Gourhari Das v. *Santilata Singh,* AIR 1999 Orissa 61.

Section 57—Judicial notice of fact.

Discussing the issue of determination of price of land to be acquired under the Land Acquisition Act the Himachal Pradesh High Court observed that the court cannot lose sight of the fact that so far as the prices of land are concerned, there has been an over all upward trend. Not only this but the court can reasonably assume that the price of land must have gone up between May, 1979 and date of notification under Section 4 of Land Acquisition Act (November, 1982). Judicial notice of this fact needs to taken by this court keeping in view the continuing inflation and rising land values.

Smt. Gulabi v. *State of H.P.,* AIR 1998 HP 9.

Section 58—Rebuttal statement.

The Supreme Court held that it is not necessary to adduce in respect of unrebutted statement in an amended plaint specifically when the amendment was not rebutted by the defendant.

Ragvendra Kumar v. *Firm Prem Machinery & Co.,* (2000) 1 SCC 679 : AIR 2000 SC 534.

Section 63—Civil Procedure Code, 1908, Order 18, Rule 4—Showing of document during cross-examination.

The Supreme Court observed that at this stage merely showing of the said document during cross-examination of a witness for the present petitioner could not be said to be improper or illegal. The revisional court was quite justified in permitting the respondent to show the document during cross-examination. Merely showing of the document during cross-examination would not amount to admission of the document in evidence. If the document is shown to the witness and if the witness admits the signature thereon, it would be open for the petitioner to raise an objection at that time before the court that the document in question being a copy the petitioner is objecting for exhibiting of the said document and the objection raised by the petitioner should be considered and decided by the Labour Court at the time of final hearing.

Ahmedabad New Textile Mills v. *Rajubhai Dalchandbhai,* AIR 1999 Gujarat 148.

Section 63—Loss is not required to be proved.

The Supreme Court observed that it did not find any infirmity or illegality in the order passed by the trial court. *Prima facie* the existence of the document has been proved in view of the facts mentioned in the plaint and reply of the defendants. As regards the loss of the document, in the application itself the loss has been pleaded and the loss is not required to be proved in absolute terms at this stage. The allowing of the application of the plaintiff for leading secondary evidence by the trial court was held to be correct.

Shoba Rani v. *Ravi Kumar,* AIR 1999 P & H 21.

Section 63—Secondary evidence—Proving a Will.

In a case about proving a Will the scribe had been examined on Commission by the plaintiff and he had deposed that he been a petition-writer from 1926 to 1986 and Ajudhya Prasad got a Will written by him about 40-45 years back. It was signed by Ajudhya Prasad in Mudiya language and there were two witnesses and he signed as scribed. The court observed that there is evidence on record to show that the original Will had been eaten away by rats. Consequently the secondary evidence is admissible under the law. The documents before the Commissioner at the time of examination of this witness and the whole of the Will was read over by the Commissioner. The copy on records was also compared from the Register brought from the Registry Office and no objection was raised at the time of examination of witnesses regarding marking of the document as exhibit because the document on record as well as the document entered in the register maintained by the Registry Department were both copies of the original and they did not bear the signatures of the witness, hence it could not be exhibited.

Ku. Chandan v. *Longa Bai,* AIR 1998 Madhya Pradesh 1.

Section 64—Succession Act, 1925, Sections 63, 283—Non-production of draft of Will.

The Supreme Court observed that the non-production of the draft of the will, if any, by the propounders cannot be described as suspicious circumstance. The propounder has admitted in his deposition that the will was drafted by an advocate, who is since dead. Obviously, therefore, this witness cannot be accepted as to from whom the late advocate had got the draft of the will typed and as to what happened to that draft. The Supreme Court added that the deposition of the witness the propounder cannot be rejected on the ground that the particulars of the preparation of the draft or whatever happened prior to the final will being prepared were not forthcoming.

Janardan Badrinarayan Patel v. *Ambalal Himatlal,* AIR 1999 Gujarat 162.

Section 64—Orissa Estates Abolition Act.

In a suit for declaration of title the plaintiff in support of her contention that the suit land was settled in her favour under the Orissa Estates Abolition Act, produced a certified copy of the revenue record bearing an endorsement of settlement in her favour. The court held that such a document was not admissible in view of the settled position of law that if primary evidence is available it has to be produced in the court to establish the disputed fact. The court added that in the instant case the plaintiff was required to produce the copy of the order under Orissa Estates Abolition Act. While remanding the case to the trial court, the court observed that it is necessary for the trial court to consider as to whether the disputed property has been settled with the plaintiff under the provisions of Orissa Estates Abolition Act and if so, whether it has been done in accordance with proper procedure and the trial court is required to keep in mind the principles of law decided by this court in the decision reported in AIR 1980 Orissa 199 (FB), *Krupasindhu Misra* v. *Gobinda Chandra Misra.*

Batu Naik v. *Saraswati Devi,* AIR 1998 Orissa 119.

Sections 64 (a) and 65 (f)—"May be accepted as evidence".

The Supreme Court observed that the words "may be accepted as evidence" in Section 51-A of the Land Acquisition Act indicate that there is no compulsion on the court to accept such transaction as evidence but it is open to the court to treat them as evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence just like any other evidence and it is for the court to weigh all pros and cons to decide whether such transactions can be relied for understanding the real price of the land. The Supreme Court added that there are similar enabling provisions in other statues by which the courts are allowed to treat the facts stated in the documents as evidence. However what value is to be attached to such evidence must necessarily be for the court to consider and decide.

Land Acquisition Officer & Mandal Revenue Officer v. *V. Narasiah,* (2001) 3 SCC 530 : AIR 2001 SC 1117.

Section 64—Production of documents in Court.

The Supreme Court observed that all the records of the company were in the possession of government authorities and they should have produced the original records to substantiate the allegations that the resolution was anti-dated and in the absence of such records the High Court was not justified in confirming the findings of the first appellate court. The fact remains that the appellants themselves took no steps to summon the record from the custody of the authority concerned. The Court held that the opposite party cannot challenge or deny the allegation merely on the ground that the document was not

produced in court, unless it takes steps to summon the document from such authority.

Subhra Mukerjee v. *Bharat Coking Coal Ltd.*, (2000) 3 SCC 312 : AIR 2000 SC 1203.

Section 65—Secondary evidence—Production of photostat copy.

The Rajasthan High Court observed that to allow a party to lead secondary evidence under Section 65, Evidence Act, firstly the court is required to determine the entitlement of the party to lead such secondary evidence. Section 65, Evidence Act enumerates such cases and it clearly lays down that secondary evidence may be given of the existence, condition or contents of a document, when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved. In the instant case since the document in question must have been in possession of the witness, because it related to him and, therefore, the plaintiff was entitled to produce the secondary evidence. However, under Section 66 of the Evidence Act, it is obligatory that secondary evidence of the contents of the document referred to in Section 65, clause (a) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is such notice to produce it. The court held that the lower court has committed an illegality or material irregularity in exercise of its jurisdiction in according permission for production of photostat copy of assessment order of the year 1980-81.

Rajasthan Golden Transport Company v. *L.R's of Amritlal,* AIR 1998 Rajasthan 153.

Section 65—Production of secondary evidence.

Discussing the production of secondary evidence and its permissibility the Punjab and Haryana High Court observed that the parameters of Section 65 of the Evidence Act can come to the rescue of party who has served notice on the other side to produce the document, the original of which is in possession of parties to whom notice is served. Consequently the secondary evidence can be permitted to be led when the original is shown or appears to be in possession and power of the person against whom such a document is sought to be proved. The fact which emerged from the record is that such a document was executed by the respondent the original of which was in possession of the petitioners which either continues to be in her possession or/and they have refused to produce it or the document is in possession of the plaintiffs to lead evidence based on this document and prove the same in accordance with law cannot be taken away.

Gopal Krishan Jiwan Kumar v. *Puran Singh,* AIR 1998 P & H 144.

Section 65 (a)—Production of secondary evidence—Rent note.

The Supreme Court observed that the trial court was not justified in rejecting the prayer seeking leave of court for production of secondary evidence, on the ground that the copy of the rent note sought to be produced by the appellant was of doubtful veracity. The Court added that the trial court was not justified in forming that opinion without affording the appellant an opportunity of adducing secondary evidence. The appellant has alleged the original rent note to be in possession of the respondent and the case is covered by Clause (a) of Section 65 of the Indian Evidence Act, 1872.

Nawab Singh v. *Inderjit Kaur,* AIR 1999 SC 1668 : (1999) 4 SCC 413.

Section 65—Permission to lead secondary evidence.

The Supreme Court observed that the trial court observed that the application seeking permission to lead secondary evidence under Section 65, of the Evidence Act, was not supported by any affidavit and also that the averments contained in the application were vague. It was on account of these deficiencies that the High Court in revision did not interfere with the order of the trial court.

The Supreme Court added that although no fault can be found with the orders of the trial court or the High Court it appears appropriate in the interest of justice to permit the appellant to file fresh application within four weeks in the trial court for seeking permission under Section 65 of the Evidence Act to lead secondary evidence supported by proper affidavit and giving all necessary details necessary to attract the provisions of Section 65 of the Evidence Act.

State of Rajasthan v. *Khemraj,* (2000) 9 SCC 241 : AIR 2000 SC 1759.

Sections 65 and 34—Extracts of private account books.

The Supreme Court observed that private extracts of alleged account book are not admissible. The principle evidence relating to alleged payment of rent disappears and the foundation for the alternative plea of tenancy crumbles. This is one reason for vitiating the finding relating to money as it is based on inadmissible evidence. The Supreme Court added that in the present case no account books were produced by the defendant and only extracts were filed two years after filing of written statement and one and a half years after the settlement of issues. The non-production of original books for comparison was never explained nor was the person preparing the extracts examined. In terms of Section 34 of the Evidence Act sanctity is attached to books of accounts if they are original and show on their face that they were kept in the regular course of business and such

sanctity cannot be attached to private extracts of alleged account books. Loose sheets of paper or scraps of paper cannot be termed as books for they can be easily detached and replaced.

Ishwar Dass Jain v. *Sohan Lal,* (2000) 1 SCC 434 : AIR 2000 SC 426.

Section 65—Method or mode of proof.

The Supreme Court observed that the High Court took objection to the admissibility of a document on the ground that the application moved by the counsel for the State did not strictly conform to the requirement of Section 65, Evidence Act, 1872. Apart from the correctness or otherwise of this view of the High Court it should have remitted the matter to any one of the courts below for proper consideration of this aspect of the matter without completely foreclosing the rights of the State to properly prove the same, by giving an opportunity to do so. There was no challenge or dispute with reference to the admissibility of the said documents by the plaintiff at the appropriate stage before the trial court or the first appellate court. Even the grievance before the High Court seems to be not that the document is *per se* an inadmissible one but about the mode or method of proof only.

State of H.P. v. *Akshara Nand,* (2000) 3 SCC 661 : AIR 2000 SC 1828.

Section 65—Proving of agreement.

The Supreme Court observed that it appears that the High Court had ignored the finding to the effect that the defendant had failed to prove the so-called agreement to sell in his favour. He had not produced on record the said sale deed or a letter executed by the plaintiff in favour of the defendant or his brother. The defendant also did not lead evidence of the witness in whose presence the said document was executed. The Supreme Court held that there being no document on record the alleged contents of the deed could not have been considered by referring to oral say of the defendant.

Roop Singh v. *Ram Singh,* (2000) 3 SCC 708 : AIR 2000 SC 1485.

Section 65 (f), (c)—*Res judicata*—adverse possession.

In the present case there is an additional factor that the factum of there being such a judgment was not denied. The respondents did not say that the copy which has been produced was not the correct copy. All that the respondent has pleaded was that the earlier judgment was not binding on him. The Supreme Court observed that both the first Appellate Court and the second Appellate Court failed to appreciate that on the principle of *res judicata* respondents were precluded from denying appellants title to suit property. They were precluded from claiming that they had acquired title by adverse

possession. Both the appellate courts below fell in error in holding that the appellants had failed to prove title and the respondents had established title by adverse possession on the contrary the decree in the earlier suit established the title of the appellants and showed that the respondents were in possession merely as *pujaris*. In the absence of any proof as to the date, time and manner in which possession as a *pujari* got converted into open hostile and adverse the claim for adverse possession could not be upheld.

Marwari Kumhar v. *Bhagwanpuri Guru Ganeshpuri*, AIR 2000 SC 2629 : (2000) 6 SCC 753.

Sections 65 and 68—Reliance on inadmissible evidence.

In a case the proof of execution of a mortgage deed was not specifically denied by the defendant mortgagee and it was not necessary for the plaintiff to call the attestor into witness box. The defendant mortgagee refused to file the original deed. The plaintiff filed a certified copy of the deed as secondary evidence which was sufficient proof of the execution of deed.

The Supreme Court observed that situation in which interference with finding is permissible is where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted an opposite conclusion was possible. In *Sri Chand Gupta* v. *Gulzar Singh*, (1992 1 SCC 143) it was held that the High Court was right in interfering in Second Appeal where the lower appellate Court relied upon an admission of a third party treating it as binding on the defendant. The admission was inadmissible as against the defendant.

Ishwar Dass Jain v. *Sohan Lal*, AIR 2000 SC 426 : (2000) 1 SCC 434.

Section 67—Obstructionists proceedings.

The Supreme Court observed that the Appellate Bench as well as the trial Court has held that none of the executants of the rent receipts were examined. Neither Rith Misquita nor Birtha Misquita both of whom were available during the obstructionist proceedings were examined. Champalal Vardhan had specifically denied the signatures on the rent receipts to be either of the Misquitas. Despite the specific assertion of Champalal and despite ample opportunities being available to the obstructionists during the subsequent stages of the obstructionists proceedings no efforts were made to lead the evidence of any of the executants who were available to prove the rent receipts. The Supreme Court held that in this view of the matter it is difficult to find fault with the orders refusing to admit the rent receipts.

Ramakrishna Girishchandra Dode v. *Anand Govind Kelkar*, AIR 1999 Bombay 89.

Section 67—Document to be proved.

Section 67 enjoins that before a document can be looked into, it has to be proved. Section 67, of course, does not prescribe any particular mode of proof : *see* Dowry Prohibition Act, 1961, S. 4 and S. 2.

S. Gopal Reddy v. *State of A.P.*, (1996) 4 SCC 596 : AIR 1996 SC 2184 : 1996 Cri LJ 323.

Section 68—'Holograph Wills'.

A 'Holograph Will' is one which is wholly in the handwriting of the testator.

The Calcutta High Court in *Ajit Chandra Majumdar* v. *Akhil Chandra Majumdar*, AIR 1960 Cal 551 : 64 CWN 576, stated about such Will, thus :

> "The whole of this Will was written in the hand by the testator himself in English. The handwriting is clear and firm. The law makes a great presumption in favour of the genuineness of a Holograph Will for the very good reason that the mind of the testator in physically writing out his own Will is more apparent in a holograph Will than where his signature alone appears to either a typed script or to a script written by someone else". (emphasis supplied)

Joyce Primrose Prestor v. *Vera Marie Vas*, (1996) 9 SCC 324.

Section 68—Proof of "Will".

The Delhi High Court observed that to prove a "Will" it would be sufficient if only one attesting witness is examined. Section 68 of the Evidence Act stipulates that to prove a "Will" at least one of the attesting witnesses be examined. The respondent (petitioner before the trial court) was not under any obligation to produce both the attesting witnesses as it was not the requirement of law nor was the respondent under statutory obligation to give reasons for non-production of the second witness.

Mathew Jacob v. *Salestine Jacob*, AIR 1998 Delhi 390.

Section 68, proviso and Section 65 (a)—Mortgage proved by certified copy.

The Supreme Court observed that in terms of Section 68 Evidence Act, 1872 where a mortgage deed is registered, then except in the case of a will, it is not necessary to call an attesting witness, unless the execution has been specifically denied by the person by whom it purports to have been executed. In the present case though the relationship of mortgagor and mortgagee was denied in the written statement it was admitted in the additional pleas, in the same written

statement that the mortgage deed was executed but it was executed to circumvent the rent control legislation. Accordingly there is no specific denial of execution. Since there was no need for the plaintiff to call the attestator into the witness box the plaintiff could not be faulted for not examining any attestator. The Supreme Court held that the mortgage stood proved by the certified copy.

Ishwar Dass Jain v. *Sohan Lal,* (2000) 1 SCC 434 : AIR 2000 SC 426.

Sections 65 (c), (f) and 74—*'Res judicata'*—Secondary evidence.

The Supreme Court observed that under Clause (c) of Section 65 of the Evidence Act, when the original has been lost or destroyed then secondary evidence of the contents of the documents, if the conditions as laid down under clause (c) are fulfilled, is permissible. Thus if the original of a public document has been lost or destroyed then the secondary evidence can be given of a public documents as per law laid down in *Bibi Aisha* v. *Bihar Subai Sunni Majlis Avaqaf,* (AIR 1969 SC 253; (1969) 1 SCR 417). Accordingly under the circumstances, the Supreme Court added that the ordinary copy of the earlier documents was admissible in evidence. There is an additional factum of there being such a judgment was not denied. The respondents did not contend that the copy which had been produced was not the correct copy. The earlier judgment was, therefore, binding on both the respondents.

