APPRECIATION OF EVIDENCE

INTRODUCTION:

In a criminal case appreciation of evidence is one of the first and foremost tests to consider the credibility and reliability of the prosecution version both oral and documentary. The finding of the facts, the question of law and the conclusion of the Judges of the Court culminating into the judgments in a criminal case mainly based on the appreciation of evidence. Right from setting the law in motion in a criminal case by preferring FIR and after completion of investigation filing the final report ultimately resulting in producing and adducing the evidence before the Court consist varied kinds of evidence both oral and documentary and the admissibility and reliability of such evidence should be considered by the Court on the basis of the facts and law for arriving at the just decision of the case. Therefore appreciation of evidence is the heart and soul of the dispensation of justice delivery system in criminal law. Criminal cases involves life and death problem of a citizen and the destiny of the citizen is to be decided by carefully analyzing and scrutinizing the evidence adduced by the prosecution.

The Hon'ble Apex Court in **Rang Bahadur Singh V. State of U.P.** reported in **AIR 2000 SC 1209** has held as follows :

> **"**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 the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits**."**

In yet another decision in **State of U.P. V. Ram Veer Singh and Another** reported in **2007 (6) Supreme 164** the Hon'ble Apex Court has held as follows:

> **"The golden thread which runs through the web of administration of justice in criminal cases is that if two view are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.** The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. **A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.** In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the

evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not."

Let me now consider the varied aspects of evidence: -

(1). FIRST INFORMATION REPORT:

FIR is not an encyclopedia. It is only to set the law in motion. It need not elaborate but should contain necessary allegations to constitute cognizable offences.

(a). Evidentiary Value:

Section 154, Cr.P.C – Use of FIR - FIR is not a substantial piece of evidence - It can only be used for corroborating or contradicting its maker – It cannot be used to corroborate or contradict other witnesses –**Baldev Sings vs. State of Punjab – (1990) 4 SCC 692 ; State of Gujarat vs. Anirudhsing – (1997) 6 SCC 514.**

Section 154, Cr.P.C. – FIR – Evidentiary value – Corroboration of its maker is permissible – But the first information report cannot be used as substantive evidence or corroborating a statement of third party – **State of M.P. vs. Surbhan – AIR 1996 SC 3345.**

(b). Delay in FIR:

Delay in FIR – The inordinate and unexplained delay in dispatching the first information report to the Magistrate – The difference in the account given by the prosecution witnesses and appearing from the first information report of the occurrence – the absence of any statement in the first information report as to the injuries received by some of the accused, and the non-examination of material witnesses – Conviction cannot be sustained – **Ishwar Singh vs. State of U.P – AIR 1976 SC 2423.**

The Hon'ble Apex Court in **Meharaj Singh (L/Nk.) V. State of U.P. (1994 (5) SCC 188)** has held that,

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the

advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. …. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr. P. C, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. ….**"**

The Hon'ble Apex Court in **State of H.P. V. Gian Chand (2001) 6 SCC 71** has held that,

"12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case**."**

The Hon'ble Apex Court in **Dilawar Singh V. State of Delhi** reported in **2007 (12) SCC 641** has held that,

"9. In criminal trial one of the cardinal principles for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the allegations with suspicion and look

for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case."

(c). Delay to Magistrate Court:–

No proper explanation – Fatal to the prosecution case – **State of Rajasthan V. Sheo Singh (AIR 2003 SC 1783).** Similar view was taken earlier in **Awadesh V. State of M.P. (AIR 1988 SC 1158)** and in **State of Rajasthan V. Teja Singh (2001 SCC (Cri) 439).**

(d). Nature of FIR:-

General diary containing – General diary containing a noting of a report regarding cognizable offence, cannot be treated as FIR - Telephonic information to investigating officer – Such information not in nature of FIR – **Animireddy Venkata Ramana vs. Public Prosecutor, High Court of Andhra Pradesh - (2008) 5 SCC 368.**

(2). INQUEST REPORT:

(a). Scope and Object :-

The Inquest report is merely to ascertain whether a person has died under suspicious circumstances or unnatural death, and if so what is the apparent cause of the death. Details of the attack of the deceased are not necessary to be mentioned. – **State of U.P vs. Abdul (AIR 1997 SC 2512).**

The scope and object of the inquest report has been elaborately discussed recently in the case of **Radha Mohan Singh vs. State of U.P – (2006) 2 SCC 450** as follows

> "It is limited in scope and is confined to ascertainment of apparent cause of death – It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted – Details of overt acts need not be recorded in inquest report – question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who were the witness of the assault is foreign to the ambit and scope of the proceedings under section 174 – No requirement in law to mention details of FIR names of the accused or the names of eyewitnesses or the gist of their statements in inquest report, nor is the said report required to be signed by any eyewitness."

The purpose and object of inquest report and Section 172 of Cr. P. C. has been stated as follows – Section 174 read with 178 of Cr. P. C. – Inquest report is prepared by the Investigating Officer to find out prima-facie the nature of injuries and the possible weapons used in causing

those injuries as also the possible cause of death – Non-disclosure of name of assailants by eye-witnesses – Merely on this ground eye-witnesses cannot be disbelieved – **Suresh Rai vs. State of Bihar (AIR 2000 SC 2207).**

In **State Re.p by Inspector of Police, Tamil Nadu V. Rajendran & Ors.** reported in **2008 (8) Supreme 188,** it was held by the Hon'ble Apex Court that,

"As rightly submitted, the inquest report need not contain the names of all the witnesses".

(3). EVIDENTIARY VALUE OF STATEMENTS RECORDED UNDER SECTIONs 161 and 164 OF CRIMINAL PROCEDURE CODE:

(a). Evidentiary Value:-

Section 161 of Cr. P. C. – Statement recorded under S.161 Cr.P.C. shall not be used for any purpose except to contradict a witness in the manner prescribed in the proviso to Section 162 (1) – Further the First Information Report is not a substantial piece of evidence – **Baldev Singh vs. State of Punjab (1990 (4) SCC 692 = AIR 1991 SC 31).**

In **Rajendra singh vs. State of U.P – (2007) 7 SCC 378** the Hon'ble Apex Court has held that,

"A statement under Section 161 Cr. P. C is not a substantive piece of evidence. In view of the provision to Section 162 (1) CrPC, the said statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Therefore, the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding that Respondent 2 could not have been present at the scene of commission of the crime**."**

Section 164 Cr. P. C. Statement – It can be used for corroboration or contradiction. In **Sunil Kumar and others vs. State of M.P.** reported in **AIR 1997 SC 940** the Hon'ble Apex Court has held that,

"20. .... This conclusion of ours, however, does not in any way affect the merits of the prosecution case for we find that immediately after PW 1 was taken to the hospital his statement was recorded as a dying declaration which, consequent upon survival, is to be treated only as a statement recorded under Section 164 Cr. P. C and can be used for corroboration or contradiction. ...**."**

(b). Confrontation of Statement:-

Sections 161 and 162 of Criminal Procedure Code – The Witness not confronted with the statement – The Court cannot subsequently use the statement even for drawing any adverse impression against the witness – **Dandu Lakshmi Reddi vs. State of A.P. (AIR 1999 SC 3255).**

(c). Signing of Statement:-

Sections 161 and 162 – Statement of witness – If thumb impression or signature obtained – Such statements are unreliable – **Gurnam Kaur vs. Bakshish Singh and others – AIR 1981 SC 631.**

Section 161 – Signing of statement – It merely puts the Court on caution and may necessitate in depth scrutiny of the evidence, but the evidence on this account cannot be rejected outright – **State of U.P vs. M.K. Anthony – AIR 1985 SC 48.**

(4). CONFESSION:-

(a). What is Confession ?