The Court also observed that, both the first Appellate Court and the second Appellate Court failed to appreciate that on principle of *res judicata* the respondents were precluded from denying the appellants title to the said property. The trial court correctly appreciated this fact. The decree in the earlier suit established the title of the appellants and showed that the respondents were in possession merely as *pujaris.* The Supreme Court held that in the absence of any proof as to the date time and the manner in which possession as *pujari* got converted into open, hostile and adverse claim for adverse possession could not be upheld.

Marwari Kumhar v. *Bhagwanpuri Guru Ganeshpuri,* (2000) 6 SCC 735 : AIR 2000 SC 2629.

Section 68—Unregistered will—Scribe as attesting witness.

The Supreme Court observed that the will was an unregistered one. Out of three witnesses two were dead and the third one was not produced. The lower appellate court merely stated while reversing the decree of the trial court that the scribe has been examined to prove the will. How the scribe was examined, what was stated by him and whether the statement amounted to the scribe being regarded as an attesting witness was not held by the lower appellate court. The High Court on the other hand dealt with the evidence of the scribe and

then came to the conclusion that he could not be regarded as an attesting witness. The Supreme Court held that the decision calls for no interference as it was not satisfied that the will propounded by the appellants was duly proved.

Kannian v. *Sethurama,* AIR 2001 SC 3522 (1); (2000) 9 SCC 359.

Section 68 and proviso—Gift deed.

The Supreme Court observed that in considering the applicability of the proviso to Section 68 of the Evidence Act the finding should be clear and specific and not vaguely or negatively drawn. The pleadings of the parties must be taken into consideration which in the present case has not been done. The recorded pleadings in the judgment of the trial court clearly indicate that the said documents were not executed. The pleadings record that the defendants forged the signatures of their father after influencing the Sub-Registrar. The denial cannot be more strong than that was recorded. The Supreme Court held that the proviso to Section 68 will not apply. The High Court, the Supreme Court observed, fell into error in applying the proviso. None of the two attending witnesses had been produced. Once the gift deed could not be produced in evidence in view of the non-compliance of Section 68 it was held that the plaintiff had successfully challenged the execution. The Supreme Court held that no right under the document accrued to the respondent concerned over Schedule A property covering the gift deed.

Rasammal Issetheenammal Fernandez v. *Joosa Mariyan Fernandez,* (2000) 7 SCC 189; AIR 2000 SC 2857.

Section 68—Will duly executed.

The Supreme Court held that the disputed will was attested by three attesting witnesses out of which one was examined in the trial court for proving the said Will. The Court added that the trial court as well as the High Court were justified in taking the view that the Will was duly executed.

Palanivelayutham Pillai v. *Ramchandran,* (2000) 6 SCC 151.

Section 71—Execution of the document.

The Madhya Pradesh High Court observed that taking into account all statements together with the fact that the document was registered and the statement of the scribe of the will it is amply proved that a document had been executed on 15.12.1949 and there does not remain any doubt whatsoever about the execution of the document. The court added that though the attesting witness deny the attestation of the will, other evidence is permissible. The scribe of the will testified as to scribing the will and its attestation by two witnesses. The document was registered. The statement of the scribe comes under Section 71 of the Evidence Act. The will of subsequent

date alleged to be executed by the testator makes a specific mention of execution of will in execution. The court held that considering, the facts and evidence on record the execution of the will in question is proved.

Ku. Chandan v. *Longa Bai*, AIR 1998 Madhya Pradesh 1.

Section 73—Doctrine of undue enrichment.

The Supreme Court observed that it was apparent that the Ist defendant was trying to get out of the situation when confronted with his signatures on the *Vakalatnama* and the written statement and his having earlier denied his signatures on the sale agreement in order to defeat the claim of the plaintiff. Falsehood of the claim of the Ist defendant was writ large on the face of it. The trial Court could also have compared the signature of the Ist defendant as provided in Section 73 of the Evidence Act. The Supreme Court added that it was a case where instead of going into a protracted trial, the trial, court could have decreed the suit of the plaintiff against the Ist Defendant as well at the stage of order X (examination of parties by the court) and the Code of Civil Procedure. The Court also observed that if the pleading of the Ist defendant is accepted then the amount of rupees one lakh had been given by the plaintiff under some mistake. In any case it was not a payment gratuitously made. The doctrine of undue enrichment would squarely apply in the present case and the plaintiff would be entitled to restitution.

K.S. Satyanarayana v. *V.R. Narayana Rao*, AIR 1999 SC 2544 : (1999) 6 SCC 104.

Section 73—Modes of Proof.

There are other modes of proof of documents also as by comparison of the handwriting as envisaged under Section 73 of the Evidence Act or through the evidence of a handwriting expert under Section 45 of the Act, besides the admission of person against whom the document is intended to be used.

S. Gopal Reddy v. *State of A.P.*, (1996) 4 SCC 596 : AIR 1996 SC 2184 : 1996 Cri LJ 323.

Sections 73 and 45—Comparison of disputed and admitted signatures.

The Supreme Court observed that under Section 73 or the Evidence Act, 1872, the court is entitled to compare disputed and admitted signatures and handwriting for coming to a conclusion but the rule of prudence and caution requires that in the first place expert's opinion should be obtained for assistance and if such opinion is not available then the Judge presiding over the Court must disclose in the judgment his knowledge on the subject of comparison of handwriting or should mention whether that he has taken aid from

some authoritative text-book. The Court should also mention whether the result of its comparison finds support from some evidence adduced by the parties may be in the shape of oral or documentary evidence or direct evidence.

In the present case on the basis of comparison of handwriting on chit with the handwriting on the postcard allegedly sent by the defendant to the plaintiff, the trial court came to a conclusion that the handwriting on the chit was that of the defendant. The Supreme Court held that the conclusion arrived at by the trial court was based on no evidence and suffered from conjectures and surmises. There is nothing on record to show that the specimen handwriting of the defendant was obtained for comparison with his alleged handwriting on the chit. There was no proof that the post card was actually written by the defendant, and the allegation was expressly denied by the defendant.

Ashok Kumar Uttamchand Shah v. *Patel Mohamad Aswal Chanchad,* AIR 1999 Gujarat 108.

Section 74—What is a public document ?

Elaborating what is a public document the Delhi High Court observed that by no stretch of imagination employees of insurance company can be called the Central Government employees or State Government employees. They are employees of a Corporation, an autonomous body. Therefore their Officers cannot be called public officers. Moreover, they are not performing any public duty. They are in fact performing contractual duty. Insurance policy is a document of contract entered into by the insured with the insurer. By virtue of this contract the insurer will issue only that insurance policy which is demanded by the insured. There is no public duty cast on the insurer to issue only one set of policy. It is on the basis of his proposal form that the insurer issues policy and a contract comes into existence. The Insurance Company by issuing insurance cover and policy performed contractual obligation. It would not thus be just to describe officers of the Insurance Company as public officer and insurance policy a public document under Section 74 of the Evidence Act, as to be a public document it should not only be available for public inspection but should also have been brought into existence for that purpose.

New India Assurance Co. Ltd. v. *Smt. Krishna Sharma,* AIR 1998 Delhi 386.

Section 81—Newspaper reports cannot be treated as proof.

The Supreme Court observed that newspaper reports regarding the Central Government decision could not be any basis for the respondents to stop action under the Assam Control Order of 1961. The paper reports do not specifically refer to the Assam Control Order

194. In fact Government of Assam itself was not prepared to act on the newspaper report as stated in the wireless message. Section 81 of the Evidence Act was not relied upon for the appellant, in this behalf, to say that the newspaper was evidence and conveyed the necessary information to one and all including the respondents. But the presumption of genuineness attached under Section 81 of the newspapers reports cannot be treated as proof of the facts stated therein.

Ravindra Kumar Sharma v. *State of Assam*, AIR 1999 SC 3571 : (1999) 7 SCC 453.

Section 90—Presumption of due execution.

Section 90 of the Act is founded on necessity and convenience because it it extremely difficult and sometimes not possible to lead evidence to prove handwriting, signature or execution of old documents after lapse of thirty years. The Privy Council (case of *Khetter Chunder Mookerjee*, ILR (1879-1880) 5 Cal 886 : 6 CLR 199) upon review of the authorities, however, did not accept the decision rendered in *Khetter's* case and other decisions of the High Court, where the presumption was attached also to copies as correct. It was indicated that in view of clear language of Section 90 the production of the particular document would be necessary for applying the statutory presumption under Section 90.

Lakhi Baruah v. *Padma Kanta Kalta*, (1996) 8 SCC 357 : AIR 1996 SC 1253; *Khetter's* case quoted above over-ruled.

Section 91—Written contract.

Once a contract is reduced to writing by operation of Section 91 of the Evidence Act, it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the intention of the parties. Under Section 92, where the written instruments appears to contain the whole terms of the contract then parties to the contract are not entitled to lead any oral evidence to ascertain the terms of the contract. It is only when the written contract does not contain the whole of the agreement between the parties and there is any ambiguity then oral evidence is permissible to prove the other conditions which also must not be inconsistent with the written contract.

Tamil Nadu Electricity Board v. *N. Raju Reddiar*, (1996) 4 SCC 551 : AIR 1996 SC 2025.

Sections 91 and 92—Oral evidence—reliance of.

The Supreme Court observed that the rejection of oral evidence by the Assistant Commissioner on the plea that it is inadmissible as

it contradicts the recitals in the deed of registration of the Society in view of Section 91 and 92 of the Evidence Act is not correct. Oral evidence could be adduced to show that the recitals in a deed were nominal or were not intended to be acted upon or that they were not meant to alter the existing state of affairs. Oral evidence could, therefore, be issued to show that the Society's main concern was the celebration of the Durga Puja festivals etc. and that other activities were subsidiary. The Supreme Court held that the Deputy Commissioner was right in relying on this part of the oral evidence.

Hindu Public v. *Rajdhani Puja Samithee,* AIR 1999 SC 964 : (1999) 2 SCC 583.

Section 92—Contract to be reduced in writing.

The contention of the plaintiff-respondent 1 is that he would obtain the signatures of Respondents 2 and 3 and the sale deed would be executed as composite sale deed of the entire property and the contrary plea that the appellants undertook to get the signatures of their sisters are all pleas and contentions which are not borne out from the agreement and sale. The pleas of both the parties are beyond the written agreement. The Supreme Court held that the law in this regard is well settled, in view of Section 92 of the Indian Evidence Act where any contract is required by law to be reduced in writing, then no oral evidence or understanding to the contrary or what is apart from the said contract would be admissible in law.

A. Abdul Rashid Khan v. *P.A.K.A. Shahul Hamid,* (2000) 10 SCC 636.

Section 92—Bar imposed by the section.

The Madras High Court observed that the defendant who was aware of all facts was put questions regarding his application for loan with the Housing Society and the amount sanctioned by them. Further on receipt of proper summons from the court, the Secretary of the Housing Society brought the records and he is the competent authority to speak about these documents and records. The court rejected the contention that those documents are inadmissible in evidence and that the same were not put up to the defendant.

The court added that a perusal of Section 92, Evidence Act and Proviso 1 to the Section shows that Section 92 does not debar the party to contract from adducing evidence for purpose of contradicting recitals of facts mentioned in the document. The bar imposed by Section 92, sub-clause (1) applies only when a party seeks to rely upon document embodying the terms of the transaction. The court added that the consideration cannot be said to be a term of contract though, it is interwoven with it. The court held that in the instant case there is no waiver at all at any point of time nor had the plaintiff abandoned his rights. If there was nothing to suggest in the conduct

of the plaintiff implying an abandonment, the contract will have to be enforced.

K.M. Rajendran v. *Arul Prakasam*, AIR 1998 Madras 336.

Section 92 (1)—Sham document.

The Supreme Court observed that the reason given by the defendant appears curious. One can understand a debtor incurring a debt and executing a deed as collateral security. If it is a deed of collateral security by the defendant than the defendant would have had to execute a deed in favour of the plaintiff and not vice versa. Here the plaintiff-owner has mortagaged his shop to the defendant as security. The plea and evidence of the collateral security offered by the defendant appears not to fit into a situation where the plaintiff has not executed the mortgage. If the plaintiff wanted to secure something by way of an additional security from the defendant the normal course would have been to ask the defendant to give such a security and for the plaintiff to execute a mortgage. Thus the reason mentioned and evidence given by the defendant as to why a sham document was executed falls to the ground.

Ishwar Dass v. *Sohan Lal*, AIR 2000 SC 426 : (2000) 1 SCC 434.

Section 92 (2)—Real intention of the parties.

The Sikkim High Court observed that it agreed with the Appellate Court on the point that the connected evidence should be gone into to make out the real nature of the document in question. Proviso (2) of Section 92 of the Evidence Act authorities the Court to admit and go into oral or other evidence for the purpose of explaining the real intention of the parties to the document. The High Court held that the First-Appellate Court was quite justified in interpreting the document in the light of probability and with the help of evidence on record.

B.B. Lohar v. *Prem Prakash Goyal*, AIR 1999 Sikkim 11.

Section 92 (4)—Parol evidence.

What proviso (4) to Section 92 of the Evidence Act, 1872, provides is that where a contract or disposition, not required by law in writing, has been arrived at orally then subsequent oral agreement modifying or rescinding that said contract or disposition can be substantiated by parol evidence and such evidence is admissible. In the present case the settlement deed is a registered document. The second part of proviso (4) to Section 92 does not permit leading of parole for proving a subsequent oral agreement modifying or rescinding the registered instrument. The terms of a registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement as pleaded is allowed to be substantiated by parol evidence it would mean rewriting of the

settlement deed. The Supreme Court held that no parol evidence is permissible.

The Supreme Court added that once under law a document is required to be in writing parties to such documents cannot be permitted to let in parol evidence to substantiate any subsequent arrangement which has effect of modifying earlier written document. If such parol evidence is permitted it would divest the rights of other parties to the written document. The Court held that subsequent oral arrangement set up by the defendant appellant cannot be proved by parol evidence.

S. Saktivel v. *M. Venugopal Pillai*, (2000) 7 SCC 104 : AIR 2000 SC 2633.

Section 94—Execution of the document.

The Supreme Court observed that Section 94, Evidence Act, will come into play only when there is a document and its language has to be considered with reference to a particular factual situation. The section will apply only when the execution of the document is admitted and no vitiating circumstance has been put forward against the same. In the present case, the document in question is a proceeding of the Board. If at all, it can only be said that the said document contains an admission made by the signatories thereto and 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 Ammal* v. *B. Shaama Rao*, AIR 1956 SC 593 : 1956 SCR 451, 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* v. *Union of India*, AIR 1958 SC 419 : 1958 SCR 1295; *Basant Singh* v. *Janki Singh*, AIR 1967 SC 341 : 1967 All LJ 1; *Prem, Ex-servicemen Cooperative Tenant Farming Society Ltd.*, v. *State of Haryana*, (1974) 2 SCC 319 : AIR 1974 SC 1121.

General Court-Martial v. *Col. Aniltej Singh Dhaliwal*, (1998) 1 SCC 756 : AIR 1998 SC 983.

Section 96—Court—expert of all experts.

On a question arising whether a trial Judge should compare the disputed signature of the appellant with his admitted signature the Calcutta High Court observed that although there appears to be divergent views on the subject there cannot be any doubt that although court is said to be expert of all experts, in any doubt that the Court should be slow to undertake such a task upon itself. Ordinarily

the court should examine a disputed signature with the aid and assistance of a hand-writing expert. But the court should also satisfy itself that the demand for sending the disputed signature is not frivolous and for that purpose it may also examine the same with naked eye.

Tarak Nath Sha v. *Bhutoria Brothers Pvt. Ltd.*, AIR 1998 Cal 31.

Section 101—Sham and fictitious transaction.

The Supreme Court observed that 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 it a sham bogus and fictitious transaction, it is only when the first part has been proved that the party alleging it to be sham has to dislodge it by proving that it is 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 v. *Bharat Coking Coal Ltd.*, AIR 2000 SC 1203 : (2000) 3 SCC 312.

Sections 101-104—Expression 'burden of proof'.

The Calcutta High Court observed that the Supreme Court in *Naryan Bhagwantrai Gosavi Balajiwale* v. *Gopal Vinayak Gosavi*, AIR 1960 SC 1007, had held that the expression, 'burden of proof' really means two different things. It means some times 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. 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 issues and have led evidence and the conflicting evidence can be weighted to determine which way the issue can be decided, the abstract question of burden of proof becomes academic. The court added that, with the application of the above principle as laid down by the Apex Court to the facts of the instant case, the finding of the trial Judge cannot be set aside merely on the ground that he had only considered the contradictory statements made by the witnesses and on that basis arrived at a conclusion that the defendant failed to prove due execution of the sale deeds. The court also observed that the executant though illiterate had sufficient experience in dealing with property. The executant cannot be granted such protection as is granted to pardanashin woman. In the case of a deed executed by such a person, the fact that the contents of the deed were read over and explained to the executant must be proved by the person

who wants to take advantage of such deeds. In the instant case in view of the contradictory statements made by the witnesses of the deeds as regards execution and explanation of the contents, the finding of the trial Judge cannot be said to be wrong.

Kartick Parsad Gorai v. *Neami Parsad Gorai,* AIR 1998 Calcutta 278.

Sections 101 and 104—Oral and documentary evidence.

The Supreme Court observed that 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 Haritheerthan, that would not, 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 defendant. In fact reading the judgment of the High Court it is clear that the High Court was dealing with the case if it was a first appeal. The Supreme Court held that the judgment of the High Court cannot be sustained and set it aside and restored the judgment of the lower appellate court. The Supreme Court added that the judgment of the first-appellate court cannot be reversed on the ground that the first appellate court had not come to grips with the reasoning of the trial court.

Arumugham v. *Sundarambul,* AIR 1999 SC 2216 : (1999) 4 SCC 350.

Sections 101 to 104—Charge of professional misconduct.

The Supreme Court observed that a charge of professional misconduct by an advocate is in the nature of a quasi criminal charge which is required to be proved in the manner of proving a criminal charge and the nature of proof required to prove it is that of beyond reasonable doubt. Both the State Bar Council as also the Bar Council of India on the basis of material on record found that the charge against the respondent has not been proved. The Supreme Court held that findings recorded by both the State Bar Council and the Bar Council of India are on correct and proper appreciation of evidence available on record.

H.V. Panchaksharappa v. *K.G. Eshwar,* AIR 2000 SC 3344 : (2000) 6 SCC 721.

Sections 101 and 114—Carriers Act, 1865, Sections 8 and 9—Doctrine of burden of proof.

The Supreme Court held that the carrier has not discharged the burden of proof on him and he failed to prove the loss has been caused by act of God or because of inevitable accident and there was no negligence on his part. The failure to produce its driver on the part

of the defendant carrier also lends to a circumstance which may make the court raise an adverse presumption against the defendants case. The Supreme Court also observed that in the instant case the driver not having been produced an adverse presumption against the defendant coupled with presumption under Section 8 and 9 of the Carriers Act, 1865 in favour of plaintiff is valid. It is one of the well settled principles of law that when the best possible evidence, whether in the form of documentary evidence or oral is in possession of the parties to the suit or litigation it is their bounden duty to place the same before the Court for examination. The Supreme Court also observed that the doctrine of burden of proof applies to the case where evidence is in possession of a third party but not in cases where it is in possession of the parties to the suit.

Karnataka Transport Corporation v. *National Insurance Bank Ltd.*, AIR 1999 Karnataka 233.

Sections 101 and 106—Illegal gratification.

The Supreme Court observed that it was not inclined to disturb the finding of the High Court that the defence adopted by the respondent cannot be doubted as improbable. The Supreme Court did not not approve of a proposition of law propounded by the High Court that in such cases the initial burden is on the prosecution to prove that the amount was not paid by returning the hand loan. It is well settled that when the amount is found to have been passed to the public servant the burden is on the public servant to establish that it is not by way of illegal gratification.

State of A.P. v. *Kommaraju Gopal Krishna Murthy,* (2000) 9 SCC 752.

Section 101—Monthly tenancy and rent.

The Supreme Court observed that it is settled law that in the absence of any express or implied contract, to the contrary, in a monthly tenancy the rent is payable at the end of each month of tenancy. In the present case, a perusal of the schedule filed in the court of the Rent Controller shows that the rent was not being paid regularly and, therefore, the appellate authority as well as the Division Bench were justified in holding that the tenant was a habitual defaulter. The Supreme Court held that this being the position there is no merit in the appeal which fails.

Hiralal v. *Vijay Kumar,* (2000) 10 SCC 544.

Sections 101 and 102—Land on old grant terms.

The Supreme Court observed that it is clear that at all stages the case has progressed on the basis that it was not disputed that the land was on old grant terms. Apart from making an averment in the plaint that the land was not on old grant terms the point has clearly

not been pressed at any stage. If the relevant documents, now sought to be relied upon were produced earlier the respondents would have had an opportunity to cross-examine witnesses and show that the averments in the document were not correct and/or to explain how and why lease was taken. No submission on the question of ownership by the plaintiff and/or the land was not an old grant land has been recorded. The trial Court has clarified that the Government could resume the land after following the due procedure of law. Even when the respondent went in second appeal before the High Court no cross-objections were filed and it was not disputed that the land was on old grant terms. It is settled law that one has to proceed on the basis of what has been recorded by the Court. The High Court thus confirmed that at the time the second appeal was argued it was not disputed that the land was an old-grant terms. The Supreme Court held that it would be travesty of justice and would amount to permitting the parties to misuse laws, delays, if at this stage they are permitted to change their stand and make contentions which are contrary to what has been admitted position all these years.

Chitra Kumari v. *Union of India,* (2001) 3 SCC 208 : AIR 2001 SC 1237.

Section 105—Burden of proving the exception.

The Supreme Court observed that the law is that burden of proving the exception is on the accused. But the mere fact that the accused adopted alternate defence during his examination under Section 313 of the Indian Penal Code without referring to Exception 1 of Section 300, Indian Penal Code is not enough to deny him of the benefit of the exception. It is not the law that failure to set up such a defence would foreclose the right to rely on the exception once and for all. It is axiomatic that the burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence, by showing a preponderance of probability.

State of U.P. v. *Lakhami,* (1998) 4 SCC 336.

Section 105—Preponderance of probabilities.

The Supreme Court observed that the accused who pleads any of the exceptions under Chapter IV of the Indian Penal Code has to prove it since law has cast the burden on him in such situation. Under Section 105 of the Evidence Act the Court will presume the absence of it. Of course the standard of such proof is not akin to that of the prosecution to prove the guilt of the accused. It is trite law that such burden can be discharged by the accused showing preponderance of probabilities.

Bhupendra Singh A. Ghudasama v. *State of Gujarat,* (1998) 2 SCC 603.

Section 106—Quantum of punishment.

The Supreme Court observed that the missing link to connect the accused-appellant is provided by the blunt and outright denial of everyone and all the incriminating circumstances pointed out which with sufficient and reasonable certainty on the facts proved, connect the accused with the death and cause for the death of Gracy. The Supreme Court agreed with the findings of the Division Bench of the High Court holding the appellant guilty of offences under Section 302 for committing the murder and robbery. The deceased meekly went with the accused from the convent on account of the misrepresentation made that her mother was seriously, ill and hospitalised, apparently reposing faith and confidence in him in view of his close relationship, being the husband of her own sister but the appellant seems to not only betrayed the confidence reposed in him but also took advantage of the loneliness of the hapless women. The Supreme Court held that the quantum of punishment imposed is commensurate with the gravity of the charges held proved and and calls for no interference.

Joseph v. *State of Kerala*, (2000) 5 SCC 197 : AIR 2000 SC 1608 : 2000 Cri LJ 2467.

Sections 106 and 114—Kalori—Within the special knowledge.

The Calcutta High Court observed that the allegations of the plaintiff that the owners and the charterers were one and the same entity or sister-concerns were sought to be controverted by the owners by producing documents and certificates showing who owned how many shares of the Vessel "M.V. PRAPTI" and disclosing the name of the Secretary of the Eleanora Shipping Company Ltd., but not a single document was produced to disclose the share-holding pattern of either the owners or the majority share-holder nor the names of the directors. During course of the hearing the plaintiff produced a certificate issued by the Registrar of the Companies showing the name of one of the directors about which there was no denial by the owners. In these circumstances the factum of share holding of Kalori would almost certainly be considered to be within the special knowledge of the owners and therefore, in the light of Section 106 of the Evidence Act, the owners would be under an obligation to disclose such factum and since they have not done so, under Section 114 (g) of the Evidence Act the court would be constrained to assume adversely to the interest of the owners.

Alexandros Dryron S.A. v. *Owners and Parties, M.V. PRAPTI,* AIR 1998 Cal 142.

Section 108—Civil death or fictional death.

The Allahabad High Court observed that the moot point for consideration is as to on which date death is to presumed in the case

of a person who is missing as the presumption of civil death or fictional death under Section 108, Evidence Act tantamounts to physical death in the eye of the law for giving benefits to the heirs/ legal representatives and dependents of the deceased. At what time within the period of seven years, a person has died is not a matter of presumption but of evidence and the onus of proving that the death took place at any particular time within seven years lies upon the person who claims a right to the establishment of which that fact is essential once the rule of presumption is invoked on the ground that a man has not been heard of for seven years the beneficiary or the claimant is entitled to ask for relief on the footing that he is dead.

Hemant Kishore v. *Brij Raj Kishore,* AIR 1998 All 328.

In another case, the Allahabad High court observed that on the other hand it has to be seen whether on the date of the suit the presumption of death could be drawn and it is only when this presumption was available on the date of the suit that the appellants could be held to be heirs and challenge the adoption deed. Since not even three years period expired from the date of the adoption to the date of the institution of the suit, this presumption could not be drawn and the two courts below were, therefore, correct in holding that the plaintiff's have no right to sue. The court added that if they had no right to sue, the appeal was rightly allowed by the lower appellate court and the suit of the plaintiff's was rightly dismissed.

Baru (since deceased) v. *Tej Pal,* AIR 1998 All 230.

Section 111—Cancellation of a document obtained by misrepresentation.

Discussing the position about cancellation of a document obtained by misrepresentation as to the character of transaction the Madras High Court observed that an illiterate father who is now running 80 years of age, believed his only son. He has knocked away all the properties and the father is also subsequently driven out of the house. In his old age, the father believed his son. But he was betrayed by him. The close relationship between the father and the son makes the court confirm the judgment of the lower and appellate courts. The father did not have any free legal advice and it is the case of the defendant himself that he did consult others before executing the document. But, treating the property as family property itself was wrong. Even according to the defendant, if the properties are treated as joint family properties, the defendant will be entitled to only half share. But under the document the entire property has been taken away by the son leaving only 27 cents to the father. How this happened the defendant has no case. The lower appellate court has further found that even most of the witnesses have not seen the plaintiff signing the documents and even utter strangers who are not known to both the parties have signed it. The court observed that a fictitious

document is brought into existence by the defendant is clear from the above facts.

Selvarasu Kounder v. *Sahadeva Kounder*, AIR 1998 Mad 58.

Section 111 (g)—Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10 (2)—Transfer of Property Act, 1882, Section 116—Relationship of landlord and tenant.

The Supreme Court observed that when we consider the conduct of the respondents that from the date of the reply notice the respondents neither denied the relationship of landlord and tenant nor did they stop paying rent to the appellant nor did they set up any claim adverse to the title or interest of the appellant in themselves or a third party and that after coming to know of the said release deed did they persist in their plea that he was a co-owner, it cannot be said that the respondents denied the title of the appellants, much less can it be said that such a denial was not *bona fide*. The Supreme Court added that it upheld the order of the High Court which rightly came to the conclusion that but for the release deed the appellant would be a co-owner and the respondents were justified in calling the owner as co-owner for lack of knowledge of the release deed and that the appellant failed to make out a case of denial of his title to the premises by the respondents.

C. Chandramohan v. *Sengottoiyan*, AIR 2000 SCC 568 : (2000) 1 SCC 451.

Section 112—Legitimacy of child—Son of his father.

Hindu law is clear on the subject that if a Shudra woman is turned out of the house by her husband, or she wilfully abandons him and is not pursued to be brought back as wife, a divorce in fact takes place, sometimes regulated by custom, and then each spouse is entitled to re-arrange his/her life in marriage with other marrying partners. In the present case the High Court in illegitimising the appellant, seems to have overlooked the caste factor which would have great bearing in order to establish relationship between the parties. The divorce was complete. Paternity of the appellant having not being denied he was treated as a son of his father. (Hindu Marriage Act, S. 13.)

M. Govindaraju v. *K. Munisami Gounder*, AIR 1997 SC 10.

Section 112—Presumption of legitimacy of the child.

The Kerala High Court observed that it can safely be inferred that Section 112 of Evidence Act, 1872, is applicable only if there is a valid marriage. If there was no valid marriage initially, there cannot be any scope for a presumption of legitimacy of the child. The presumption applies only when a child was born during the continuance of a valid marriage or within 280 days after the

dissolution of the marriage and the mother remaining unmarried. If the presumption under Section 112 is stretched to other cases, anomaly may occur. Suppose a child was born immediately within a few days of the marriage, still a presumption will apply. Then the non-access has to be proved at a time before the marriage took place. The question of non access must relate to a time after the marriage and not before the marriage. In this case the case of the respondent is that the petitioner had access to the respondent before marriage but this fact has been held to be not proved. The wife delivered a child after 203 days of marriage and she has completed 29 weeks of the 40 normal weeks of pregnancy. The child was not premature. The court added that it can be concluded that on the date of marriage she was pregnant and that the husband had no access to wife before marriage. Therefore, there is no question of calling in aid presumption under Section 112 of Evidence Act. The court held that the wife was pregnant at the time of the marriage. The pregnancy of the respondent was concealed from the knowledge of the petitioner and he is entitled to get a declaration of nullity of his marriage with the respondent.

P.V. Sabu v. *Mariakutty*, AIR 1998 Ker 86.

Sections 112 and 114—Legitimacy of child.

Section 112 of the Evidence Act and what has been stated in Section 114, these two sections give rise to presumption against concubinage and permit raising of presumption of legitimacy of the children born during the period of continuous cohabitation.

S. Ajaram, B.I. v. *S. Khurshid Begum*, (1996) 8 SCC 81 : AIR 1996 SC 1663; *See* also *Chowdegowde* v. *C. Nagaraju*, (1996) 5 SCC 623.

Section 113-A—Cruelty—Same meaning as under Section 498-A of the Indian Penal Code.

The Supreme Court observed that the incorporation of Section 113-A of the Evidence Act in the statute book depicted a legal presumption though however the time period of within seven years of marriage is a prerequisite for such presumption. The circumstances in the contextual facts and the materials on record substantiate the requirements of Section 113-A and having regard to the language used in Section 498-A of the Indian Penal Code there cannot be any hesitation in coming to a finding that cruelty was writ large as regards the conduct of the appellant towards the deceased. The explanation to Section 113-A provides that 'cruelty' shall have the same meaning as is attributed under Section 498-A of the Indian Penal Code. With the situation existing and having regard to statutory presumptions the Supreme Court held that the circumstances pointedly point out the accused as guilty persons, as abettors and in the wake of the order of conviction which cannot be interfered with.

Pawan Kumar v. *State of Haryana*, (2001) 3 SCC 628 : AIR 2001 SC 1324 : 2001 Cri LJ 1679 : 2001 SCC (Cri) 594.

Section 113-B—Dowry Prohibition Act, 1961.

The Supreme Court observed that according to Section 8-A of the Dowry Prohibition Act, 1961 the burden to explain for taking or abetting dowry, is placed upon such person against whom the allegation of committing an offence is made. Similarly under explanation to Section 113 B of the Evidence Act, which was also brought in by Act 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.

Pawan Kumar v. *State of Haryana,* (1998) 3 SCC 309.

Section 113-B—Unnatural death—Conviction under Sections 304-B and 498-A of the Indian Penal Code.

The Supreme Court observed that what is held proved against the appellant is that his wife died an unnatural death within two years of their marriage and that before her death, she was subjected to harassment by him because she was not bringing from her parents the remaining amount of dowry promised to him. As regards demand of dowry and harassment both the Courts below have thought it fit to accept the evidence. The High Court accepting the version of suicide thought it fit to acquit the appellant under Section 302 Penal Code and convict him under Section 304-B. The Supreme Court held that the High Court has correctly appreciated the evidence and has given good reasons for convicting the appellant under Section 304-B and Section 498-A of the Indian Penal Code.

Venugopal v. *State of Karnataka,* (1999) 1 SCC 216 : 1998 SCC (Cri) 1592.

Section 114—Deed of adoption.

The Allahabad High Court observed that it is clearly mentioned that 16 days before the execution of the deed of adoption requisite ceremonies including feasts etc. were performed. In such circumstances heavy burden lay on the plaintiff-appellants to disprove the deed of adoption and also disprove that ceremonies were not performed. Simply because the pandit was not examined presumption available and flowing from recitals the adoption deed cannot be negatived nor it can be disproved that no ceremonies were performed. Pandit could be examined by the plaintiffs on whose shoulders the burden lay to prove the factum of adoption and proof of due execution and registration of the adoption deed.

Baru (Since deceased) v. *Tej Pal,* AIR 1998 All 230.