A ''Confession'' must either be an express acknowledgement of guilt of the offence charged, certain and complete in itself, or it must admit substantially all the facts which constitute the offence.

In **Sahib Singh vs. State of Haryana (AIR 1997 SC 3247)** the Hon'ble Apex Court has held thus,

"42. Section 24 provides, though in the negative form, that 'Confession' can be treated as relevant against the person making the confession unless it appears to the Court that it is rendered irrelevant on account of any of the factors, namely, threat, inducements, promises etc. mentioned therein. Whether the 'Confession' attracts the frown of Section 24 has to be considered from the point of view of the confession of the accused as to how the inducement, threat or promise from a person in authority would operate in his mind. (See **Satbir Singh V. State of Punjab (1977 (2) SCC 263))**. "Confession has to be affirmatively proved to be free and voluntary. (See **Hem Rah Devilal v. State of Ajmer (AIR 1954 SC 462)).** Before a conviction can be based on "confession", it has to be shown that it was truthful.

43. Section 25 which provides that a Confession made to a Police Officer shall not be proved against the person accused of an offence, places complete ban on the making of such confession by that person whether he is in custody or not. Section 26 lays down that confession made by a person while he is in custody of a Police Officer shall not be proved against him

unless it is made in the immediate presence of a Magistrate. Section 27 provides that when any fact is discovered in consequence of information received from a person accused of any offence who is in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates to the fact thereby discovered, may be proved. Section 27 is thus in the form of a proviso to Sections 24, 25 and 26. Section 164, 281 463 of the Code of Criminal Procedure are the other provisions dealing with confession and the manner in which it is to be recorded**."**

(b). General Corroboration:-

In **Madi Ganga vs. State of Orissa (AIR 1981 SC 1165)** the Hon'ble Apex Court has held that,

> **"6.** .... It is now well settled that in order to sustain a conviction on the basis of a confessional statement it is sufficient that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is sufficient vide **Subramania Goundan V. State of Madras (AIR 1958 SC 66).** ...."

(c). Incriminating fact without establishing the guilt:-

Admission – Incriminating fact without establishing the guilt of the maker is not a confession – **Kanda Padayachi vs. State of Tamil Nadu – AIR 1972 SC 66.**

(d). Inculpatory and exculpatory portion of the Confession:-

Confession – Appreciation of – Acceptance of inculpatory portion while ignoring the improbable exculpatory portion - Conviction on the basis of confession, affirmed vide **Nishi Kant Jha vs. State of Bihar (AIR 1969 SC 422),** in which the Hon'ble Apex Court has held that ,

> **"**The exculpatory part of the appellant's statement was not only inherently improbable but was contradicted by the other evidence and also it was wholly unacceptable. The other incriminating circumstances considered along with the appellant's statement pointed conclusively to his having committed the murder. The court could reject the exculpatory portion of the statement and accept inculpatory portion**."**

In **Devku Bhikha vs. State of Gujarat – 1995 AIR SC 2171** the Hon'ble has held that,

> **"3.** It is settled law that the confession of the accused has to be taken as a whole

and the exculpatory part cannot be thrown aside**."**

(e). Co- accused:-

Confession – Co-accused – Confession of co-accused can be taken into consideration but it is not substantive piece of evidence – **Ram Chandra vs. State of U.P. (AIR 1957 SC 381).**

Confession of co-accused cannot be treated as substantive evidence vide **Bishnu Prasad Sinha V. State of Assam (2007 (11) SCC 467)**, in which the Hon'ble Apex Court has held that,

> **"**The expression "the court may take into consideration such confession" is significant. It signifies that such confession by the maker as against the co-accused himself should be treated as a piece of corroborative evidence. In the absence of any substantive evidence, no judgment of conviction can be recorded only on the basis of confession of a co-accused, be it extra-judicial confession or a judicial confession and least of all on the basis of retracted confession**."**

(f). Co- accused and Corroboration:-

Confession – Corroboration – Co-accused – Joint trial of more than one accused – The confession is not irrelevant against co-accused but it is a matter of practice that it is not ordinarily acted upon without corroboration – **Ram Prakash vs. State of Punjab – AIR 1959 SC 1.**

(5). EXTRA – JUDICIAL CONFESSION:-

Confession may be judicial and extra judicial. If confession recorded by Magistrate it is judicial and if made to any other person it is said to be extra judicial Confession.

(a). Corroboration:-

Confession – Extra judicial – Corroboration – Necessity of – Conviction on the basis of confession without insisting on corroboration – Permissibility. – **Maghar Singh vs. State of Punjab – AIR 1975 SC 1320.** The Hon'ble Court in this decision has held as follows :

> **"5.** .... The evidence furnished by the extra-judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required it is only by way of abundant caution. If the Court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case convicted can be founded on

such evidence alone as was done in **Rao Shiv Bahadur Singh V. State of U.P. (AIR 1954 SC 322)** where their Lordships of the Supreme Court rested the conviction of the accused on the extra-judicial confession made by him before tow independent witnesses, namely Gadkari and Perulakar. ..."

Extra-judicial confession needs corroboration and satisfaction of procedure related thereto – **State of Tamil Nadu vs. Manmatharaj – 2009 (1) Supreme 455.**

(b). Weak piece of evidence:-

Extra judicial Confession – It is a weak piece of evidence – Reliance cannot be placed unless it is plausible and inspires confidence – **State of Punjab vs. Bhajan Singh – AIR 1975 SC 258.**

Extra judicial confession – It may or may not be a weak evidence – Each case should be examined on its own facts and circumstances – **Siva Kumar vs. State – 2006 (1) SCC 714.**

(c). Probative value:-

Extra judicial confession – Probative value – Such confession cannot be presumed in law to be a weak type of evidence – It depends of the facts and circumstances of each case – **Narayan Singh and others vs. State of M.P. – AIR 1985 SC 1678.**

In **Gura Singh v. State of Rajasthan (2001 (2) SCC 205),** it was held by the Hon'ble Apex Court that,

"Extra Judicial Confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. That the evidence in the form extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the Court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. It is not open to the court trying the criminal to start with a presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession."

(d). Accused not acquainted with witness:-

Extra judicial confession – Accused not acquainted with witness – Witness not having a status in society – No reason shown as to why accused went to house of witness to confess their crime – Confession cannot be believed – **Sandeep vs. State of Haryana – AIR 2001 SC 1103.**

(e). Reposed faith:-

The prosecution has to show how the accused reposed confidence on a particular person to give the extra judicial confession (**Jaspal Singh vs. State of Punjab (1997 SCC (Cri) 358.**

Extra judicial confession – Section 24 – Murder – Alleged to be made before two prosecution witnesses – One of them was known to brother of deceased – He was neither a sarpanch nor a ward member – Therefore, there was no reason for the accused to repose faith in him to seek his protection – Similarly, other prosecution witness admitted that he was not even acquainted with the accused – Thus said evidence can be said to be unnatural and unbelievable – **State of Rajasthan vs. Kashi Ram – 2006 AIR SCW 5768.**

(f). Confession to an unknown person:-

Confession – It was wholly unlikely that the accused would make extra judicial confession to a person whom they never knew – **Deepak Chandrakant Patil vs. State of Maharashtra – (2006) 10 SC 151.**

In **Jaswant Gir V. State of Punjab (2005 (12) SCC 438)** it was held that the witness to whom confession said to have been made, not taken the accused to the police station immediately and no reason for the accused to confess to the witness with whom he had no intimate relation. The relevant portion is as follows:

"There is no earthly reason why he should go to PW 9 and confide to him as to what he had done. According to PW 9, the appellant wanted to surrender himself to the police. But there is no explanation from PW 9 as to why he did not take him to the police station. He merely stated that the appellant did not turn up thereafter. The circumstances in which PW 9 went to the police station and got his statement recorded by the police on 14-11-1997 are also not forthcoming.**"**

Ultimately the Hon'ble Apex Court has held that conviction cannot be based on his doubtful testimony.