Section 114—Presumption of correctness.

The Allahabad High Court observed that there is a presumption of correctness and regularity of the official acts. The report submitted by

the authority has not been brought on record by the petitioner. In this background coupled with the statutory presumption of correctness and regularity attached with that report the court was not inclined to place any reliance on the self-serving statement of the petitioner. It is not the case of the petitioner that after cancelling the lease of the petitioner the mining authorities have settled the mining area with some one else.

Kamal Singh v. *State of U.P.*, AIR 1998 All 220.

Section 114—Presumption of a marriage in law.

The Supreme Court observed that in case a marriage in fact is established there would be presumption of a marriage in law. However, where the parties consistently, continuously and openly lived as husband and wife, cohabited together had three children and were regarded and recognised by friends and relations as husband and wife and enjoyed such a repute in general public; sufficient ground is made out for raising a presumption about the existence of a marriage and such a marriage in law carries with it the same rights and obligations on the parties as originate and flow from establishing a marriage in fact. The presumption of marriage on account of long cohabitation with habit and repute of that particular status which flows from a lawful marriage is further strengthened, in case the evidence on record indicates that such union gave birth to children as there is a presumption in regard to legitimacy of such children. The presumption of legitimacy necessary involves that the union which gave birth to such children was lawful. The presumption in favour of a marriage as indicated above cannot be taken to have been rebutted in case the husband himself admits marriage and such an admission has to be accepted as conclusive especially in the absence of any material to indicate that the admission had been obtained in a manner not recognised by law.

Virendra Singh Pal v. *Kashibai*, AIR 1998 MP 324.

Section 114 (e)—Madhya Bharat Land Revenue and Tenancy Act, 1950, Sections 45 and 50—Annual village papers.

The Supreme Court observed that Section 45 of the Madhya Bharat Land Revenue and Tenancy Act, 1950, specified that *Khasra, Jamabandi* or *Khatauni* and such other village papers as the Government may from time to time prescribe shall be annual village papers. Section 46 enjoins preparation of village papers annually each year for each Village of a District in accordance with rules under the Act. Section 52 embodies the presumption that all entries made under that chapter in the annual village papers shall be presumed to be correct until the contrary is proved and Section 50 prescribes the method or procedure for correcting of the wrong entries in the annual village papers by superior officers and until they are so corrected the presumption under Section 52 will govern the position.

In so far as Samvat 2008 is concerned it is not in dispute that initially the names of the appellants were recorded. They were subsequently scored off by the Patwari and another name entered. There is nothing to show that this correction was made in accordance with the procedure prescribed under Section 50 of the 1950 Act. It is not the case of respondent that correction was carried out under the said provisions. The Court held that the subsequent entry will be of no consequence and it confers no benefit either to the person whose name was substituted or any other person claiming through him.

Kasturchand v. *Harbilash*, AIR 2000 SC 3037 : (2000) 7 SCC 611.

Section 114—Transaction of sale.

The Supreme Court observed that, where a party to a suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross- examined by the other side a presumption would arise that the sale deed executed by defendant no. 2 in favour of the plaintiff was fictitious and bogus. This plea was not supported by defendant no. 1 as he did not enter into the witness box and did not state the facts pleaded in the written statement on oath in the trial Court and avoided the witness box so that he may not be cross-examined. The Supreme Court held that this, by itself, is enough to reject the claim that the transaction of sale between defendant no. 2 and the plaintiff was a bogus transaction.

Vidhyadhar v. *Manikrao*, AIR 1999 SC 1441 : (1999) 3 SCC 573.

Section 114—Adverse presumption.

The Court observed that it is well settled principle of law that if there are material documents which may throw light on the question involved and the documents are in possession of a party in the proceedings and that party in possession of such material does not produce the adverse presumption has to be raised against that party. So adverse presumption arises and can be raised against-plaintiff's plea in this regard and it may be held in defendant's case that he never entered into an agreement is corrected.

Ganga Maruthi v. *Nagaraj*, AIR 1998 Karn 407.

Section 114—Rebuttal of presumption.

In the present case, the Supreme Court observed that no fact or circumstance has been pleaded or proved which could indicate in any manner whatsoever that Munni was living in sin or the alleged marriage or the relationship had its origin in concubinage. There is nothing on record to indicate that no legal marriage could be permissible between them. The oral evidence tendered by Munni was admissible under Section 50 of the Evidence Act. The evidence led by Anguri Devi was not sufficient to rebut the presumption available in

regard to the marriage of Hari Shanker with Munni. The trial Court erroneously totally ignored the service book of Munni prepared in 1984 indicating the name of her husband as Hari Shanker. The Supreme Court held that the finding returned by the trial court to the effect that Munni could not be treated to have married Hari Shanker is not liable to be sustained especially when the trial Court itself has found that the sons and daughters who have been impleaded are children of Hari Shanker.

Munni Devi v. *Anguri Devi,* AIR 1999 MP 31.

Section 114—Terrorists and Disruptive Activities (Prevention) Act, 1987.

The Supreme Court observed that a presumption can be drawn only from facts and not from other presumptions by a process of probable and logical reasoning. The designated court under Terrorists and Disruptive Activities (Prevention) Act, 1987, could not have, therefore, drawn the presumption of a conspiracy to kill Haldankar as the statements of two witnesses do not afford by any stretch of imagination any foundation for the same.

Suresh Budharmal Kalani alias *Pappu Kalani* v. *State of Maharashtra,* AIR 1998 SC 3258.

Section 114 (iii) (c)—Punjab Security of Land Tenures Act, 1953, Section 9 (1)—Presumption of regular performance of official acts.

The Supreme Court observed that apart from the presumption that official acts were performed regularly, the evidence in this case which was accepted by the District Judge proves, that the respondents were evicted validly in accordance with the order of eviction. There was no justification for the High Court to hold that the dispossession was not valid but a sham transaction. Once as a fact it is found that there was dispossession of the tenants by executing the orders of eviction, the relationship of landlord and tenant ceased to exist. The respondents were in possession only as trespassers. The Supreme Court added that this is a *fortiori case* as the respondents were also dispossessed in execution. The Supreme Court held that in the present case the respondents were trespassers as found by the District Court and the High Court is not justified in interfering with the said decree.

Balbir Singh v. *Santa Singh,* (2000) 10 SCC 520.

Section 114 (iii) (e)—Service of notice.

The Supreme Court observed that the appellant is one of the legal heirs of the 8th defendant and an application to bring him on record was made. When a party is sought to be impleaded in a legal proceeding service of notice on such party cannot be a mere formality

but should, in fact, be a reality. In the present case neither the trial Court nor the High Court gave any definite finding as to the service of notice on the appellant. The Supreme Court added that in the peculiar facts and circumstances of the present case the failure to determine the issue as to the guarantee furnished by the late defendant 8th having been discharged and consequently his liability and that of his legal heirs having come to a end did spell out prejudice to the interest of the appellant on account of opportunity to defend having not been afforded to him. The appellant ought to have been with notice of the application for substitution which having not been done the application filed by him was entitled to be granted. The Supreme Court set aside the decree and ordered disposal of suit after hearing the appellate on merits.

Naresh Chandra Agarwal v. *Bank of Baroda,* (2001) 3 SCC 163 : AIR 2001 SC 1253 : 2001 All LJ 581.

Sections 114 (iii) (e) and 35—Correction of date of birth.

The Supreme Court observed that the correction of the date of birth in the school certificate is an official act and it must be presumed to have been done in accordance with law. No evidence could be produced to show that there was any irregularity in the process of correcting the date of birth in the School record. It was not necessary for the authorities to issue any notice and there was no violation of the principles of natural justice on that score. The Oil Selection Board considered all these aspects and held that the date of birth of the applicant must be 26.12.1965 and that as on date of application for allotment of the retail outlet outlet he had attained the age of more than 21 years. The trial Court had also held the date of birth to be 26.12.1965 and the appellate court was not justified in reversing the decision of the trial court.

Updesh Kumar v. *B. Prithvi Singh,* (2001) 2 SCC 524 : 2001 SCC (Cri) 1300 : AIR 2001 SC 703.

Section 114—Delhi Development Act, 1957, Section 3—Presumption of regular performance of official acts.

The case set up by the plaintiff is that the bid given by her could have been accepted only by the Vice Chairman but the same was purported to have been accepted by D.D.A. The Supreme Court observed that D.D.A. being a body corporate under Section 3 of the Delhi Development Act, 1957, acts through its officers and there is a presumption in favour of the official acts performed by it as having been regularly done. The Supreme Court held that that being the position the plaintiff must be held to have failed in establishing that the bid offered by her was not accepted by the Vice-Chairman.

Krishana Rani Kwatra v. *Delhi Development Authority,* AIR 1999 Delhi 194.

Section 114 (g)—Principles of public justice.

The Allahabad High Court held that a presumption has to be drawn against the Union of India for keeping away the best evidence from the court despite the fact that a writ of *certiorari* has been issued. The law permits the court to draw such presumption when the best evidence will be kept away from the court. This is provided in Section 114 (g) of the Evidence Act. Besides with a writ petition pending and a writ of *certiorari* having been issued, in a matter like this official records cannot be weeded out in a matter of audit and accounting. Keeping records of accounts away from a court of law, more so when such records are sought by the court, is against the principles of public justice and the court, thus draws an adverse presumption against the party not producing the records which is the best evidence [AIR 1965 SC 1755, *Union of India* v. *Mahadeolal Prabhu Dayal,* and AIR 1966 SC 1375, *Commr. of Income Tax, Madras* v. *M/s. Best and Co. (Private) Ltd., Madras*].

L.P. Naithani v. *Allahabad Telephones,* AIR 1998 All 191.

Section 114 (g)—Adverse presumption.

The Supreme Court refused to draw an adverse presumption against the prosecution under Section 114, Illustration (g) of the Evidence Act as on the perusal of the records found that the explanation offered by the prosecution for non examination of the injured witness was that he was gained over by the accused and this was borne out by the record in so much as his son who claimed to have seen the incident when examined under Section 161, Criminal Procedure Code, turned hostile. Besides on being cross-examined by the prosecution he stated that the complainant party was suspecting that his father had joined hands with the accused.

Saudagar Singh v. *Gian Singh,* AIR 1998 SC 28.

Section 114 (g)—Adverse presumption.

The Supreme Court observed that the principle under Section 114 of the Evidence Act, 1872 is that if a party does not enter into the witness box an adverse presumption had to be drawn against the party. In the instant case the appellant had abstained from the witness box and had not made any statement on oath in support of his pleading set out in the written statement and, therefore an adverse inference has to be drawn against him. The Supreme Court held that the High Court was fully justified in decreeing the suit in its entirety and passing a decree against the appellant.

Iswar Bhai C. Patel v. *Harihar Behera,* AIR 1999 SC 1341 : (1999) 3 SCC 457.

Section 114—Presumption of execution of Will.

The Supreme Court observed that only when the execution of a Will is denied by a party, then the burden is on the party who relies

upon the Will to prove the execution of the same. When execution is not denied it is unnecessary to compel the person who relies upon the document to let in evidence to establish the execution, since admitted facts need not to be proved. The Supreme Court held that when the plaintiffs pleaded that the Will has been executed by fraud and undue influence it is the duty of the plaintiffs to establish the same. In the absence of any evidence to support the plea of the plaintiffs it has to be held that the Will executed in favour of defendant No. 3 and 4 is valid.

S. Kaliyammal v. *K. Palaniammal,* AIR 1999 Madras 40.

Section 114 (e)—Search and seizure.

The Supreme Court observed that sub-section (3) of Section 166 of the Code of Criminal Procedure provides that whenever there is reason to believe that by requiring a officer incharge of another police station to cause a search to be made under sub-section (1) of that section might occasion delay and result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for the investigating officer or team making investigation under Chapter XII to search or cause to search any place in the limits of another police station in accordance with the provisions of Section 165, Cr. P.C. as if such a place were within the limits of his own police station. Sub-section (4) requires that after conducting the search as contemplated under sub-section (3), the officer shall forthwith send a notice to the officer in charge of the police station within the limits of such place and a copy of the search, if any, prepared under Section 100 to that police station and to the nearest magistrate empowered to take cognizance of the offence along with the copies of the record referred to in sub-section (1) and (3) of Section 165. The investigation officer stated that he wrote two letters to the police station in which the articles were seized, but no copies were produced. The court held that the witness had stated that he has sent the letter to the police station concerned, therefore, the presumption under illustration (e) of Section 114 of Evidence Act would arise and the official acts would be deemed to have been performed regularly. There is thus non-compliance of the aforementioned provisions of the Code of Criminal Procedure.

Ronny alias *Ronald James Alwaries* v. *State of Maharashtra,* (1998) 3 SCC 625 : AIR 1998 SC 1251.

Sections 114 (b) and 133—Uncorroborated testimony.

The Supreme Court observed that the testimony of an accomplice is, no doubt, a stigmatised evidence in criminal proceedings. It is on account of the inherent weakness which such evidence is endowed with that the illustration (b) to Section 114 of the Evidence Act suggests that it is open to the court to presume that the uncorroborated testimony of an accomplice is unworthy of credit. But the

legislature had advisedly refrained from including the said category of evidence within the ambit of legal presumptions but retained it only within the area of factual presumptions by using the expression "the court may presume". In order to make the position clear the same enactment has incorporated Section 133 saying that it is not illegal to convict. The *reason d'etre* for such legislative marshalling is to enable the court to have its freedom to act on the evidence of an accomplice in appropriate cases, even without corroboration if the court feels that a particular accomplice evidence is worthy of credence. Thus the law is not that the evidence of an accomplice deserves outright rejection if there is no corroboration. What is required is to adopt great circum-spection and care when dealing with the evidence of an accomplice. Though there is no legal necessary to seek corroboration of accomplice's evidence it is desirable that the court seeks reassuring circumstances to satisfy the judicial conscience that the evidence is true.

State of T.N. v. *Suresh,* (1998) 2 SCC 372 : AIR 1998 SC 1044; *Dagdu* v. *State of Maharashtra,* (1977) 3 SCC 68 : 1977 SCC (Cri.) 421; *Rameshwar* v. *State of Rajasthan,* AIR 1952 SC 54 : 1952 Cri LJ 547 relied upon.

Section 114—Presumption of performance of official acts.

The Supreme Court observed that in the light of Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985 no accused can be released on bail when the application is opposed by the Public Prosecutor unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52 and 57 of the 1985 Act have been prejudged by the Single Judge at the stage of consideration of bail. The Judge should have taken into account factual presumption of law position that the official acts have to be performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the Judge during bail stage regarding compliance with the formalities mentioned in these two sections.

Supdt., Narcotics Control Bureau v. *R. Paulsamy,* (2000) 9 SCC 549.

Section 114—Presumption of receipt of letter.

The Supreme Court observed that where a post card is received through post office, presumption that it is written by purported sender would not arise in law. On the other hand when a letter is posted and sent through post the presumption is that if it is correctly addressed it reached the addressee. Beyond this no presumption in the eye of the law could be drawn regarding correctness and genuineness of the

contents of the letter which have to be proved by a person relying upon it by cogent and direct evidence.

Ashok Kumar Uttamchand Shah v. *Patel Mohammad Aswal Chanchad,* AIR 1999 Guj. 108.

Sections 114 and 111 (e)—Karnataka Law Reforms Act, 1961, Sections 45, 48 and 48-A—Presumption of entries in Records of Rights.

The Supreme Court observed that the presumption arising under Section 133 of the Karnataka Land Revenue Act, 1964 in respect of entries made in the Records of Rights stood displaced by the finding of fact recorded that the appellants were cultivating the same. In the face of such an admission made by the respondents it is difficult to accept the finding recorded by the appellate authority as affirmed by the High Court that in view of the entries made in the Record of Rights the appellants could not be stated to be in possession of the land on the relevant date nor were they cultivating the same.

Mohan Balaku Patel v. *Krishnoji Bhaurao Hundre,* (2000) 1 SCC 518 : AIR 1999 SC 1114.

Sections 114 and 103—Presumption of possession of narcotic drug or psychotropic substance.

The Supreme Court observed that there is no evidence that anybody had seen that any one of the accused was dealing with narcotic drugs. There is also no evidence to show that any one of them had admitted either through a confession or otherwise of any incriminating role. Nor is there evidence that the accused persons who were found sitting in the room had possession of the room, actual or constructive. The room was in possession of a person who is not an accused and he was not examined as a prosecution witness to disclose as to how the accused persons happened to be in the room. The Supreme Court added that there is no statutory provision for drawing any presumption that a person who was present at any particular place shall be presumed to be in possession of narcotic or psychotropic substance. No presumption under law can be drawn even under Section 114 of the Evidence Act merely because these persons were present when prosecution witness No. 7 went there. The Supreme Court held that in the light of the aforesaid imponderables it is difficult to sustain the conviction as against any one of the appellants.

Ismailkhan Aiyubkhan Pathan v. *State of Gujarat,* (2000) 10 SCC 257.

Sections 114 and 111 (g)—Adverse inference.

The Supreme Court observed that it is found that the conclusions reached by the High Court on re-appreciation of evidence are not perverse but supported by evidence. Interference under Article 136 of

the Constitution would not be justified. On carefully reading the impugned judgment and the evidence it is not possible to hold that the orders of the High Court are perverse. The court added that the best evidence that could have been made available by the first petitioner who was in know of vital things, since deceased was not forthcoming on a lame excuse. The High Court was therefore, right in taking adverse inference on vital aspects. The Supreme Court held that the institution in question falls within the definition of temple and the High Court was right in holding that the institution was a public temple within the meaning of the Orissa Hindu Religious Endowments Act, 1951.

Maruа Dei v. *Murlidhar Nanda,* (1999) 1 SCC 377 : AIR 1999 SC 329.

Sections 114 and 45—Examination of the doctor.

In a case the doctor who conducted post-mortem examination on the dead body was not put in the witness box. No reason was seen noted by the trial court or the High Court for non-examination of the doctor who conducted the autopsy. The Supreme Court held that in view of the admission of the accused that the death of the deceased was a case of homicide such a lapse was not fatal to the prosecution case.

State of U.P. v. *Lakhmi,* (1998) 4 SCC 336.

Section 114 (a)—Presumption under.

The Supreme Court observed that the recovery of articles belonging to the family of the deceased from the possession of the appellants soon after the robbery and murder which possession remained unexplained by the appellants, the presumption under illustration (a) of Section 114, Evidence Act will be attracted. It needs no discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would, therefore, be that the appellants and no one else had committed the three murders and robbery.

Ronny alias *Ronald James Alwares* v. *State of Maharashtra,* (1998) 3 SCC 625 : AIR 1998 1251.

Baiju v. *State of M.P.,* (1978) 1 SCC 588 : 1978 SCC (Cri) 142; *Gulab Chand* v. *State of M.P.,* (1995) 3 SCC 574 : 1995 SCC (Cri) 552 : AIR 1995 SC 1598 relied on.

Union Territory of Goa v. *Beaventura D'Souza,* 1993 Supp (3) SCC 305 : 1993 SCC (Cri) 999 : AIR 1993 SC 1199 distinguished.

Section 115—Doctrine of promissory estoppel.

Discussing the applicability of the doctrine of promissory estoppel, the Rajasthan High Court observed that the preponderance of the

decisions rendered by the Apex Court is that the doctrine of promissory estoppel is meant to keep the scale of justice even by courts of law and to do effective and complete justice between parties mitigating the rigour of strict law.

The role of promissory estoppel being an equitable doctrine evolved by courts of law therefore it can be moulded by courts making it suitable to the facts and circumstances of each case. In those cases where the court is objectively satisfied that equity demands that the promissor can be allowed to resile from his/its promise or representation and the promise can be adequately compensated in such cases, ordinarily, the court can decline to extend the applicability of doctrine of promissory estoppel looking into public interest whereas on the other hand if it is objectively satisfied that cannot be made possible to relegate the promisee to his original position *ante* then the promise so made should be declared final and irrevocable ignoring the plea of executive necessity of State. In the instant case after the allotment of a plot was communicated by the Municipal Board to the petitioner who deposited large sums of money with the Board and spent a lot of money in obtaining electricity and water connections. The construction on the plot was made by the petitioner as per sanctioned plan of the Board. The refusal thereafter by the Board equitable principles of promissory estoppel and legitimate expectation require that the Board be directed to execute registered lease in favour of the petitioner.

Kalu Chand v. *State of Rajasthan,* AIR 1998 Raj 33.

The petitioner made an application for allotment of land to a proposed housing society in 1982 when the Resolution of 1970 permitting allotment of land for considering individual application instead of having recourse to public auction offering an opportunity to public at large was in force. No decision was taken on the application until 1991 as the society for which allotment was sought was not registered. During pendency of application in 1991 the policy of the State in the procedure of allotment was changed and Government decided to allot plot by public auction only in larger public interest. The Gujarat High Court observed that acknowledgment of receipt of application along with earnest money in any circumstances cannot be considered to be any promise or such assurance of the respondents. Apart from that the Resolution of 1970 did not contain any such promise nor any such assurance came into existence by any action of the competent authority in exercise of power under Rules, promissory estoppel does not enure beyond the life of the Resolution of 1970 itself. Once no action was taken under the 1970 Resolution on replacement of new process of allotment of Resolution dated 21.11.1991, it cannot be said that the petitioner could still hold authorities bound to consider his application under a Resolution which is no more in existence.

Becharbhai V. Patel v. *State of Gujarat,* AIR 1998 Guj 1.

In an agreement between the parties the lessee agreed to take on lease, the plinths to be constructed by the owners of the land on their land for a period of three years. The Madhya Pradesh High Court observed that in the circumstances of the case on the doctrine of promissory estoppel the Food Corporation of India was bound to discharge its obligations arising out of the contract. The Food Corporation being a statutory body cannot be allowed to resile from its promise so as to cause harm or injury to the respondent as there is no inequitability or equity in favour of the Food Corporation of India. The contract also is not opposed to public policy under Section 23 of the Contract Act or prohibited by any statutory provision of law or *ultra vires* the authority. The case is also not such that public interest would suffer. On the other hand Food Corporation of India decided to continue the plinths but on reduction of hiring charges by five percent to be equitable with the plinths owners. The court added that the lessees cannot back out from promise and terminate lease before expiry of three years on technical plea that agreement was not registered tenancy from month to month which could be terminated under Section 106 of Transfer of Property Act.

Food Corporation of India, Bhopal v. *Babulal Agarwal, Bhopal,* AIR 1998 MP 23.

The Patna High Court observed that the appellant has not questioned the payment of the additional compensation and interest before the Tribunal when the matter was heard on reference. It is, therefore, evident that since the very beginning, the competent authority and the appellant were aware about the letter of the Central Government and accepting the said decision, they calculated the additional compensation and interest and in fact the same have been paid to some of the claimants. Now the appellant cannot be allowed to turn back and say that, the same is not payable for the reason that the payment of such amount is not proved under the Coal Bearing Areas (Acquisition and Development) Act, 1957.

Union of India v. *Kashinath Mahto,* AIR 1998 Pat 100; *State of Tamil Nadu* v. *K. Sabanayagam,* AIR 1998 SC 344 Foll.

The Central Government and the State Government together had promised to grant subsidy to the extent of 25% (15% + 10%) on investment of goods carriage. In pursuance of that Scheme the petitioner purchased the good carriage in January, 1988 when the Scheme was in force. But the concession was withdrawn in September, 1988. Therefore, the denial of subsidy to the petitioner on the investment prior to September, 1988 is illegal and unjust and promissory estoppel would apply to the facts of the case.

Arya Durga Industries v. *General Manager, District Industries Centre, Kasaragod,* AIR 1998 Ker 311; AIR 1993 Del 321 and AIR 1991 Kant 52, Foll.

A piece of land was converted from agricultural area to industrial area by government with a view to its allotment to a company for its expansion. After the company was induced to make part payment towards sale price the government issued notice for taking coercive action against the company for encroachment over the land. The Rajasthan High Court observed that the principle of promissory estoppel is equally attracted to the government and its instrumentalities who are no longer immune from its applicability and the State agencies have to work within the frame work of the legal system. As a matter of fact estoppel can be invoked to hold the government and its instrumentalities bound by its promise and agreements whether they be of executive or administrative character. The rights and interests of a private party have to be equally protected by courts of law if they have suffered or sustained any injury or loss as a result of the dealings. This will not only ensure fairness in administrative actions of the functionaries in public offices as regards their dealings with the people at large but will also repose confidence in them that they are quite safe and will not be subjected to any kind of exploitation. The court held that the government cannot go back from its promise and consequently notice by government for taking coercive action against company for its alleged encroachment over land in question was illegal.

National Engineering Industries Ltd., Jaipur v. *State of Rajasthan,* AIR 1998 Raj 229.

The Gujarat High Court observed that the principle of promissory estoppel is applicable to administrative law and not between the private parties.

Hamir Ram v. *Varising Raimal,* AIR 1998 Guj 165.

The Karnataka High Court observed that it is not in dispute that the petitioner had secured less than 40% marks in aggregate in his qualifying examination for admission to B.E. Degree course. The court added that the contention that the principle of promissory estoppel is applicable has no substance whatsoever for the reason that the principle cannot be applied against a statute. As noticed above, proviso to Rule 3, Admission to Engineering, Medical, Dental Pharmacy and Nursing Courses Rules, 1993 is a statutory rule whereunder no student can be admitted to B.E. Degree course unless he or she has obtained 40% marks in the qualifying examination for admission granted by the college authorities to prosecute their studies cannot operate as estoppel, the same being contrary to the statutory rule. Even otherwise the admission made by the College authorities is only provisional subject to the approval of the University authorities. Since the admission itself was contrary to the proviso of Rule 3 of the Rules,

the University is justified in disapproving the admission of the petitioner.

K. Shashidrara v. *Ambedkar Institute of Technology, Bangalore,* AIR 1998 Kant 294.

The Supreme Court observed that even though the case would not fall within the terms of Section 115 of the Evidence Act which enacts the rule of estoppel, it would still be open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution of India. The court added that the decisions in *Century Spg. and Manufacturing Co. Ltd.* v. *Ulhasnagar, Municipal Council,* (1970) 1 SCC 582 : AIR 1971 SC 1021 and *Radhakrishna Agarwal* v. *State of Bihar,* (1977) 3 SCC 457 : AIR 1977 SC 1946, are to the same effect.

Dr. Ashok Kumar Maheshwari v. *State of U.P.,* (1998) 2 SCC 502 : AIR 1998 SC 966; *Union of India* v. *Anglo Afghan Agencies,* AIR 1968 SC 718 : (1968) 2 SCR 366; *Century Spg. and Manufacturing Co. Ltd.* v. *Ulhasnagar, Municipal Council,* (1970) 1 SCC 582 : AIR 1971 SC 1021, and *Radhakrishna Agarwal* v. *State of Bihar,* (1977) 3 SCC 457 : AIR 1977 SC 1496, relied on.

Section 115—Promissory estoppel against Government.

The Rajasthan High Court observed that for applicability of promissory estoppel against Government it must be established—

(i) that there was a definite representation by the Government,

(ii) that the person to whom the representation or promise was made in fact altered their position by acting upon such representation or promise, and

(iii) that they suffered some prejudice sufficient to constitute an estoppel.

The advertisement, in the instant case, showed that 40% marks will be the minimum qualification and this could not be said to be a promise made to any person either to permit him to appear in the examination on the same criteria or for admission to the course. It does not mean that the criteria cannot be changed. The criteria laid down in the advertisement does not create any right in the petitioners to appear in the examination on that criteria alone and none else. There is no question of petitioners altering their position on the basis of the advertisement. This apart, none can be compelled to act against the statute, the Government or the public authority cannot be compelled to make a provision which is contrary to law. Thus the

norm and standards having been laid down by the National Council for Teachers Education fixing 45% aggregate marks essential, as admission criteria, the fixation of lower aggregate marks criteria would be contrary to law, beyond the competence and would be outside the authority or power of the University.

Anop Singh Ratnu v. *Maharishi Dayanand Saraswati University, Ajmer,* AIR 1998 Raj 54.

Section 115—Estoppel on facts and not on law.

The Supreme Court observed that on factual aspects if a consistent stand is taken by the Housing Board to the effect that it is governed by the Payment of Bonus Act, implicit in the stand is the admission on facts that statutory exemption under Section 32 (v) (c) of the Act factually is not earned by the Board when on facts the Housing Board has not thought it fit to raise such a factual dispute or contention for the relevant accounting years its stand admitting the non-existence of the relevant date for invoking Section 32 (v) (c) of the Act must be held binding to the Housing Board. It is obvious that facts which are admitted need not be proved. The Housing Board itself by its conduct admitted non-existence of the relevant factual data for invoking the powers under Section 32 (v) (c) of the Act. Therefore, it can certainly be held to be bound by its admissions on these facts and it can at least to the lowest be said to have waived its contention in this connection for the relevant accounting years. It would amount to estoppel on facts and not on law and would also certainly amount to conscious giving up of its claim for statutory exemption under the said provision.

State of Tamil Nadu v. *K. Sabanayagam,* AIR 1998 SC 344.

The Madras High Court held that candidates applying for admission to a particular course in terms of the prospectus are not estopped from challenging particular clause of the prospectus later on. The court added that the Supreme Court had held in *Mohini Jain* v. *State of Karnataka,* AIR 1992 SC 1858, that "right to education is concommitant to the fundamental rights enshrined under Part III of the Constitution and that the State is under constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The court also added that considering the judgment of the Supreme Court, the Division Bench of this court has held in W.P. Nos. 10756, 10755 etc. of 1992 dated 16.12.1992 that the theory that once the petitioner having accepted the conditions in the prospectus cannot challenge the prospectus as no longer good law.

V. Ramalakshmi v. *Director of Medical Education,* AIR 1998 Mad 55.

Section 115—Estoppel by conduct.

The Supreme Court observed that a bare perusal would go to show that the issue of an estoppel by conduct can only be said to be available

in the event of there being a precise and unambiguous representation and on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status. The Court added that the contextual facts, however, depict otherwise. The factual score depicts recording of an undertaking to repay excess payments and on the wake of the findings as noticed it would neither he fair nor reasonable or in consonance with the concept of justice, equity and good conscience directing entitlement of the appellant as is being claimed. The correspondence unmistakably divulge an obligation to pay certain compensation in the event there is a payment of certain levy by the appellant. The appellant admittedly has not made the payment. Doctrine of unreasonableness is opposed to doctrine of fairness and reasonableness will have its play. The happening of the event has not taken place, can it be said irrespective of such an event reimbursement is to be allowed. The Supreme Court held that the answer cannot but be in the negative.

Tata Iron and Steel Co. Ltd. v. *Union of India,* AIR 2000 SC 3706.

Section 115—Plea of promissory estoppel.

The Supreme Court observed that the only question for decision before the High Court was the availability of the plea of promissory estoppel to a party against issue of a notification in exercise of statutory powers superseding the exemption from duty or tax granted earlier for a specified period. The single Judge held against the assessee but the Division Bench of the High Court decided in assessee's favour. The Supreme Court added that the point is now settled by the decision of this court in *Kasinka Trading* v. *Union of India,* (1995) 1 SCC 274 wherein such a plea of the assessee was rejected. The Supreme Court set aside the judgment of the Division Bench of the High Court.

Union of India v. *M/s. Godhawani Brothers,* AIR 1999 SC 1604.

Section 115—Grant-in-aid to educational institutions.

A State Government exempted persons who have undergone sterilisation operation from payment of tuition fees for Medical and Engineering courses. By a subsequent clarification the concession was made non-applicable to unaided courses in private colleges and institutions. The Supreme Court observed that there will be difficulty in extending exemption to unaided courses in private colleges/ institutions for the reason that if Government is not to meet the teaching expenses in part-time courses and if the college is not to collect the tuition fees, the college will have to bear the financial burden without the corresponding right to collect fee from the students to meet its legitimate expenses for these part time courses. There is also no material to show that before such an administrative order was

issued the private colleges/institutions agreed to bear the expenditure themselves even if grant-in-aid was not extended to these part time courses. The Court held that the Government was justified in making the clarification which represents a reasonable stand It was contended that if there was no grant-in-aid the State must be directed to pay the tuition fee in respect of such individual candidate who had undergone sterilisation though the part-time course was not aided. The Supreme Court held that it is not possible to issue any such direction in this writ petition. Grant-in-aid either for the institution or for the School or for individuals is a matter of policy.

Principal, Madhan Institute of Technology and Science v. *Rajendra Singh Yadav,* AIR 2000 SC 2487 : (2000) 6 SCC 608 : (2000) 5 SLR 192.

Section 115—East Punjab Urban Rent Restriction Act, 1949, Section 15—High Court's order based on agreement of the parties.

The Supreme Court observed that the order dated 1.5.1997 which was passed by the High Court on agreement of the parties stood exhausted when the parties appeared before the Rent Controller and the Rent Controller decided the matter and thereafter there remained nothing to be challenged. If the appellants wanted they could have promptly challenged the order dated 1.5.1997 passed by the High Court and obtained stay of remand order. The appellants having chosen not to do so, it is too late in the day to challenge the order dated 1.5.1997 passed by the High Court based on agreement of the parties.

P.K. Vasudeva v. *Zenobia Bhanot,* AIR 1999 SC 3222 : (1999) 7 SCC 377.

Section 115—Maharashtra Housing and Area Development Act, 1977, Section 66—Regularisation of tenancy and eviction.