(g). Confession to inimical person:

Confession – It is improbable, as rightly held by the High Court that the accused would repose confidence in a person who is inimically disposed towards him, and confess his guilt –

State of Rajasthan V. Raja Ram (2003 SCC (Cri.) 1965)

(h). Scope and applicability of Extra-Judicial Confession:-

The Hon'ble Apex Court in **Chattar Singh and Anr. V. State of Haryana** reported in **2008 (8) Supreme 178** has held that,

"17. Confessions may be divided into two classes i.e., judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or Court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. .... As to extra-judicial confessions, two questions arise : (i) were they made voluntarily ? And (ii) are they true ? ...

18. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touch-stone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility**."**

(6). SECTION 27 : INFORMATION RECEIVED AND DECUMENTS RECOVERED:-

(a). Scope and requirement to attract Section 27 :-

Anter Singh vs. State of Rajasthan – AIR 2004 SC 2865 is one of the landmark decisions in respect of Section 27 recovery statement. The relevant portions of the Judgment are hereunder:

> **"11.** The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in **Pulukuri Kotayya vs. Emperor (AIR 1947 PC 67)** in the following words, which have become locus classicus:
>
> "It is fallacious to treat the fact discovered within the section as equivalent to the object produced: the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to the fact. Information as to past user or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I sill produce the concealed knife from the roof of my house' does not lead to discovery of knife: knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant." (p.77)
>
> **12.** The aforesaid position was again highlighted in **Prabhoo vs. State of Uttar Pradesh (AIR 1963 SC 1113).**
>
> **13.** Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases in the background events proved therein is not always free from difficulty. It will, therefore, be worthwhile at the outset, to have a short and swift glance at Section 27 and be reminded of its requirements. The Section says:
>
> "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."
>
> **14.** The expression "Provided that" together with the phase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. it is not necessary in this case to consider if this section qualifies, to any extent Section 24 also. It will be seen that the first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant fact, in

consequence of the information received from a person accused of an offence. The second is such that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word 'distinctly' means 'directly', 'indubitably', 'strictly', 'unmistakably'. The word has been advisably used to limit and define the scope of the provable information. The phrase 'distinctly' relates 'to the facts thereby discovered' and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. **(**see **Mohammed Inayuttillah vs. State of Maharashtra (AIR 1976 SC 483)).**

15. At one time it was held that the expression 'fact discovered' in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in **Pulukuri Kottaya's Case and in Udai Bhan vs. State of Uttar Pradesh (AIR 1962 SC 1116).**

16. The various requirements of the section can be summed up as follows:

(*1*) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(*2*) The fact must have been discovered.

(*3*) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(*4*) The person giving the information must be accused of any offence.

(*5*) He must be in the custody of a police officer.

(*6*) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(*7*) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

(b). When Section 27 not tenable? :-

Section 27 – Disclosure statement by accused – Robbery and Murder – Confessional statement by one of the accused mentioning that "and I am wearing the pant which I washed (after commission of the offence) – Disclosure statement by another accused persons mentioning that "I can recover the (looted) property" – Objection to bracketed words and plea that statements hit by sections 24 and 26 of Evidence Act Section 162 of Cr. P. C – Not tenable – more so when consequent upon disclosure statements articles mentioned therein where actually recovered at instance of accused from place where such articles had been hidden by them – words objected to, do not implicate accused with commission of crime but refer only to nature of property hidden by them.

Recovery of stolen property – Disclosure statements by accused proved by testimony of natural witness, a brother of deceased present during investigation when accused have made such statements – Fact that no independent witnesses were associated with recoveries – Not sufficient to create doubt in prosecution version. – **Sanjay vs. State (NCT of Delhi) – AIR 2001 SC 979.**

(c). Recovery of incriminating articles:-

Section 27 – Recovery of incriminating articles – From place which is open and accessible to others – Evidence under S. 27 would not be vitiated on that ground.

There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles are made from any place which is "open or accessible to others". It is a fallacious notion when recovery of any incriminating article was made from a place which is open or accessible to others it would vitiate the evidence under section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried on the main roadside or if it is concealed, beneath dry leaves lying on public places or kept hidden in a public office, the article

would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses the fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

(7) DYING DECLARATION:–

The Hon'ble Apex Court has held in several cases that there is no bar for basing conviction solely on the Dying Declaration but the same should be tested about the voluntaries and truthfulness.

The Hon'ble Apex Court in **P.Mani vs. State of T.N.** reported in **(2006) 3 SCC 161** has held as follows :

Section 32 of the Evidence Act, 1872 – Dying Declaration – Must be wholly reliable – In case of suspicion, the Court should seek corroboration – If evidence shows that statement of deceased is not wholly true it can be treated only as a piece of evidence but conviction cannot be based solely upon it.

It is further held in the very same decision that,

> **"**Indisputably conviction can be recorded on the basis of the dying declaration alone but **therefore the same must be wholly reliable**. In a case where suspicion can be raised as regards the correctness of the dying declaration, the Court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion, it is trite, is no substitute for proof. If evidence brought on record suggests that such dying declaration does not reveal the entire truth, if may be considered only as piece of evidence in which event conviction may not be considered only as a piece of evidence in which event conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon several factors; physical and mental condition of the deceased is one of them**."**

A leading and landmark decision rendered by a five-Judge Bench of the Hon'ble Apex Court in respect of Dying Declaration is **Laxman V. State of Maharashtra (2002 SCC (Cri.)**

1491) in which the Hon'ble Apex Court has held as follows :

> **"3.** … The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. …. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.
>
> **4.** …..
>
> **5.** …. It is indeed a hyper technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers

elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. ….**"**

In a recent decision in **Amol Singh V. State of M.P. (2002 (5) SCC 468** that Hon'ble Apex Court has held as follows:

"S.32(1) of the Evidence Act, 1872 – Dying Declaration – Evidentiary value – Multiple dying declarations – Inconsistencies – Discrepancies in the last dying declaration making it doubtful – Held, it would not be safe to convict the appellant – Penal Code, 1860, Ss.302 and 34.

Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If there are more than one dying declaration they should be consistent. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

On facts, it would be unsafe to convict the appellant. The discrepancies make the last declaration doubtful. The nature of the inconsistencies is such that they are certainly material. The High Court had itself observed that the dying declaration (Ex.t.P-11) scribed by the Executive Magistrate (PW 9) at about 0435 hours in the same night was not in conformity with the FIR and the earlier dying declaration (Ext.P-3) scribed by ASI, B (PW 8) insofar as different motives have been described. That is not only variation. There are several other discrepancies, even as regards the manner in which she is supposed to have been sprinkled with kerosene and thereafter set fire on her**."**

Section 32 – Dying Declaration – Recorded in translated version – Reliability – Declaration made by deceased in Telugu – translated by the duty doctor in Tamil and recorded by the Magistrate in Tamil – Statement so recorded was read over and explained by doctor to deceased – Deceased admitted it to be correct – As regards translation none was cross examined – No material to show that it was a result of tutoring – Declaration corroborated by

evidence of sister-in-law of deceased – is trustworthy and credible – **Ravi Kumar alias Kutti ravi vs. State of Tamil Nadu - 2006 AIR SCW 1037.**

Section 32 – Dying Declaration – Contradiction with accident register – Declaration stating that accused put deceased on fire – Case of suicide, however, recorded in accident register – Doctor who made entry, however, explained that entry was so made on presumption since cause of injuries was not informed to him at that time – Evidence of doctor clear and unambiguous – Defence case of suicide cannot be accepted on face of two dying declarations recorded by Magistrate and Police Constable and their clear evidence – **Ravi Kumar alias Kutti ravi vs. State of tamil Nadu - 2006 AIR SCW 1037.**

Section 32 – Dying Declaration – Deceased wife not keeping good relations with accused-husband – was labouring under belief that husband was having an affair – Deceased was suffering from depression – Had made an earlier attempt for suicide – All prosecution witnesses stating that deceased bolted doors of room from inside – Witnesses along with accused had forced open room and doused fire – Accused himself had taken her to hospital – Circumstances brought on record clearly point out that what might have been stated in dying declaration may not be correct – Conviction based only on dying declaration is not proper –**P. Mani vs. State of Tamil Nadu - 2006 AIR SCW 1053.**

Section 32 – Dying Declaration – Deceased was assaulted by accused with sword, axe etc. – Presence or non presence of eye-witness or non-mentioning of name of said eye-witness in dying declaration – Has no connection with ascertainment of veracity and creditworthiness of dying declaration – Thus disbelieving dying declaration of deceased recorded by doctor on ground that deceased did not mention presence of eye-witness in dying declaration – Not proper – **Heeralal Yadav vs. State of M.P. - 2006 AIR SCW 3425.**

Section 32 – Dying declaration – Recording of – Only because a dying declaration was not recorded by a Magistrate – Same by itself may not be a ground to disbelieve entire prosecution case –**Balbir Singh vs. State of Punjab - 2006 AIR SCW 4950 (A).**

Section 32 – Dying Declaration – Death by burning – victim in her dying declaration recorded by doctor stating that her husband had put kerosene oil upon her and upon igniting, locked door of bathroom from outside – Victim in second dying declaration before investigating Officer not only named her husband but also her mother-in-law – Evidence of witnesses stating how deceased received maltreatment at hands of accused persons for their demand of dowry – Conviction of accused husband under section 302, proper – In view of inconsistencies between two dying declarations, benefit of doubt given to accused mother-in-law – Conviction of both under section 498-A, proper – **Balbir Singh vs. State of Punjab - 2006 AIR SCW 4950 (B)**.

Section 32 – Dying declaration – Reliability – possibility of deceased becoming

instantaneously unconscious – Expressed by doctor conducting post mortem – No ground to disbelieve dying declaration – There is a difference between something possible and something possible or certain – More so, when dying declaration was recorded before deceased reached hospital – **Gangaram Shantaram Salunkhe vs. State of Maharashtra - 2006 AIR SCW 5918 (A).**

Section 32 – Multiple dying declarations – Reliability – Accused was named in all dying declarations as per who poured kerosene on deceased and set him on fire – Dying Declarations though more than one not contradictory to and inconsistent with each other – Evidence of witnesses corroborating dying declarations – reliance can be placed on such dying declarations – **Vimal vs. State of Maharashtra - 2006 AIR SCW 5953.**

Section 32 – Dying Declaration – Conviction can indisputably be based on a dying declaration but before it cannot be acted upon, the same held to have been rendered voluntarily and truthfully – Consistency in the dying declaration is the relevant factor for placing full reliance thereupon – **Mehiboobsab Abbasafi Nadaf vs. State of Karnataka – 2007 (5) Supreme 713.**

The Hon'ble Apex Court in **Samadhan Dhudka Koli V. State of Maharashtra** reported in **2008 (8) Supreme 719** has held that,

> **"16.** Consistency in the dying declaration, therefore, is a very relevant factor. Such a relevant factor cannot be ignored. When a contradictory and inconsistent stand is taken by the deceased herself in different dying declarations, they should not be accepted on their face value. In any event, as a rule of prudence, corroboration must be sought from other evidence brought on record**."**

The Hon'ble Apex Court in **Kalawati W/o, Devaji Dhote vs. State of Maharashtra 2009(1) Supreme 800** has held that, in respect of the principles governing dying declaration, which could be summed up as under as indicated in,

Smt. Paniben vs. State of Gujarat (AIR 1992 SC 1817):

i. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [**Munnu Raja and another vs. The State of Madhya Pradesh (1976) 2 SCR 673)].**

ii. If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [State of Uttar Pradesh vs. Ram Sagar Yadav

and Others AIR 1985 SC 416 and Ramavati Devi vs. State of Bihar AIR 1983 SC 164].

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

iv. Where the dying declarati0on is suspicious, it should not be acted upon without corroborative evidence. [Rasheed Beg vs. State of Madhya Pradesh (1974 (4) SCC 264)].

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

vi. A dying declaration which suffers from infirmity cannot form the basis of conviction. [Ram Manorath and others vs. State of U.P. (1981 (2) SCC 654)].

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

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

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

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

xi. Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted [Mohanlal Gangaram Gehani vs. State of Maharashtra (AIR 1982 SC 839) and Mohan Lal and others vs. State of Haryana (2007) (9) SCC 151)].

Samadhan Dhudaka Koli vs. State of Maharashtra 2008 (8) Supreme 719 – when a contradictory and inconsistent stand is taken by deceased in different dying declarations they should not be accepted on their face value.

(8) CASE DIARY:-

Section 172(2) – Case diary – Evidentiary value – Held, a criminal Court can send for the police diaries of a case under trial in such Court, and may use such diaries, not as evidence of the case, but to aid it in such inquiry or trial – Case diary cannot be utilized as evidence to corroborate the statement of the prosecution witness – In the instant case, the IO had migrated to Pakistan and had died there, hence could not be examined by trial Court – In such circumstances trial Court looked into the case diary as a additional factor to test the veracity of the witnesses – Since the witnesses confronted with the previous statements, that was not prejudicial to the accused in peculiar facts of the case – **Bachan Singh vs. State of Bihar – (2008) 12 SCC 23-A.**

(9) COMMON INTENTION AND COMMON OBJECT:-

Common Intention – Appellants and the co-accused came together and left together and the appellants restricted the movement of the deceased – As such liable u/s 304 (ii) r/w 34 IPC – **Surinder Singh V. State of Punjab - 2006 AIR SCW 5454.**

(a) Common object:-

Common Object **–** Section 149 IPC - A person can be convicted for his vicarious liability if he is found to be a member of the unlawful assembly sharing the common object in spite of the fact whether he had actually participated in the commission of the offence – **Bhagwan Singh Vs. State of M.P. -AIR 2002 SC 1836 = AIR 2002 SC 1621.**