The Supreme Court observed that in the present case, at the time of allotment, the appellant submitted Form 'C' to the Board wherein he specifically indicated that his brother, namely the respondent, along with his wife would be occupying the premises. The Board accepted the said Form 'C' and allotted the premises to the appellant. The Board after having permitted the appellant's brother to reside in the premises it was not open to it to terminate the tenancy of the appellant on the ground that he has sublet the premises to his brother. The Supreme Court held that the ground on which appellants eviction was ordered was illegal. Since there was no vacancy there was no question of regularisation of tenancy in favour of the respondent and consequently the order passed by the competent Authority regularising the tenancy in favour of the respondent was also illegal and void.

Dattaram S. Vichare v. *Thukaram S. Vichare,* AIR 2000 SC 103 : (1999) 6 SCC 764; W.P. No. 123 of 1989, dated 3.12.1990 (Bombay) Reversed.

Section 115—Estoppel against the Mahapalika.

The Supreme Court observed that the action of the Mahapalika in agreeing to the construction of underground shopping complex in contravention of the provisions of Section 114 of the U.P. Municipal Corporation Adhiniyam, 1959 and then entering into an agreement with the builder against settled norms was wholly illegal and has been held to be so by the High Court. No doubt Mahapalika is a continuing (constituted) body and it will be estopped from changing its stand in a given case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. The Court held that there cannot be any estoppel operating against the Mahapalika.

M.I. Builders Pvt. Ltd. v. *Radhey Shyam Sahu,* AIR 1999 SC 2468 : (1999) 6 SCC 464.

Section 115—Constitution of India, Art. 226—Concession on point of law—Binding nature of.

The Supreme Court observed that the entire question whether the claim for refund was justified in law or not and the further connected question whether the amounts deposited were towards 'basic wages or otherwise were open for consideration of authorities. It cannot be said that such an inquiry was not open to the authorities and was clearly shut out by the order of the High Court in earlier writ petitions recording the concession of the Advocate General. The Supreme Court held that the Advocate General's concession was on a question of law and such concession on question of law cannot bind the authorities for all time to come.

The Daily Partap v. *The Regional Provident Fund Commissioner, Chandigarh,* AIR 1999 SC 2015.

Section 115—Withdrawal of benefit scheme prospectively in public interest.

In a case the respondents held the State to the promise made by it in the form of an incentive scheme made available for a specified period. The Supreme Court held that public interest requires that the State be held by it in such a situation. But this does not preclude the State from withdrawing the benefit prospectively even during the period of the scheme, if public interest so requires. Even in a case where a party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel.

State of Rajasthan v. *Mahaveer Oil Industries,* AIR 1999 SC 2302.

Section 115—Estimated value of property and reserve price.

In a case the estimated value of property given by the decree-holder in the sale-proclamation was suggested by the decree-holder to be fixed as reserve price. No written objection was filed by the judgment-debtor even though the reserve price so fixed was less than the amount due under the decree. The court observed that an inference that the judgment debtor have waived all their objections to the amount suggested by the decree-holder or that they have consented for fixing the amount suggested by the decree-holder as reserve price of the properties cannot be drawn especially in the light of the detailed objections filed by the judgment-debtor regarding the particular value shown by the decree-holder in the unamended proclamation and the wide disparity in value shown by the decree-holder and judgment-debtor proclamation.

Anto Nitto v. *South Indian Bank Ltd.*, AIR 1998 Ker 219.

Section 115—Estoppel and equity.

A candidate secured admission in a teachers training school on payment of capitation fee though he was not eligible for admission. He completed two years course but his result was withheld on grounds of ineligibility. The Madras High Court observed that it is now well settled that the ground of estoppel and equity cannot be called in assistance by a candidate to maintain his admission—

(i) where the admission has been obtained by the candidate by fraud or misrepresentation of material facts; and

(ii) where the candidate is ineligible for admission and there is a statutory bar against admitting ineligible candidates.

In such cases, pursuing the course for a few months will not create any right in favour of the student to claim immunity from cancellation of admission. The court held that the contention on the ground of estoppel cannot be sustained.

M.K. Sankaran v. *Govt. of Tamil Nadu*, AIR 1998 Mad 332.

Section 115—Arbitration Act, 1940, Section 28 And Sch. 1, Para 3—Principle of approbate and reprobate.

The Supreme Court observed that the Court has the power to extend time which is available under Section 28 of the Arbitration Act as well as Schedule 1, Paragraph 3 of the Act but the Court must decide such question judicially after ascertaining the factual position. In the present case the parties have participated in arbitration proceedings before the expiry of time and after expiry of time on the basis of time extended at the instance of one of the parties. The party in one hand volunteered before the Arbitrator for extending the time and has opposed to extension of time and thus has taken the plea

reverse to such stand now before the court to frustrate the award. Such an act the Supreme Court held is hit by the principle of approbate and reprobate. The Court added that in premises the conduct of the arbitrator may be construed as irregular but not as illegal. The irregularity may be condoned but illegality is not. The Supreme Court did not hold the award to be illegal observing that defect, if any was condoned.

Food Corporation of India v. *Kumar Dutta,* AIR 1999 Calcutta 75.

Section 115—Sale of Goods Act, 1930, Sections 18, 19 and 20—Benefit of doctrine of estoppel.

The Supreme Court observed that in the present case it is found with no amount of uncertainty that the title of the timber in question had not been transferred in favour of the petitioner as the timber had remained unascertained and not in a deliverable state. As per the existing condition of sanction order the timber could be ascertained on the availability of stocks as well as delivery could also be made at that time on these facts the contract had yet not been concluded. The Supreme Court held that the present case is governed by Sections 18, 19 and 20 of the Sale of Goods Act and the petitioner cannot claim the benefit of doctrine of estoppel. It is left to the judicial discretion of the respondents to supply the timber to the petitioner at a rate which is lawfully chargeable.

Ghulam Mohammad Wani v. *State of J & K,* AIR 1999 Jammu and Kashmir 74.

Section 115—Registration Act, 1908, Sections 49, 17 (1) (b)—Family arrangement—Registration of.

The Supreme Court observed that the law, however, is clear and well settled that the family arrangement may be even oral and in that case no registration is necessary. However registration would be necessary, only if the terms of the family arrangements are reduced into writing. In the present case the document disclosed that there has been a partition by metes and bounds between the plaintiff and the defendant and that a map drawn to scale is a part of the document. The two portions of the plaintiff and the defendant have been shown in different colours. The court added that it cannot be said that the document is a mere memorandum of family arrangement which has already been effected and has been recorded only for the purpose of remembrance or for record. The Supreme Court held the deed of family arrangement was rightly held to be inadmissible in evidence as the same was hit by Section 35 of the Stamp Act and Section 17 (1) (b) of the Registration Act and the lower appellate court was right in allowing the appeal and that the second appeal lacks merit and is dismissed.

Bankey Bihari v. *Surya Narain,* AIR 1999 Allahabad 167.

Section 115—Principle of promissory/equitable estoppel.

The Supreme Court observed that the courts below have failed to notice the legal principle that there is no estoppel against law. The allotment of plots by the Trust is controlled by the statutory rules and any allotment contrary to these rules will be against the law. Since the allotments made in favour of some of the respondents was based on wrong application of the reservation made for 'local displaced persons' those allotments were contrary to law. The Court held that the principle of promissory/equitable estoppel cannot be invoked to protect such illegal allotments. The Supreme Court did not sustain the judgments and decrees impugned in the appeal.

Jalandhar Improvement Trust v. *Sampuran Singh*, AIR 1999 SC 1347 : (1999) 3 SCC 494.

Section 115—Principle of legitimate expectation and contractual relationship.

A letter of the Prasar Bharti stated that the serial was re-scheduled, that the serial was approved for 52 episodes and no request for further extension of the number of episodes would be entertained. The applicant, the Supreme Court observed, cannot compel the authorities to alter the terms of the said letter on the basis of 'revised policy' brought out by Prasar Bharti when the parties acted upon it because the letter served as an agreement between parties. The agreement was entered into after the formulation of the 'Revised Policy'. The Supreme Court added that the principle of legitimate expectation also cannot be invoked to vary or modify the express terms of agreement between the parties. The Supreme Court held that neither the rule of promissory estoppel nor the doctrine of legitimate expectation can be applied to amend, alter or vary the express terms of the contract between the parties as these doctrines/principle have no play where the parties are governed by contractual relationship as to their rights and obligations.

A.A.A. Film Motion Pictures Producers v. *Union of India*, AIR 1999 Delhi 178.

Section 115—Estoppel against law.

The impugned notification clearly shows that maximum gross vehicle weight and maximum safe axle weight of each of such vehicles are to be the maximum load permitted to be carried by the tyres as specified in Rule 95 of Central Motor Vehicle Rules, 1989. The impugned notification is in conformity with the provisions of Section 58 (1) of the Motor Vehicle Act, 1988. Every time a notification is issued by the Central Government specifying the maximum safe weight, the certificate of registration of the vehicle has to be altered with a entry showing the revised maximum safe weight. Section 58

(3) of the Motor Vehicle Act provides that the registering authority may require the owner of the transport vehicle to produce the certificate of registration. The Supreme Court observed that the plea that since the petitioners have paid road tax and surcharge as per the maximum gross vehicle weight as registered in their certificates of registration which was higher than the maximum gross weight in the impugned notification the authorities are estopped from altering the certificates of registration and permitting the petitioners for carrying load as specified in their registration certificates for the period for which higher tax has been paid is misconceived. It is a settled position of law that there is no estoppel against law. The impugned notification has been issued in accordance with law. The Supreme Court held that the petitioners cannot raise the plea of estoppel against such law on the basis of higher tax that they have paid even for the period prior to 18.10.1996, the date of issue of the impugned notification. The Court added that it is open to the petitioner to claim refund of such higher tax and surcharge.

Shiv Kumar Pandit v. *State of Assam,* AIR 1999 Gauhati, 68.

Section 115—Mines and Minerals (Regulation and Development) Act, 1957, Section 8 (3).

The Supreme Court observed that M/s. Ferro Alloys Corporation Ltd. (FACOR) was already a party respondent before this court which took up for consideration on the date the question whether the Shamra Committee Report is accepted by the Central Government by its order was correct or not. The stand adopted by the appellant (FACOR) assumes importance. It discretely kept silent and invited this Court to accept the said decision of the Central Government as a whole. That is to say by 5th October, 1995 (the date on which the Supreme Court took up the consideration of the report), FACOR as a respondent in the proceedings before this Court deliberately did not choose to challenge the said order on any permissible ground if it was aggrieved by the lower assessment of its needs by the Committee as accepted by Central Government. On the contrary its stand before this court on that date was of necessity one of getting the said order wholly upheld. The Supreme Court added that FACOR cannot blow hot and cold in this connection. It cannot now submit to this court differently from what it submitted in the past when this court decided TISCO's case (1996 AIR SCW 3031) and get the assessment of its needs approved by this Court and it cannot turn around and say that this court should not have accepted the said assessment.

Ferro Alloys Corporation Ltd. v. *Union of India,* AIR 1999 SC 1236 : (1999) 4 SCC 149.

Section 115—Levy of composite fee.

The Supreme Court observed that keeping in view the objective of promoting tourism and the fact that the tourist operators constitute

a separate and special class, a conscious decision to levy a composite fee of Rs. 12,000 per quarter per State from tourist operator was taken and it was on the faith of this decision that the tourist-operators undertook the work of transporting tourists by spending substantial amounts of money on expensive vehicles, the authorities shall be estopped from levying anything beyond the composite fee as provided for in Ministry of Surface Transport's letter dated August 30, 1993. The composite fee is required to be paid in each State. The Supreme Court added that if the transporter was obliged to pay all taxes as levied by each State there would be no necessity to burden him with extra fee of Rs. 12,000 per quarter.

M/s. Indo Canadian Transport Co. v. *Union of India,* AIR 1999 P&H 130.

Section 115—Appointment on retainership basis.

In a case a person was appointed as advisor to plaintiff company on retainership. The appointee admitted that the understanding arrived at in the company's letter was final settlement between himself and the company. The Supreme Court observed that it is too late in the day for defendant to contend that the letter appointing him as adviser was not issued under the authority of the plaintiff's companies or that on that count to contend that the negative covenant in Clause 4 cannot be binding and not enforceable against defendants. The Supreme Court held that for the same reason the said finding of the trial court cannot be sustained.

M/s. Sociedade de Foments Industrial Ltd. v. *Ravindarnath Subraya Kamat,* AIR 1999 Bombay 158 (Panaji Bench) (Goa).

Section 115—Commencement of lease.

The Supreme Court observed that the plea that possession of sites cannot be treated to have been legally transferred until all amenities are made available is not tenable. The statute does not cast duty on the respondents to undertake development so as to provide all amenities specified in Section 2 (b) of the Capital of Punjab (Development and Regulation) Act, 1952before transferring land/sites. In view of the express provisions contained in Rule 6 of Chandigarh Leasehold of Sites and Building Rules, 1973 the lease of the site will be deemed to have commenced from the date of auction and the petitioners were duty bound to pay the instalments of premium and ground rent. The petitioners have not challenged the general terms and conditions of auction and letter of allotment and, therefore they are estopped from challenging the proceedings initiated for recovery of amount of premium and ground rent.

Sukhpal Singh Kang v. *Chandigarh Administration,* AIR 1999 Punjab and Haryana 156.

Section 115—Approbation and reapprobation.

The Supreme Court observed that the principle forbidding simultaneous approbation and reapprobation is an equitable principle and so are the principles relating to estoppel. It is not a true view of the law that if one party does something under a dictate of an order or a decree, and other party receives something thereby and the parties are parties to the litigation in question, then in every such case, the order or decree becomes unchallengeable by the recipient party. The nature of receipt has to be examined in the facts and circumstances of each different case and then only the rules of good conscience must be applied. In the present case the debtor company itself admits in its letter of the presence of principle dues of 335 lakhs. Restitution by way of a separate or consequential order would look and be unjust and improper because it would be ordering the bank to give back the money to an admittedly large debtor when these matters must and should be dealt with by the court as and when the suit is heard.

United Bank of India v. *Abhijit Tea Co. (Pvt.) Ltd.*, AIR 1999 Calcutta 81.

Section 115—Plea of estoppel by conduct.

The Supreme Court observed that the plea of an estoppel by conduct can only be said to be available in the event of their being a precise and unambiguous representation and on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status. The contextual facts however, depict otherwise. Annexure 2 to the application form for benefit of price protection contains an undertaking to refund money paid in case any declaration or certificate furnished by the claimant is found to be incorrect or any excess payment is found to have been made. The Supreme Court added that in the event of there being a specific undertaking to refund for any amount erroneously paid or paid in excess question of there being any estoppel would not arise.

Tata Iron and Steel Co. Ltd. v. *Union of India*, (2001) 2 SCC 41.

Section 115—Participation and acquiescence in arbitration proceedings.

The Supreme Court observed that it is clear from the proceedings before the arbitrator that the respondents did not raise any objection before the arbitrator about the proceedings without jurisdiction or the arbitrator having no authority to take upon disputes which had been referred to him. The respondents participated in the proceedings without any protest and therefore by participation and acquiescence in the proceedings before the arbitrator the respondents are estopped

from challenging the jurisdiction of the arbitrator on the ground that the matter could not be referred to the arbitrator and the award of the arbitrator cannot be allowed to be challenged on this ground.

Vaish Brothers & Co. v. *Union of India,* AIR 1999 Delhi 105.

Section 115—Estoppel and Land Acquisition Act, 1894.

The Supreme Court observed that having regard to the principles in Section 115 of the Evidence Act, a question of estoppel *prima facie* arises in favour of the applicant. The applicants case for release under Section 48 of Land Acquisition Act, 1894 should be sympathetically considered in the light of the various factors mentioned in the concessions of the Solicitor General in the case. As to the extent of land that can be released under Section 48 in addition to the building has to be left to the reasonable discretion of the Competent Authority.

Delhi Administration v. *Gurdip Singh Uban,* (2000) 7 SCC 296 : AIR 2000 SC 3737.

Section 115—Parol evidence.

It was pleaded before the Supreme Court that Ext. A-1 in fact is not a settlement deed is a Will and, therefore parol evidence is admissible to substantive the subsequent oral arrange-ment. This controversy also arose before the trial court where the parties had agreed that the disputed document was a settlement deed and not a Will and the Court proceeded on that basis. The Supreme Court held that the defendant-appellant could not plead before the Supreme Court that the document was a Will as any stand contrary to position taken before the trial Court cannot be permitted.

S. Saktivel v. *M. Venugopal Pillai,* (2000) 7 SCC 104 : AIR 2000 SC 2633.

Section 115—Estoppel.

In a case the acquisition proceedings/notification were quashed by the High Court as a consequence of which the respondent was directed by the Delhi Development Authority to approach M.C.D. for approval of the building plan and for getting a no objection certificate for construction on that land. The respondent after completion of formalities constructed a house. The acquisition proceedings were upheld by the Supreme Court. The respondent filed an application for release of part of land. The Supreme Court observed that having regard to the principles in Section 115 of the Evidence Act a question of estoppel *prima facie* arises in favour of the applicant. The Supreme Court added that as to the extent of land that can be released under Section 48 of the Land Acquisition Act in addition to the building had to be left to the reasonable direction of the Competent Authority. The Supreme Court directed that the respondent's application if made

within 15 days from today be considered within 8 weeks after such filing and a reasoned order communicated to the applicant.