Common Object **–** S.149 IPC – Overt act need not be proved – Attribution of definite role of accused also not necessary – Only requirement is to be found in unlawful assembly – **Dani Singh Vs. State of Bihar - 2005 SCC (Cri.) 127.**

Common Object - Attack with lathies by six persons – Only one accused caused fatal blow – Other accused could not be intended to kill the deceased – S.149 cannot be invoked – **Bharosi Vs. State of M.P. - AIR 2002 SC 3299.**

The Hon'ble Apex Court in **Viji & Anr. v. State of Karnataka (2008 (7) Supreme 578)** has held as follows :

> **"15.** It is equally well-settled that where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence in pursuance of common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults a victim, it is not necessary that all of them must take part in the actual assault. Even in absence of actual assault, all members of unlawful assembly may be held vicariously liable for the acts of others provided there was common object to commit a crime. Appreciation of evidence in such a complex situation is indeed a difficult task, but courts exercising powers in administering criminal justice have to do their best in dealing with such cases and it is expected of them to discharge their duty to sift the evidence carefully and to decide which part of it is true and which is not (vide **Masalti V. State of U.P., (1964) 8 SCR 133)."**

(b) Common intention:-

Section 34 – To attract section 34, IPC, it has to be established that there was plan or meeting of mind of all the accused persons to commit the offence – Pre-arranged or on the spur of moment; but before commission of the crime. – **Kilari Malakondiaah @ Malayadri and Others vs. State of Andhra Pradesh – 2009 (1) Supreme 487.**

Section 34 – Common intention – Proof of – It is question of fact which is subjective – It can also be inferred from the facts and circumstances of the case which includes the conduct of the accused persons acting in concert to commit the offence – **Maqsoodan and others vs. State of U.P. – AIR 1983 sc 126.**

Section 34 – common intention – Proof of – the common intention to bring out a certain

result may develop on the spot itself – **Kirpal and others vs. State of Uttar Pradesh – AIR 1954 SC 706.**

Section 34 – Common intention – Scope – Mention of Section 34 IPC in judgment is not requirement of law for conviction – **Narinder Singh and another vs. State of Punjab – AIR 2000 (SC) 2212.**

Section 34 – Common intention – Sudden fight – The fatal blow caused on the head – The accused who caused fatal injury not established – The accused persons are not liable for common intention to murder. – **Shri Kishan and others vs. State of U.P. – AIR 1972 SC 2056.**

Sections 34 and 149 – Common intention – Non framing of separate charge – Accused charged with Section 300 read with Section 149 IPC – no charge framed under Section 34 IPC – Common object of the accused persons not proved – However, common intention which was not initially in existence formed during transaction on the spot, proved – Conviction of the accused for the major offence read with Section 34 – Is permissible – **Madhu Yadav and others vs. State of Bihar – AIR 2002 SC 2137.**

Section 34 and 300 – Common intention – Overt act – Infliction of solitary blow on the neck of deceased with sharp edged weapon – Acquittal of co-accused persons – No evidence on record to prove as to who delivered the fatal blow – The accused in question cannot be convicted for sharing the common intention to murder – **Ramachandra Ohdar vs. State of Bihar – AIR 1999 SC 998.**

(c) Difference between Common Object with Common Intention:-

In **Chittarmal vs. State of Rajasthan – AIR 2003 SC 796** the Hon'ble Apex Court has held that,

> **"**It is well settled that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction between common intention and common object is that common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require

proof of prior meeting of minds or pre concert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the fact of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does not involve a common intention, then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all**."**

The Apex Court in the case of **Raj Nath vs. State of U.P. 2009 (1) Supreme 370** has stated the difference between the 'Common object' is different from a 'Common intention' as follows:

8. "A plea which was emphasized by the appellant relates to the question whether Section 149, IPC has any application for fastening the constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. the word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once

formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 have to be strictly construed as equivalent 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object upto certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly."

9. "Common object is different from a Common intention as it does not require prior concert and common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and as they act as an assembly to achieve that object. The common object of an assembly is to be an ascertained from the acts and language of the members composing it, and from consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under the law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled may subsequently become unlawful. It os not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful may subsequently becomes unlawful. In other words it can develop during the course of incident at the *spot co instanti*.

10) CONSPIRACY :-

It is well settled that from the very nature a conspiracy must be conceived and hatched in

complete secrecy and it is impossible and very rare to get direct evidence. It is also equally well settled that it is not necessary that each member to conspiracy must know all the details of the conspiracy.

The Hon'ble Supreme Court in **Mohd. Khalid vs. State of W.B. (2002) 7 SCC 334** has held that,

> **"**… For an offence punishable under section 120-B the prosecution need not necessarily prove that the perpetrators expressly agreed to do or caused to be done an illegal act; the agreement may be proved by necessary implication.**"**

It is further held in the very same decision that,

> **"**Offence of conspiracy can be proved by either direct or circumstantial evidence. However, conspiracies are not hatched in the open, by their nature, they are secretly planned. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is therefore seldom available. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objections set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all that is necessarily a matter of inference. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration. It can in some cases be inferred from the acts and conduct of the parties.**"**

The Hon'ble Apex Court has held in **K.R. Purushothaman vs. State of Kerala - AIR 2006 SC 35** as follows:

> **"**To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act bi illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every details of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence; as the

conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstance of the case and the conduct of the accused involved in the conspiracy.**" – V. Thiagarajan and Others vs. State rep. by Inspector of Police, SPE/CBE/ACB, Chennai.**

(a) Essential ingredients:-

In **Suresh Chandra Bahri vs. State of Bihar – AIR 1994 SC 2420** the Hon'ble Apex Court has held that,

"Section 120-A reveals that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn**."**

(11). TEST IDENTIFICATION PARADE:-

(a) Reliance on evidence?

Identification Parade – Identification by witness – It is not safe to place implicit reliance on the evidence of fleeting glimpse of the accused – It is extremely risky to place implicit reliance on identification for the first time before Court – **State of Maharashtra vs. Sukhdev Singh - AIR 1992 SC 2100.**

(b) Identification parade beyond doubt:-

No I.D.Parade – Accused not known to the witness – Identification accused cannot be believed beyond doubt – Chander Pal vs. State of Haryana – AIR 2002 SC 989. – D. Gopalakrishnan vs. Sadanand Naik – AIR 2004 SC 4965 [Similar view].