Delhi Administration v. *Gurdip Singh Uban,* AIR 2000 SC 3737 : (2000) 7 SCC 296.

Section 115—Suit for eviction.

A suit for eviction was filed by the appellant in 1969 and the suit was decreed in 1975 by the trial Court on grounds of *bona fide* need of the landlord. An appeal was filed and a compromise recorded in 1981 whereby it was agreed that the respondent, son of the tenant would be permitted to remain in half portion of the suit premises for 10 years after which he and his heirs would vacate on an agreed date and in case of failure the appellant could file execution proceedings. The Supreme Court observed that the respondent was estopped from objecting to the execution proceedings for eviction decree. The High Court erred in allowing the revision petition. The compromise did not create another tenancy.

Som Dutt v. *Govind Ram,* (2000) 9 SCC 345 : AIR 2000 SC 1638.

Section 115—Reclaiming guardianship.

In a case a widowed mother gave her child in adoption to her own father. The paternal grandfather (respondent) in an opposing application sought appointment as guardian on the plea that since adoption the maternal grandfather had become sole guardian. The family Court and the High Court awarded guardianship to the paternal grandfather. The mother did not challenge the High Courts order initially. But during the pendency of the maternal grandfather's Special Leave Petition the mother also filed a Special Leave Petition seeking to be appointed guardian herself. The Supreme Court held that in view of her earlier stand about guardianship her Special Leave Petition could not be entertained and a widowed mother having given her child in adoption cannot reclaim guardianship.

Jai Prakash Khadria v. *Shyam Sunder Agarwalla,* (2000) 6 SCC 598 : AIR 2000 SC 2172.

Section 115—Benefit of leasehold rights.

The Supreme Court observed that the land vesting in the Gram Panchyat can be used for any one or more of the purposes specified in sub-rule (2) of Rule 3 of Punjab Village Common Lands (Regulation) Rules, 1964 leasing out for cultivation being one of the purposes. The Supreme Court agreed with the High Court in approving the position of law settled in *Kushi Pure's* case (1978 Punj. L.J. 78) and *Bishamber Dayal's* case (1986 Punj. L.J. 208). The Supreme Court held that the present petition though filed in a representative capacity is not a *bona fide* action inasmuch as the appellants and their relations having

accepted the position of law and earlier at times taken the benefit of lease hold rights could not have recourse to the legal proceedings after having failed to get the lease in their favour or in favour of their relations.

Shish Ram v. *State of Haryana,* (2000) 6 SCC 84 : AIR 2000 SC 2148.

Section 116—Change of jural relationship.

The Supreme Court observed that any jural relationship between two persons could be created and similarly changed through agreement. The induction of the appellant in tenancy only means that both agreed that their relationship was to be that of landlord and tenant. Later when the landlord decided to sell his property to the tenant and the tenant agreed to purchase it by entering into an agreement they by their positive act changed their relationship as purchaser and seller. The acceptance of a sum by the seller landlord is in pursuance of the agreement. In the suit of the landlady for eviction it was held that the appellant was no longer a tenant and non-payment could not be construed as wilful default in payment of rent.

R. Kanthimathi v. *Beatrice Xavier,* (2000) 9 SCC 339.

Section 116—Denial of title of landlord and non-payment of rent.

The Supreme Court observed that according to the finding recorded the conduct of the tenant amounts to denial of respondents title. Inspite of no claim of the rent made from the appellant he on his own voilition requested the Devasrhanam to accept him as his tenant. The Devasthanam had not even informed the appellant that they were the owner and in this back ground the denial of title by the tenant is not *bona fide.* The denial of title by the appellant against his landlord is from its very inception and this is for bidden by Section 116 of the Evidence Act. The Supreme Court held that both on law and facts the case of the appellant is not sustainable and non-payment of rent to him amounts to wilful default.

S. Thangappan v. *P. Padmavathy,* AIR 1999 SC 3584 : (1999) 7 SCC 474.

Section 116—Plea of denial of ownership.

The Supreme Court observed that assuming that the Education Department was occupying the suit premises, it could certainly have found out from the office of the Assessor and Collector, which is also under the Corporation as to who was the owner of the property at that time before raising the plea of denial of ownership of the respondent which in the circumstances does not appear to be true. It is no part

of the duty of the respondent to again bring on record evidence as to her title to the property. The Supreme Court held that looking at the conduct of the Corporation in having denied the title of the respondent to the property and thus raising plea which in the circumstances is not true leave to the Corporation was refused.

Municipal Corpn. of Delhi v. *Vinod Bhasin,* (2000) 9 SCC 234.

Section 116—Presumption of conclusive evidence.

The Supreme Court observed that a plain reading of the certificate shows that the authority has certified only two facts namely, that the appellant was a member of the armed forces of the Union and has retired and that he did not possess any other suitable house in the local area where he or any member of his family could reside. The Supreme Court added that the presumption of conclusive evidence applies to the facts stated in the certificate and to no other fact. Ownership of the flat in dispute and relationship of landlord and tenant are not facts stated therein. The appellant in an eviction suit under Section 13-A (1) of Rent Control and Eviction Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in addition to the facts stated in the certificate has to prove that he is a landlord and owner of the flat in question. The Competent Authority as well as the High Court have recorded that the appellant could not establish his ownership to the flat in question or the relationship of landlord and tenant between him and the respondent.

David Joseph Guido v. *A.C. Fernandes,* (2000) 9 SCC 179.

Section 118—Order 20, Rule 4 (1), Civil Procedure Code.

In a case of forgery the sub-judge stated that the scribe was not examined and that itself is a lacuna. No law says that the scribe of an endorsement should be examined as it is not one of the documents required by law to be attested or scribed. The law is also clear that a judgment in a small cause suit need not contain more points for determination and the decision thereon in view of Order 20, Rule 4 (1), Civil Procedure Code which the High Court cannot alter, and if some reasons are given, unless they are absurd, the High Court in revision under Civil Procedure Code cannot supplement its reasons, contrary to the finding.

Musunuri Anjaneyulu v. *Koona Lakshmi,* AIR 1998 AP 214.

Section 123—Army Act, Section 18—C.P.C., 1908, Order 6—Natural Justice.

Section 18 of the Army Act can be challenged on the ground of *malafides.* With regard to the pleadings in respect of the challenge to the order on the ground of *malafides,* no particular formula can be laid down. The pleadings will depend upon the facts of each case.

U.O.I v. *Ex. Major N.R. Ajwani,* (1996) 9 SCC 406.

Section 126—Confidential communication.

The Andhra Pradesh High Court observed that the purpose of summoning the advocate is not to disclose any confidential communication made by the client to his advocate. The purpose is only to prove sending of the notice which was sent by the advocate on the information supplied by the client. The very purpose of sending is to communicate the contents to the other side. There is nothing confidential in nature in the contents of the notice. There is abundant authority for stating that the Section 126 of the evidence Act is not meant to forbid the disclosure of any fact which was already known or disclosed.

P.G. Anantasayanam v. *Miriyala Sathiraju,* AIR 1998 Andhra Pradesh 335.

Section 133—Circumstantial evidence.

The Supreme Court observed that the whole of the deposition of the accomplice turned approver is a vivid explanation of the manner in which the offence was committed by A-1 in the presence of A-2 and A-3. There is no reason to disbelieve the statement of PW 1. Besides in his ocular testimony there is sufficient corroborative evidence which connects A-1 with the commission of the crime of murder of the deceased. The Supreme Court held that the circumstantial evidence produced in the case is sufficient to connect the accused with the commission of the crime. The court upheld the findings of the trial court as well as of the High Court insofar as the involvement of A-1 in the commission of the crime of murder is concerned.

State of Kerala v. *P. Sugathan,* (2000) 8 SCC 203 : 2000 SCC (Cri) 1474.

Section 133—Accomplice evidence.

The Supreme Court observed that Courts will, as a matter of practice not accept the evidence of an accomplice without corroboration in material particulars. The Court must look at the broad spectrum of the approver's version and then find out whether there is other evidence to corroborate and lend assurance to that version. Corroboration, the Supreme Court added need not be in the form of ocular testimony of witnesses and may be even in the form of circumstantial evidence and the corroborative evidence must be independent and not vague or unreliable. In the present case the statement of the accomplice was vivid in explanation and inspired full confidence of the Court to pass the conviction of the accused for the offences with which they were charged and the corroborative evidence to that statement left no doubt in the mind of the Court regarding the involvement of the appellants in the commission of the crime for which they had been convicted and sentenced. The

Supreme Court held that such conviction on the basis of testimony of accomplice would not be liable to be set aside.

Narayan Chetanram Chaudhary v. *State of Maharashtra*, AIR 2000 SC 3352 : (2000) 8 SCC 457 : 2000 SCC (Cri) 1546.

Section 133—Code of Criminal Procedure, 1973, Section 306—Testimony of an accomplice.

The Supreme Court observed that though there is no legal hurdle against acting on the testimony of an accomplice it is well nigh settled that it would be imprudent to base a conviction on such testimony unless it is corroborated in material particulars. Where the conviction of accused person solely depends upon the testimony of an accomplice the evidence of the accomplice has to pass the test of reliability and must secure adequate corroboration before the same can be acted upon. The Court added that non-disclosure of the name of one of the accused while being questioned by the police before his offer to confess is not of much consequence when in confessional statement he implicated himself and other accused persons. This aspect the Court observed only goes along with the inherent weakness of the testimony of any approver.

Ram Prasad v. *State of Maharashtra*, AIR 1999 SC 1969 : (1999) 5 SCC 10 : 1999 Cri LJ 2889.

Section 133—Non-examination of approver.

It was submitted that Section 306 (4) (a), Criminal Procedure Code, 1973 is couched in mandatory terms by using the word 'Shall' which indicates that if there is a breach of the said mandatory provision further trial would be vitiated. The Supreme Court observed that the submission is without any substance. By not examining the approver the trial would not get vitiated. Such evidence will have to be scrutinised with greater circumspection and if in such scrutiny the evidence is found reliable the court cannot be inhibited from using the evidence. At the time of recording of approver's evidence by Magistrate at pre-committal stage *i.e.* at the time of investigation or inquiry for offences triable by Sessions Court accused persons have no right to cross-examine the approver. No objection was raised by the second accused against the omission to afford opportunity to them to cross-examine the approver. The case was committed to Session Court for trial and during the course of arguments in Session Court contention raised by accused that committing Magistrate's failure to afford them opportunity to cross-examine the approver amounted to non-compliance of Section 306 (4) (a), Criminal Procedure Code, 1973 vitiated the trial.

R. Rathinam v. *State*, (2000) 2 SCC 396 : AIR 2000 SC 1851 : 2000 SCC (Cri) 950.

Sections 133, 114 Ill. (b) and 30—Customs Act, 1962, Section 108.

The Supreme Court observed that though 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 for an assurance in support of its conclusion deducible from the said evidence. The stage to consider such confessional statements arrived only after the other evidence is considered and found to be satisfactory. [*Haricharan Kumari* v. *State of Bihar*, AIR 1964 SC 1184 : (1964) 6 SCR 623]. The court added that the statements recorded under Customs Act have been duly proved by the officials concerned. The courts below were satisfied that there was no threat or inducement and that the relevant provisions of law were explained to the person who gave the statements. The statements were bound to be voluntary and not vitiated in any manner. Hence all these statements are admissible in evidence and it is clear therefrom that the appellant was guilty of the offenses for which he was prosecuted. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence *vide Ramesh Chandra Mehta* v. *State of West Bengal*, AIR 1970 SC 940 : (1969) 2 SCR 461 : 1970 Ori LJ 863, and *K.I. Pavunny* v. *Asstt. Collector (HQ) Central Excise Collectorate*, (1997) 3 SCC 721 : 1997 SC (Cri) 444.

Bhana Khalpa Bhai Patel v. *Asstt. Collector of Customs, Bulsar, Gujarat*, (1998) 1 SCC 222.

Sections 133 and 114 (iii) (b)—Accomplice evidence.

The Supreme Court observed that Section 133 of the Evidence Act provides that an accomplice is a competent witness against an accused person and the conviction is not illegal merely because it proceeds on uncorroborated testimony of the accomplice. There is no distinction between an accomplice who is or is not an approver and as both have been treated alike the rule of corroboration applies to both. Accomplice's evidence is taken on record as a matter of necessity in cases where it is impossible to get sufficient evidence of a heinous crime. The evidence of the accomplice must, however, be shown to be of a reliable witness. The Supreme Court added that the corroborative evidence must be independent and not vague or unreliable. Once the evidence of an approver is held to be trustworthy it must be shown that the story given by the approver so far as an accused is concerned, must implicate him in such a manner so as to give rise to a conclusion of guilt beyond reasonable doubt. Insistence on corroboration is based on the rule of caution and not merely as a rule of law. The Supreme Court held that in the present case the Courts were conscious of the creditability of an approver witness and insisted upon the corrobo-rative witness in material particulars of the depositions made by the approver.

Narayan Chetanram Chaudhary v. *State of Maharashtra*, AIR 2000 SC 3352 : (2000) 8 SCC 457 : 2000 SCC (Cri) 1546.

Sections 133 and 114, Ill. (b)—Evidence of approver.

Ordinarily, the combined effect of Sections 113 and 114 of the Evidence Act, 1872 is that conviction can be based on uncorroborated testimony of an approver but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of an approver. Section 114, Ill. (b) incorporates a rule of caution to which the courts should have regard.

Niranjan Singh v. *State of Punjab,* (1996) 9 SCC 98; *see Suresh Chandra Bahri* v. *State of Bihar,* 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60.

Discussing the position of testimony of a bribe giver, the Supreme Court observed that the complainants evidence was jettisoned on the mere ground that since he had a grouse against the delinquent public servant he might falsely have implicated the latter. Such a premise is frought with conse-quences that no bribe-give can get away from such a stigma in any graft case. The very fact that the complainant lodged a compliant with the Anti-Corruption Bureau is reflective of his grievance such a handicap in his evidence my require the court to scrutinise it with greater care but it does not call for outright rejection of his evidence at the threshold. A complaint simply on the premise that he was aggrieved against the bribe taker, would only help corrupt officials getting insulated from legal consequences.

State of U.P. v. *Zakaullah,* (1998) 1 SCC 557.

Section 134—Non-examination of witnesses.

The Supreme Court observed that there is no good reason for castigating the prosecution for not examining more witnesses to speak about the occurrence. The prosecution has already examined three persons from the neighbourhood who reached the place of occurrence on hearing the noise. The Supreme Court held that non-examination of more witnesses is no ground for discarding the witnesses already examined and added that the High Court has gone wrong in advancing such reasoning for sidelining worthy evidence of eye-witnesses.

State of U.P. v. *Shyam Sunder,* (2000) 10 SCC 49.

Section 134—Non-examination of witnesses

The Supreme Court observed that when four witnesses were examined the non-examination of one more witness is not a serious flaw. But in the instant case it was Ram Lakhan Yadav who set fire to the haystack in the light of which flames the culprits were identified. It was he who was first attacked by the dacoits. The Supreme Court held that the non-examination of the material witness whose testimony may have deleterious impact on the veracity of the

other witnesses would be an incongruity which cast a doubt on the prosecution case.

Rang Bahadur Singh v. *State of U.P.*, (2000) 3 SCC 454 : AIR 2000 SC 1209 : 2000 Cri LJ 1718 : 2000 All LJ 680.

Section 134—Number of witnesses.

The Supreme Court observed that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. The court added that where a criminal Court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense the test may be described as mechanical, but it is difficult to see how it can be treated as irrational or unreasonable.

Krishnegowda v. *State of Karnataka*, (2000) 1 SCC 306 : AIR 2000 SC 373 : 2000 Cri LJ 501.

Section 136—Civil Procedure Code, 1908, Section 115.

The Supreme Court observed that this was not a fit case where the High Court should have interfered under Section 115, Civil Procedure Code. It cannot be said that the order passed by the trial court was without jurisdiction or suffered from any such error which warranted interference of the High Court under Section 115. The Supreme Court added that such interference by the revisional courts during the course of trial only prolongs litigation and it is not in the interest of the parties that the trial of the cases should prolong. The Supreme Court set aside the judgment of the High Court.

Punjab National Bank, Rajpura v. *Amrit Industries*, (2000) 10 SCC 38.

Sections 137, 136 and 145—Election petition.