(c) Identification of more than one accused:-

The identification parade – identification of more than one accused in same parade – Effect – Placing of accused husband and wife in same identification parade, held, was contrary to the Criminal Manual issued by the High Court – Hence, the Courts below rightly disbelieved the identification of the accused in that identification parade – **State of Goa vs. Sanjay Thakran – 2007 (2) SCC (Cri) 162.**

(d) Accused unknown to witness:-

Identification Parade – Accused unknown to witness and witness identifying the accused for the first time before the Court and there is no identification parade – No value could be attached to such evidence –**Kanan and others vs. State of Kerala - 1980 MLJ (Cri) 1.**

(e) Belated Identification:-

Belated identification in Court – No identification parade held – witness cannot be believed – **State of Maharashtra vs. Sukhdev Singh – AIR 1992 SC 2100.**

(f) Evidentiary Value:-

Identification Parade value – Person required to identify an accused should have had no opportunity of seeing him after commission of the Crime and before identification – **Budhsen vs. State of U.P. – AIR 1970 SC 1321.**

(g) Witness already seen the accused:-

If the witness already seen the accused after the arrest and before identification

parade, no value could be attached to such evidence – **Budhsen vs. State of U.P. – AIR SC 1321.**

(h) Test Identification Parade not a Decisive Factor:-

Section 9 of The Evidence Act, 1872 – Test Identifiction Parade cannot be the decisive factor for recording conviction – Identification do not constitute substantive evidence – **Mahabir vs. The State of Delhi – 2008 (3) Supreme 111.**

(i) Identification of accused/articles:-

A person can be identified even in darkness from manner of speech, style of walking and other peculiar features – **State of M.P. vs. Makhan – (2008) 10 SCC 615-B.**

(12) EXPERT OPINION:-

(a) Doctor's Opinion:-

Doctor's opinion about the weapon through theoretical, cannot be totally wiped out – **Anwarul Haq vs. State of U.P. – (2005) 10 SCC 581.**

(b) Not Binding on Court:-

The Hon'ble Apex Court in **Amarsingh Ramjibhai Barot vs. State of Gujarat (2005 (7) SCC 550** has held that,

> "Evidence Act, 1872 – S.45 – Opinion of expert – Binding nature of – Opinion by Forensic Science Laboratory that the substance recovered from accused was "opium"., not accepted – Held, that opinion was not binding on court."

(c) Medical Evidence: -

Section 45 – Expert evidence – Medical evidence – Conflict between the medical evidence and ocular evidence about the type of murder weapon used – Conviction on such evidence is not permissible – **Mohar Singh and others vs. State of Punjab – AIR 1981 SC 1578.**

Conflict between medical and ocular testimony – Ocular testimony should be preferred – **State of Punjab vs. Hakam Singh – (2005) 7 SCC 408.**

(d) Evidentiary value:-

Section 42 – Expert evidence – Evidentiary value – The evidence of an expert is not conclusive – **S. Gopal Reddy vs. State of Andhra Pradesh (AIR 1996 SC 2184).** The relevant portion is hereunder :

"28. …. The evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering 'conclusive' proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In ***Magan Bihari Lal* v. *State of Punjab (AIR 1977 SC 1091)***, while dealing with the evidence of a handwriting expert, this Court opined:

"... We think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in ***Ram Chandra* v. *State of U.P. (AIR 1957 SC 381)*** that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in ***Ishwari Prasad Misra* v. *Mohd. Isa (AIR 1963 SC 1728)*** that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in ***Shashi Kumar Banerjee* v. *Subodh Kumar Banerjee (AIR 1964 SC 529)*** where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin* v. *State of M.P. (AIR 1967 SC 1326)* and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial**."**

(e) Admissibility:-

Section 45 – Expert evidence – Admissibility – It must be shown that expert had necessary skill and adequate knowledge before relying such evidence – **State of Himachal Pradesh vs. Jai Lal and others – 1999 AIR SC 3318.**

(f) Ballistic Expert:-

Section 45 – Expert evidence – Ballistic expert – Appreciation of opinion – Expert failing to categorically say whether the two injuries could have been caused by single shot – The direct evidence of eye-witness could not be doubted on account of such oscillating opinion –

Anvaruddin and others vs. Shakoor and others – AIR 1990 SC 1242.

Section 45 – Expert evidence – Ballistic expert – Inconsistency with ocular evidence – No explanation for inconsistency discredit the entire case – **Ram Narain vs. The State of Punjab – AIR 1975 1727.**

(g) Dog tracking:-

Section 45 – Expert evidence – Dog tracking – Evidentiary value – Scientific knowledge of dog tracking even if admissible is not much weight in evidence – **Abdul Razak Murtaza Dafadar vs. State of Maharashtra – AIR 1970 SC 283.**

(h) Foot print experts:-

Section 45 – Expert evidence – Foot print evidence – Identification by foot-print – Identification of foot print is not a fully developed science – **Mohd. Aman and another vs. State of Rajasthan – AIR 1997 SC 2960.**

(i) Handwriting Expert:-

Section 45 – Expert evidence – Handwriting expert – Evidentiary value of opinion – The opinion is not conclusive – Conviction solely on such opinion is normally not sufficient – **The State of Gujarat vs. Vinaya Chandra Lal Pathi – AIR 1967 SC 778.**

(j) Tape Recorder Evidence:-

Tape recorder evidence – Evidence admissible – Guidelines:

(1) Yusufalli Esmail Nagree vs. State of Maharashtra - AIR 1968 SC 147.

(2). R.M. Malkani vs. State of Maharashtra – AIR 1973 SC 157.

(3). Mahabir Prasad Verma vs. Dr. Surinder Kaur – (1982) 2 SCS 258.

In Mahabir's case (cited supra) the Hon'ble Apex Court has held as follows :

> **"22.** …. Tape-recorded conversation can only be relied upon as corroborative evidence of conversation deposed by any of the parties to the conversation and in the absence of evidence of any such conversation, the tape-recorded conversation is indeed no proper evidence and cannot be relied upon**."**

(h) Brain Mapping Test :

Scientific Test – Brain mapping test - Dinesh Dalmia V. State (2006 (1) MLJ (Cri.) 411.

(13).DNA TEST:-

(a). Evidence:-

Sections 112 and 4 of IEA, 1872 – Conclusiveness of presumption under section 112, held, cannot be rebutted by DNA test – DNA test value of – **Banarsi Dass vs. Teeku Dutta – (2005) 4 SCC 449.**

(b) Compulsion on Parties:-

DNA test – A party to a proceeding cannot be compelled against his/her wish to undergo any such (DNA) test the Court on its own could not have imposed a condition without any condition whatsoever – **Amarjit Kaur vs. Harbhajan Singh – (2003) 10 SCC 228.**

(14). CIRCUMSTANTIAL EVIDENCE:-

Section 3 – Medical Evidence – Alleged variance with ocular evidence – Eye-witnesses account found to be credible and trustworthy – Medical evidence pointing to alternative possibilities is not to be accepted as conclusive – **2008 AIR SCW 5578.**

(a). Prosecution case solely based on the circumstantial evidence:-

Evidence – Appreciation of – Prosecution can solely based on the circumstantial evidence – Principles of appreciation of circumstances from which the conclusion of guilt can be drawn.

In **Sarbir Singh vs. State of Punjab – 1993 Supp (3) SCC 41** it was held as follows :

"It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it is not true in many cases. Sometimes the circumstances which are sought to be proved against the accused for purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances. In Countries having sophisticated modes of investigation, every trace left behind by the culprit can be followed and pursued immediately. Unfortunately it is not available in many parts of this country. That is why the Courts have insisted

I. The circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established;

II. All the facts so established should be consistent only with the hypothesis of the guilt of the accused and should be such as to exclude every hypothesis but the one sought to be proved;

III. The circumstances should be of a conclusive nature;

IV. The chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused.

In **Padala Veera Reddy v. State of A.P. [1989 Supp (2) Supreme 706],** the Hon'ble Apex Court laid down the principle that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence**."**

The Hon'ble Apex Court in **Chattar Singh and Anr. V. State of Haryana** reported in **2008 (8) Supreme 178** has held that,

"10. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

11. In Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh (AIR 1952 SC 343), wherein it was observed thus:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused**."**

The Hon'ble Apex Court re-iterated the above principles in **Baldev Singh V. State of**

Haryana reported in **2008 (8) Supreme 544.**

(b) Appreciation of – Not to cull out one circumstance from rest:-

Circumstantial evidence – Appreciation of – Court should not cull out one circumstance from the rest to give a different meaning to it – **Gade Lakshmi Mangraju alias Ramesh vs. State of Andhra Pradesh – AIR 2001 SC 2677.**

(c) Hypothesis of the guilt:-

Circumstantial Evidence – Appreciation of – Circumstances must be consistent with the hypothesis of the guilt of the accused and totally inconsistent with his innocence – Circumstances from which the conclusion of guilt is to be drawn should be fully proved and circumstances must be conclusive in nature to connect the accused with the crime. Court should not get swayed by emotional considerations - **Balwinder Singh vs. State of Punjab – AIR 1996 SC 607.**

(d) Conditions for reliance:-

Conditions for reliance – Tests to be satisfied before convicting an accused on the basis of circumstantial evidence.

The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence – **Gambhir vs. State of Maharashtra – AIR 1982 SC 1157.**

Missing link to connect the accused – Non explanation of the accused as to what happened on the fateful night – section 313 statement – Chain of circumstances completed – Witness may lie, Circumstances will not – **Joseph vs. State of Kerala – (2000) SCC (Cri) 926.**

Circumstantial Evidence – Evidence must be compete and incapable of explanation on any other hypothesis except that of the guilt of the accused – **Reddy Sampath Kumar vs. State of A.P. – (2005) 7 SCC 603.**

Circumstantial Evidence –Last seen theory itself sufficient to connect the accused in the absence of any other links in the chain of circumstantial evidence – **Jaswant Gir vs. State of Punjab – (2005) 12 SCC 438.**

Circumstantial Evidence – Bride burning – All the circumstances must conclusively established – If there is any break in the link of chain, accused entitled for the benefit of doubt –

Sarojini vs. State of M.P. – 1993 Supp (4) SCC 632.

(15). CONDUCT OF WITNESS AND CONDUCT OF ACCUSED:-

(a). Conduct of Witness:-

Section 3 of Evidence Act, 1872 – Eye-witness not disclosing name of assailant for a day and half-credibility – **State of Orissa vs. Brahmananda – AIR 1976 SC 2488.**

Eye-witness – not informing about the incident till the third day to anyone – Unnatural conduct – Unsafe to rely upon their testimony – **Harbans Lal vs. State of Punjab – 1996 SCC (Cri) 312.**

Eye-witness not disclosing the fact to anybody that he being an eye-witness till the next day conduct unnatural - not safe to sustain conviction – **Joseph vs. State of Kerala – 2003 SCC (Cri) 356.**

Section 3 - Conduct of witness – Mere consistent version of the witnesses not sufficient to show the truthfulness and if the Court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible, or that their presence at the place of occurrence as eye-witness is suspect, the Court may reject their evidence **– Badam Singh vs. State of M.P. – AIR 2004 SC 26.**

(b). Conduct of Accused:-

The conduct of the accused would be relevant under section 8 of the Evidence Act if his immediate reactions to the illegal overture of the complainant or his action in inserting unwanted something in his pocket were revealed in the form of acts accompanied then and there are immediately thereafter by words or gestures reliably established – **Maha Singh vs. State (Delhi Administration) – AIR 1976 SC 449.**

Appreciation of Evidence – An inferential conclusion without any evidence to show participation of the accused cannot be sustained – **Suresh @ Hakla vs. State of Haryana – 2008 (3) Supreme 182.**

(16) NON-EXPLANATION OF INJURIES:-

Accused injuries **-**Non explanation of injuries – fatal – genesis and origin suppressed –**Lakshmi**

Singh Vs. State of Bihar AIR 1976 SC 2263.

In this decision, it was held by the Hon'ble Apex Court that,

"12. …. In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences :

1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version ;

2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable ;

3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. …**."**

Section 3 – Injuries to accused – Non-explanation – Effect – Murder case – Witnesses vividly described incident and part played by each of accused – All witnesses were injured and their presence at spot cannot be doubted – Injuries suffered by accused were simple – Non-explanation thereof would not dislodge prosecution case, which is established by evidence of credit worthy witnesses – **Mohinder Singh vs. State of Punjab – 2006 AIR SCW 1610.**

Murder – Non-Explanation of injuries – Minor and superficial injuries would not affect prosecution case –**Shahjahan vs. State of Kerala - 2007 AIR SCW 2123.**

(17). WITNESSES:-

(a). Sole eye-witness – Not of sterling quality – Not safe to base conviction : -

Section 3 – Sole eye-witness to murder – Evidence of – credibility – Failure to prove motive is not fatal if evidence of witnesses appears to be truthful and convincing – Thumb mark of eye-witness, mother of deceased was taken five times on blank sheet of paper and after first information report was lodged she was never questioned by police – Absence of blood stains on

clothes of eye-witness/ mother and younger brother of deceased suggests that they had not witnessed occurrence – Absence of blood stains explained by saying that she only touched body of the deceased to find out whether he was alive, unnatural – Improvement made by mother in an attempt to project presence of younger brother from very beginning of occurrence, which is not true – Testimony of solitary eye-witness, mother is not of sterling quality – Not safe to base a conviction solely on testimony of that witness – Benefit of doubt given to accused. – **Bhimappa Chandappa Hosamani vs. State of Karnataka - 2006 AIR SCW 5043.**

(b) Solitary witness – Conviction on basis of:-

It is well settled that the Court can place reliance on a solitary witness provided the same inspires confidence. If such evidence of a single witness is clear, cogent and consistent and there is no other infirmity, there is absolutely no impediment in placing reliance on such evidence and the Court need not seek for corroboration.

In **Sunil Kumar V. State of Govt of NCT of Delhi (2003 (11) SCC 367)** the Hon'ble Apex Court has held that,

> ***"9. Vadivelu Thevar case (AIR 1957 SC 614)*** was referred to with approval in the case of *Jagdish Prasad* v. *State of M.P.(AIR 1994 SC 1251)*. This Court held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise**."**

Criminal Trial – Witness – Solitary witness – Related – Testimony of – Held, can be basis of conviction even is related to the deceased – Absence of corroboration, held on facts, inconsequential – **State of Rajasthan V. Om Prakash (2007 (12) SCC 381)**

Criminal Trial – Witnesses – Solitary witness – Testimony of – Conviction on basis of – Permissible – Where testimony of sole eye-witness P.W.2 was not shaken although he was cross-examined at length and the same was corroborated by evidence of P.W.1 (who did not support the prosecution version in toto), held, conviction based on sole testimony of P.W.2 was not liable to be interfered with – Penal Code, 1860, S.302 – Testimony of sole witness –

Evidence Act, 1872, S.134. – **Kunjv Vs. State of Tamil Nadu (2008 (2) SCC 151)**

The Hon'ble Apex Court in **Munna @ Pooran Yadav V. State of Madhya Pradesh** reported in **2008 (8) Supreme 51** has held as follows:

> **"18.** Learned counsel appearing on behalf of the State relied on the decision reported in **Kunju Alias Balachandran V. State of Tamil Nadu (2008 (2) SCC 151)** which deals with the subject of the appreciation of the single eye-witness. This Court following the oftly quoted decision in **Vadivelu Thevar V. State of Madras (AIR 1957 SC 614)** and accepting that decision came to the conclusion that this Court can and may convict relying on the testimony of a single witness provided he is wholly reliable and that there was no legal impediment in convicting a person on the sole testimony of a single witness. ...**."**

The Hon'ble Apex Court in **Jarnail Singh V. State of Punjab** reported in **2009 (1) Supreme 224** has held that,

"It is no doubt true that conviction could be based on the sole testimony of a solitary eye-witness but in order to be the basis of conviction his presence at the place of occurrence has to be natural and his testimony should be strong and reliable and free from any blemish. In **Chuhar Singh V. State of Haryana (1976 (1) SCC 879)** this Court held that what is important is not how many witnesses have been examined but what is the nature and quality of evidence on which it relies. The evidence of a single witness may sustain a sentence of death whereas a host of vulnerable witnesses may fail to support a simple charge of hurt. Since the case must stand or fall by the evidence of single witness, it is necessary to examined that evidence critically."