The Supreme Court observed that an election petition is not a dispute between the petitioner and the respondent merely. A judge presiding over the trial of an election petition needs to effectively control examination, cross-examination and re-examination of the witnesses so as to exclude such questions being put to witnesses which the law does not permit. Powers to disallow questions should be effectively exercised by reference to Sections 146, 148, 150, 151 and 152 of the Evidence Act by excluding improper and impermissible questions. The examination of the witnesses should not be protracted and the witnesses should not feel harassed. The cross-examiner must

not be allowed to bully or take unfair advantage of the witness. Witnesses attend the Court to discharge the sacred duty of rendering aid to justice and they are entitled to be treated with respect and it is the judge who has to see that they feel confident in the court.

Makhan Lal Bangal v. *Manas Bhunia,* (2001) 2 SCC 652.

Sections 137 and 138—Re-cross examination.

The Madras High Court observed that the trial Court got powers to call the plaintiff for re-cross examination under Order 18, Rule 17, of the Code of Civil Procedure on the application filed by the defendant independent of Section 151, Civil Procedure Code. The powers of the court to act under Order 18, Rule 17 are very wide. It is also clear that this power is purely discretionary and the same ought to be exercised with the greatest care and only in the most peculiar circumstances. The right of the court to act under this rule is not restricted to the action of its own motion. The court held that the impugned order rejecting the prayer of the petitioner to re-call the plaintiff for re-cross-examination for putting questions with reference to certain documents suffers with infirmity and the same is liable to be set aside.

S.S.S. Durai Pandian v. *S.A. Samathira Pandian,* AIR 1998 Mad 323.

Sections 137, 138 and 145—Re-examination of witnesses.

In a case under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the counsel who was engaged for defending the appellant had cross-examined the witnesses but he could not complete the trial because of his death. The new counsel was under a disadvantage that he could not ascertain from the erstwhile counsel as to the scheme of the defence strategy he had in mind or as to why he had not put up further questions on certain aspects. The Supreme Court observed that in such circum-stances if the new counsel thought to have material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of Criminal Procedure Code. The Supreme Court set aside the conviction and sentence and remitted the case to the trial Court for disposal afresh after summoning the said witnesses for further cross-examination. The evidence on record will remain as part of evidence in the case and after the cross-examination Court may grant liberty to the prosecution to adduce further evidence.

Hoffman Andreas v. *Inspector of Customs,* (2000) 10 SCC 430.

Section 137—Appreciation of evidence.

The Supreme Court observed that it will not be a sound rule of appreciation of evidence to pick up an answer from the cross-examination of a witness and draw inference taking it in isolation.

The Court must see as to how consistent the testimony of the witness is and as to how the answer fits with the rest of the evidence and probabilities of the case.

Boramma v. *Krishna Godwa*, (2000) 9 SCC 214.

Sections 138 and 146—Right of cross-examining the witness.

The Supreme Court observed that the part of the statement of witness was not cross-examined by the accused. In the absence of the cross-examination on the explanation of delay the evidence of the witness remained, unchallenged and ought to have been believed by the High Court, Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned—

1. to test his veracity,
2. to discover who he is and what is his position in life, or
3. to shake his credit by injuring his character, although the answer to such question might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture. This aspect, the Supreme Court added was unfortunately missed by the High Court when it came to the conclusion that explanation for delay is not at all convincing.

State of U.P. v. *Nahar Singh*, (1998) 3 SCC 561 : AIR 1998 SC 1328.

Section 138—Re-examination of a witness.

The Supreme Court observed that the very purpose of re-examination is to explain matters which have been brought down in cross-examination. There is an erroneous impression that the re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt ambiguities can be resolved through re-examination but that is not the only function of the re-examiner. If the public prosecutor feels that certain answers requires more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the Court in accordance with the other provisions. Even if the public prosecutor feels that new matters should be elicited from the witness he can do so in which case the only requirement is that he must secure the permission of the Court. There is no warrant that re-examination should be limited to one or two questions. If the exigency requires any number of questions can be asked in re-examination.

Rammi v. *State of Madhya Pradesh*, AIR 1999 SC 3544 : (1999) 8 SCC 649.

Sections 142 and 154—Hostile witness.

The Supreme Court observed that it is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. The terms 'hostile', 'adverse' or 'unfavourable' witnesses are alien to the Indian Evidence Act. In India the right to cross-examine the witnesses by a party calling him is governed by the provisions of the Indian Evidence Act whether it be the grant of permission under Section 142 to put leading questions or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court . The Courts have to use the discretion in a judicious manner by proper application of mind and keeping in view the attending circumstances. In the present case the said witness was wrongly permitted to be cross-examined. It was only a post-event detail that he did not concur with the suggestion of the prosecution and the single point was too insignificant for the prosecution to claim that the witness had made a *volte face* and became totally hostile. The Supreme Court held that there is no reason to disbelieve PW 2 who is closely related to the appellant and has no reason to falsely implicate particularly when no inducement, threat or promise is allegedly given or assured.

Gura Singh v. *State of Rajasthan,* (2001) 2 SCC 205 : AIR 2001 SC 330 : 2001 SCC (Cri) 323.

Section 145—Proof of document.

The Magistrate who is supposed to have exhibited the document admitted that there was neither any signature nor seal of either Judicial Magistrate or of his office on the statement. The Supreme Court observed that it is difficult to hold that the document has been legally proved to be a former statement of P.W. 8. A scrutiny of the evidence reveals that the witness has not been confronted with that part of his alleged former statement which the defence want him to be contradicted. The Supreme Court held that in this state of affairs it is difficult to hold that the provisions of Section 145 of the Evidence Act have been complied with.

Rajendra Singh v. *State of Bihar,* AIR 2000 SC 1779 : (2000) 4 SCC 298.

Section 145—Use of previous statements of witnesses.

The Supreme Court observed that it is the right of a party in a trial to use the previous statements of a witness either for the purpose of establishing a contradiction in his evidence or for the purpose of impeaching the credit of a witness and this right given to a party in a trial under Section 145 of the Evidence Act is somewhat controlled in criminal trials by the provisions of the Criminal Procedure Code.

The Supreme Court added the use of previous statements recorded under Section 161 of the Criminal Procedure Code is controlled by Section 162 of the Code. On a reading of Section 162 of the Code bearing in mind the object of Section 145 of the Evidence Act it is clear that an accused in a criminal trial has the right to make use of the previous statement of a witness including the statements recorded by the investigation for the purpose of establishing a contradiction in the evidence of a witness to discredit the witness.

The Supreme Court also observed that Section 172 of the Criminal Procedure Code does not contemplate summoning of the case diary for the purpose of assisting the accused to have a look at the previous statements of witness for using it for his benefit, as contemplated in Section 162 of the Code. This, however does not mean that the accused is denied of his limited benefit of using the said previous statement recorded during the course of another investigation.

When a case diary is summoned under Section 91 of the Criminal Procedure Code then the restrictions imposed under sub-sections (2) and (3) of Section 172 would not apply to the use of such case diary but while using a previous statement recorded in the said case diary, the Court should bear in mind the restrictions imposed under Section 162 of the Code and Section 145 of the Evidence Act because what is sought to be used from the case diary so produced are the previous statements recorded under Section 161 of the Code. The case diary of another case not pertaining to the trial in hand can be summoned if the court trying the case considers that production of such diary is necessary or desirable for the purpose of trial under Section 91 of the Code.

State of Kerala v. *Babu,* AIR 1999 SC 2161 : (1999) 4 SCC 621.

Section 145—Contradiction of witness by former statement.

If a witness during trial is intended to be contradicted by his former statement then his attention has to be drawn to those parts of his statement which are required to be used for the purpose of contradicting him before the said statement in question can be proved as provided under Section 145 of the Evidence Act. In the present case the witness has merely been asked as to whether he stated before the Magistrate that accused had assaulted Kameshwar to which he had replied he does not recall as to what he stated before the Magistrate. The Supreme Court observed that in this state of affairs it is difficult to hold that the provisions of Section 145 of the Evidence Act have been complied with in the case in hand.

Rajender Singh v. *State of Bihar,* (2000) 4 SCC 298 : AIR 2000 SC 1779 : 2000 Cri LJ 2199.

Section 153—Prohibiting evidence on collateral issues.

The Supreme Court observed that as the general rule of evidence is one of prohibiting evidence on collateral issues and it is only by way of exception that such evidence can be permitted. The Court must guard that the defence evidence falls strictly within the exception. In the present case the basic premises has not been laid by asking a witness about the alleged loan transaction between her husband and accused's father and hence it is not permissible to cite a witness to say about any such transaction.

The Supreme Court added that the basic requirement for adducing such contradictory evidence is that the witness, whose impartiality is sought to be contradicted with the help of such evidence should have been asked about it and he should have denied it. Without adopting such preliminary recourse it would be meaningless, if not unfair, to bring in a new witness to speak something fresh about a witness already examined.

State of Karnataka v. *Yarappa Reddy,* AIR 2000 SC 185.

Section 153—Non-explanation of injuries to the accused.

In a case out of six persons arraigned before a Sessions Court for murder, one alone was convicted. The High Court of Madras confirmed the conviction and sentence for imprisonment for life. The plea of the convicted person for the right of private defence was denounced by the trial court and the High Court. The Supreme Court observed that while considering the right of private defence it has to be noted that the version of the appellant had come on official record at 3.00 p.m. When appellant told like that to the doctor (P.W. 6). The Supreme Court observed that it did not think that the appellant would have had sufficient time to concoct a false story to tell the doctor so soon after the incident. While giving evidence the P.W. 1 and other prosecution witnesses for the occurrence said that the appellant sustained those injuries when the second accused aimed to inflict a stab injury on the fallen deceased but it mis-struck on the crown of the head of the appellant. Even assuming that the second accused would have been a bad striker it is difficult to conceive that such an aim fumbling whacking would have landed on the crown of another man's head.

The Supreme Court observed that the presence of prosecution witness at the place of occurrence is doubtful. The injuries sustained by the accused have not been satisfactorily explained. The defence plea that the complainant's party trespassed into house of accused and attacked in retaliation of an earlier incident appears to be probable. The Supreme Court set aside the conviction of the accused.

Vijayan v. *State,* AIR 1999 SC 1311 : (1999) 4 SCC 36 : 1999 Cri LJ 2037.

Section 154—Hostile witness.

The Supreme Court observed that from the evidence on record it cannot be said that the High Court erred in relying upon some portion of the evidence of P.W. 7 who was cross-examined by the prosecution. It is settled law that evidence of hostile witness also can be relied upon to the extent it supports the prosecution version. Evidence of such a witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence.

Koli Lakhmanbhai Chanabhai v. *State of Gujarat,* AIR 2000 SC 210 : (1999) 8 SCC 624.

Section 154—Declaration of witness as hostile.

The Madras High Court observed that it is clear from Section 154 of the Evidence Act that the discretion is conferred upon the Court to permit cross-examination of a witness by a party who calls the witness and it does not contain any conditions or guidelines which may govern exercise of such discretion. The Courts, however, are expected to exercise such discretion judicially and properly in the interest of justice. A party will not normally be allowed to cross-examine his own witness and declare the same hostile unless the court is satisfied that the statement of the witness exhibits an element of hostility or that he has resiled from a material statement or where the Court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examined him to get out the truth. Merely because the witness speaks about the truth which may not suit the party on whose behalf he is deposing and the same is favourable to the other side, the discretion to allow the party concerned to cross-examine its own witness cannot be exercised. The discretion conferred under Section 154 of the Act is unqualified and untrammeled.

S. Murugeasan v. *S. Pethaperumal,* AIR 1999 Madras 76.

Section 154—Hostile witness.

In a case it was submitted that the grounds given by the trial Court for not believing the evidence of P.W. 10 were reasonable and therefore the High Court materially erred in interfering with the acquittal order. The Supreme Court observed that the submission is without substance because the trial court materially erred in treating this witness as a hostile witness only on the ground that the public prosecutor after obtaining the permission had asked a question with regard to the role played by accused nos. 4 and 6 on the basis of his police statement. The Supreme Court added that there was no reason for the learned Judge to treat this witness as not supporting the prosecution case. On the contrary this would mean that the witness was truthful and he has not supported his police version with regard

to identification of accused Nos. 4 and 6. He cannot be dubbed as a lair to whom no credence can be given as held by the Session Judge. The Supreme Court held that the approach of the Sessions Judge in treating this witness as a hostile witness and terming him as a liar is wholly unjustified and unreasonable.

Kathakalavak Naga Subba Reddy v. *Public Prosecutor, A.P. High Court,* AIR 2000 SC 3480.

Section 155—Discrepancies in evidence of a witness.

The Supreme Court observed that the Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible which the creditability of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variation falling in the narration of an incident either as between the evidence of two witnesses or as between two statements of the same witness is unrealistic approach for judicial scrutiny. Mere inconsistency in evidence is not sufficient to impair the creditability of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. In the instant case the evidence of the conductor and driver of the bus evinces credibility. They are the most natural witnesses for the murder which took place inside the bus. The minor variations from their former statements did not amount to discredit the core of their evidence. The strained reasoning of the trial Court for side stepping their evidence is too fragile for judicial countenance and their testimony cannot be rejected.

Rammi v. *State of Madhya Pradesh,* AIR 1999 SC 3544 : (1999) 8 SCC 649.

Section 155—Impeaching credit of a witness.

The Supreme Court observed that one of the permitted modes of impeaching of credit of a witness is proof of former statements which is inconsistent with any part of his testimony as indicated in Section 155 (3) of the Evidence Act. But the mode of using such former statements for the purpose of contradicting the witness is prescribed in Section 14 of the Evidence Act. In the present case it cannot be said that the former statement was not available for the defence to confront 'M' since the head constable to whom the former statement was made was examined later. It was open to the defence to request recalling the witness 'M' for the purpose of further cross-examination to impeach his veracity on the strength of the alleged former statement which came on record subsequently. In view of the retracing made by the head constable during later part of the cross-

examination. The Supreme Court did not give any further opportunity to the accused to confront 'M' with that material.

State of Rajasthan v. *Teja Ram*, AIR 1999 SC 1776 : (1999) 3 SCC 507.

Section 157—Injured eye-witness.

The Supreme Court observed that conviction in the present case was based on corroborated testimony of injured eye-witnesses. The wife of the deceased suffered injuries while trying to rescue her husband during the attack. She was able to see the assailants whose identity she knew earlier. The incident happened at 4 p.m. and there was sufficient light for her to identify the assailants. The F.I.R. was lodged promptly and it reached the Magistrate on the same night. Her testimony was corroborated in material particulars by prosecution witnesses to whom she had narrated the incident as soon as possible. The Supreme Court held that her evidence is admissible in terms of Section 157 of the Evidence Act and the High Court was justified in convicting the assailants on the basis of her evidence.

Jangir Singh v. *State of Punjab*, (2000) 10 SCC 261.

Section 157—Testimony of minor prosecutrix.

A girl aged below 16 years was raped and her evidence was corroborated by prosecution witness as well as by medical evidence. The Chemical Examiners report showed presence of seminal stains on her *lehnga* which supported the prosecution case. The absence of any semen stains on the clothes of the accused was due to the fact that he was examined 23 days after the incident. The trial court under Section 157 of the Evidence Act correctly admitted the narration of the incidence by several independent witness as the narration was without discrepancy. The Supreme Court on facts held that there was no reason to disbelieve the evidence of the prosecutrix as regards the rape by the accused. The Supreme Court observed that the reasoning given by the High Court for disbelieving the prosecutrix's testimony was entirely unacceptable.

State of Karnataka v. *Manjanna*, (2000) 6 SCC 188; AIR 2000 SC 2231.

Section 159—Refreshing of memory by investigating officer.

The Supreme Court observed that an investigating officer must answer questions in Court, as far as possible, only with reference to what he had recorded during investigation. Such records are the contemporaneous entries made by him and hence for refreshing his memory it is always advisable that he looks into those records before answering any question. The court held that the objection of the

defence when investigating officer wanted to reply by referring to the records of investigation is untenable and unjustified.

State of Karnataka v. *Yarappa Reddy,* AIR 2000 SC 185.

Section 159—Acquittal of accused on unreliable evidence.

The Supreme Court observed that all three eye-witnesses having categorically stated that the accused appellant had not given any knife blow on the deceased and on the other hand having stated that the accused and deceased were grapping with each other when the deceased alone was holding a stick in his hand, it is difficult to accept the statement of the wife (prosecution witness 6) that the deceased had told her that Dewa had inflicted knife injury on him. None noticed blood stains or a blood injury on the deceased. Merely because the accused is alleged to have given recovery of a knife while in custody, it is difficult to hold that prosecution has been able to establish charges beyond reasonable doubt and it is the accused who is perpetrator of the crime. The Supreme Court held that the conclusion of the Additional Section Judge as well as that of the High Court in the impugned judgment that accused-appellant caused the injury on the deceased is wholly unsustainable. The Supreme Court set aside the conviction and sentence passed against the appellant and acquitted him of the charges levelled against him.

Deva v. *State of Rajasthan,* AIR 1999 SC 214 : 1999 SCC (Cri) 41 : 1999 Cri LJ 265.