(c) Interested and partisan witnesses:-

The evidence of interested witnesses cannot be thrown out and the only requirement for the Court is to consider their evidence with great care and caution and if such evidence does not satisfy the test of credibility, then the Court can disbelieve the same. (**Mallanna V. State of Karnataka** reported in **(2007) 8 SCC 523)**

In yet another decision in **Kulesh Mondal V. State of W.B.** reported in **(2007) 8 SCC 578** the Hon'ble Apex Court has held that,

"10. We may also observe that the ground that the (witnesses being close relatives and consequently being partisan witnesses,) **should not be relied upon, has no substance.** This theory was repelled by this Court as early as in **Dalip Singh V. State of Punjab (AIR 1953 SC**

364) in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed ; (AIR p.366, para 25)

'25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses required corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fact that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavored to dispel in **Rameshwar V. State of Rajasthan (AIR 1952 SC 54)**. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel**.'**

11. Again in **Masalti V. State of U.P. (AIR 1965 SC 202)** this Court observed : (AIR pp.209-10, para 14)

….

14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. … The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence ; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.'

Evidence of the injured and other eye-witness – when to be labelled as interested witness?

The Apex Court in the case of **Rama Kant Verma vs. State of U.P. and others 2008 (8) Supreme 848** has held as follows:

7. The witnesses could not have stated the scenario with surgical precision. In **State of A.P. vs. Kandagopaludu 2005 (13) SCC 116** it was inter alia observed as follows:

"We have been taken through the evidence of PWs 1, 2 and 3 before whom extra-judicial confession has been made by the accused. The testimony of PWs 1, 2 and

3 is consistent. The learned counsel for the respondent pointed out that in the evidence of PWs 1 and 2 there is contradiction that the accused did not state before them that he came seeking protection from them. In our view, this discrepancy cannot be termed as a contradiction which would be fatal to the prosecution case. Every discrepancy in the statement of a witness cannot be treated as fatal to the prosecution case. A discrepancy which is not fatal to the prosecution does not create any infirmity. The incident had taken polace on 24-1-1992 and PW 2 was examined on 22-1-1996 after almost four years. Human memories are apt to blur with the passage of time. After lapse of almost four years, it cannot be expected that a witness can depose with mathematical precision.**"**

8. In **B.K. Channappa vs. State of Karnataka [2006 (12) SCC 57]** it was inter alia observed as follows:

"We have independently scrutinized the evidence of the material witnesses in the teeth of the rival contentions of the parties. On reappraisal and scrutiny of the evidence of the injured witnesses Shekharappa (PW 2), B.G. Shivamurthaiah (PW3) and B.G. Prakashaiah (PW 4), they have fully established the case of the prosecution against A-2, A-3, A-17,A-19and A-20, although there were certain discrepancies in their testimony and in comparison to the versions of Prosecution witnesses, the eye-witnesses, in regard to the weapons of the offence individually used by A-1, A-3, A-17, A-19 and A-20 for inflicting injury on the person of each of the injured witnesses as also on the person of the deceased. The discrepancies, as pointed out by the learned counsel for the appellants, are minor and insignificant. The occurrence took place on 5-7-1995 and the witnesses were examined in the court after about a gap of almost five years. The evidence on record further shows that the injured witnesses had been subjected to lengthy and searching cross- examination and in such type of cross- examination, some improvements, contradictions, and omissions are bound to occur in their evidence, which cannot be treated as very serious, vital and significant so as to disbelieve and discard the substratum of the prosecution case. The evidence of the injured witnesses and other eye witnesses has been rightly re appreciated and accepted by the High Court and we find no cogent and sound reason to differ from the well- reasoned judgment upholding the order of the trial Court. There is, therefore, no merit in the argument of the learned counsel for the appellants that the evidence of the injured witnesses and other eyewitnesses should be labelled as the evidence of the interested witnesses. On the other hand, we find that the evidence of all the eye witnesses including injured persons is quite natural, convincing and trustworthy. There is no material on record from which an inference can be drawn that the material witnesses have implicated the appellants

Karibasappa (A-2), Halanaika (A-3), B.K. Manjunatha (A-!7), B.K. Parmeshwarappa (A-19) and B.K. Shivarajappa (A-20) in a false case.

(d). Hostile Witness:-

Section 3 – Hostile Witness – Evidence cannot be rejected in toto merely because prosecution chose to treat him as hostile and cross-examined him – But can be accepted to the extend his version is found to be dependable on a careful scrutiny thereof. – **2006 AIR SCW 421(B).**

Section 3 – Proof of guilt – fact that prosecution witness held hostile – May be act of dishonesty on their part – But not sufficient to prove guilt of accused –**Vikramjit Singh alias Vicky vs. State of Punjab - 2006 AIR SCW 6197 [F].**

The well settled principle of law laid down by the Hon'ble Apex Court is that the evidence of a hostile witness cannot be rejected in toto and any portion either in favour of the defence or in favour of the prosecution can very well relied by the Court for arriving at a just decision. In **Sat Paul V. Delhi Administration** reported in **AIR 1976 SC 294** the Hon'ble Apex Court has held as follows:

> **"**Even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto**."**

(e). Inimical witness:-

Section 3 – Inimical Witness – Reliability – Enmity not denied – Prosecution case itself alleging that accused persons came to beat complainant – Evidence of Witnesses, who are injured, cannot be rejected on ground of enmity –**Kallu alias Masih vs. The State of Madhya**

Pradesh - 2006 AIR SCW 177[E].

(f). Interested Witness: -

Section 3 – Interested Witness – Evidence otherwise reliable – Witness has also received injury in incident – His evidence cannot be discarded merely on ground that ne is interested person – **2006 AIR SCW 1302.**

Section 3 – Interested Witness – Evidence of - Credibility – Relationship is not a factor to affect credibility of a witness – Foundation has to be laid if plea of false implication is made – **2006 AIR SCW 3680 (A).**

Section 3 – Interested Witness – Evidence of – Credibility - Murder case – Nothing elicited in cross-examination of eye-witnesses – Their evidence corroborated by complaint and medical evidence and weapon seized on disclosures made by accused – Cannot be rejected even though they were closely related to deceased and inimically disposed towards accused – **2006 AIR SCW 4143.**

(g). Non-Examination of independent witnesses:-

Section 3 – Non examination of independent witness – When Fatal – What is necessary for proving prosecution case is not quantity but quality of evidence – Offence is committed in a village over a land dispute – Independent witnesses may not come forward – However, some of witnesses examined by the prosecution are independent – Their evidence is more or less consistent – Nothing has been pointed out to discredit their testimonies – Testimonies of said witnesses cannot be rejected on grounds that all witnesses are not examined – **2006 AIR SCW 4186 [A].**