

# APPRECIATION OF EVIDENCE IN CRIMINAL TRIAL

- **Law regarding appreciation of evidence:** Proper appreciation of evidence (oral & documentary) is the most important part of judicial function of a trial Judge or Magistrate.
  
- The correctness of findings of facts and the quality of judgment depend upon whether or not the trial Judge or Magistrate or the appellate Judge is familiar with the laws applicable to different sorts of evidence adduced by the parties.
  
- Conversant with law of Evidence Act, Judicial pronouncements of the Supreme Court / High Court.
  
- **What does evidence mean and includes ?**
  - (i) **Oral Evidence** (Statements of witnesses)
  - (ii) **Documentary Evidence** (Documents)
    - (a) Electronic Records (Contents or voice in computers, CD, Mobile, Tape recorder, e-mail and other Electronic devices)
  
    - (b) Tangible Objects (like Sticks, lathis, bamboos, iron rods, swords, spears, knives, pistols, guns, cartridges, metals, explosives, splinters of bombs and other explosive devices, bones, hairs, ornaments, clothes, ropes, wires and other tangible objects etc.)

**Kinds of witnesses :** Upon examination of facts of the case, the witnesses which are generally examined before the Courts in criminal trials may broadly be categorized as under -

- (1) **Independent Witness**
- (2) **Direct (Ocular) Witness**
- (3) **Interested Witness :**
  - (a) Family Member as Witness
  - (b) Relatives as Witness
  - (c) Friendly Witness
- (4) **Inimical Witness**
- (5) Hostile Witness
- (6) **Injured Witness**
- (7) Sterling Witness. Vide Santosh Prasad Vs. State of Bihar, (2020) 3 SCC 443
- (8) Chance Witness
- (9) **Child Witness**
- (10) **Deaf and Dumb Witness**
- (11) Tutored Witness
- (12) Habitual Witness
- (13) Hearsay Witness
- (14) Planted Witness
- (15) Police Personnel as Witness
  - (a) Investigating Officer
  - (b) Chick FIR Registering Constable
  - (c) Witness to Arrest & Recovery etc.
  - (d). Official Witness. Vide: Vinod Kumar Garg Vs. State NCT of Delhi, (2020) 2 SCC 88
- (16) **Expert Witness**
  - (a) Doctor (Medical Expert)
  - (b) Hand Writing Expert
  - (c) Thumb & Finger Print Expert
  - (d) Typewriter Expert
  - (e) Voice Expert
  - (f) Chemical Examiner
  - (g) Ballistic Expert
  - (h) Any Other Expert
- (17) Secondary Witness
- (18) Approver as Witness
- (19) **Accused as Witness (Section 315 Cr.P.C)**

- **Kinds of witnesses based upon credibility of Witnesses :** As regards the reliability of witnesses, they can be categorized as under :

\*Wholly Reliable

\*Wholly Unreliable

**\*Partly Reliable & Partly Unreliable.**

**General factors appearing in oral testimony of witnesses :** Following factors are generally seen in the oral testimony of witnesses examined before the courts :

- (i) Contradictions
- (ii) Inconsistencies
- (iii) Exaggerations
- (iv) Embellishments
- (v) Contrary statements by two or more witnesses on the same fact.

### **Contradictions & their appreciation**

@ If there are no material discrepancies or contradictions in the testimony of a witness, his evidence can not be disbelieved merely on the basis of some normal, natural or minor contradictions, inconsistencies, exaggerations, embellishments etc. The distinction between material discrepancies and normal discrepancies are that minor discrepancies do not corrode the credibility of a party's case but material discrepancies do so.

Mustak Vs. State of Gujarat, (2020) 7 SCC 237.

### **Mukesh Vs. State for NCT of Delhi, AIR 2017 SC 2161**

@ Picking up one word or sentence out of testimony of a witness and deriving conclusion therefrom not proper: Evidence of a witness has to be read as a whole. Words and sentences cannot be truncated and read in isolation. **Mustak Vs. State of Gujarat, (2020) 7 SCC 237.**

@ **Contradictions & their appreciation :** Minor contradictions in the testimonies of the Prosecution Witness are bound to be there and in fact they go to support the truthfulness of the witnesses. If the witnesses are examined after lapse of time, it is bound to occur.

Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537

**Ramesh Vs. State of UP, (2009) 15 SCC 513**

**Dharnidhar Vs. State of U.P., 2010 (6) SCJ 662.**

@ **Doctrine of "falsus in uno, falsus in omnibus" not applicable in Indian judicial system** It is merely a rule of caution. Thus even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of number

of other co-accused persons, his conviction can be maintained. The court has to separate grain from

chaff and appraise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected in toto.

**Mahendran Vs. State of Tamil Nadu, AIR 2019 SC 1719.**

**Babu Vs. State of T.N., (2013) 8 SCC 60**

**@ Conduct of accused in abscondence admissible in evidence under Section 8 of the Evidence Act:** Conduct of accused in abscondence is admissible in evidence u/s 8 of the Evidence Act: See: **State NCT of Delhi Vs. Shiv Charan Bansal, (2020) 2 SCC 290.**

**Illustrations .**

**@ Sole witness:** Whether conviction can be based on the evidence of a sole witness? It has been held by the Supreme Court in the cases noted below that in a criminal trial quality of evidence and not the quantity matters. As per **Sec. 134 of the Evidence Act**, no particular number of witnesses is required to prove any fact. Plurality of witnesses in a criminal trial is not the legislative intent. If the testimony of a sole witness is found reliable on the touchstone of credibility, accused can be convicted on the basis of such sole testimony :

**Parvat Singh Vs. State of M.P., (2020) 4 SCC 33**

**Sudip Kumar Sen Vs. State of W.B., (2016) 3 SCC 26**

**@ Related witnesses & interested witnesses :** The testimony of a witness in a criminal trial cannot be discarded merely because the witness is a relative or family member of the victim of the offence. In such a case, court has to adopt a careful approach in analyzing the evidence of such witness and if the testimony of the related witness is otherwise found credible accused can be convicted on the basis of testimony of such related witness.

**Ramji Singh Vs. State of UP, (2020) 2 SCC 425**

**Laltu Ghosh Vs. State of W.B., AIR 2019 SC 1058.**

**Md. Rojali Ali Vs. State of Assam, AIR 2019 SC 1128.**

**Sucha Singh Vs. State of Punjab, (2003) 7 SCC 643**

**@ Interested witness : Who is? :** A 'related witness' is not equivalent to an 'interested witness'. A witness may be called 'interested' only when he or she derives some benefit from the result of the litigation in the decree in a civil case or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be an 'interested witness'. (Example Section 498A IPC)

**Ramji Singh Vs. State of UP, (2020) 2 SCC 425**  
**Ganpathi Vs. State of Tamil Nadu, (2018) 5 SCC 549**  
**State of Rajasthan Vs. Kalki, (1981) 2 SCC 752**

**@ Inimical witnesses :** Enmity of the witnesses with the accused is not a ground to reject their testimony and if on proper scrutiny, the testimony of such witnesses is found reliable, the accused can be convicted. However, the possibility of falsely involving some persons in the crime or exaggerating the role of some of the accused by such witnesses should be kept in mind and ascertained on the facts of each case. Enmity for false implication but it may also acts as catalyst.

**Dilawar Singh Vs. State of Haryana, (2015) 1 SCC 737**  
**Dhari Vs. State of UP, AIR 2013 SC 308**  
**Ramesh Harijan Vs. State of UP, (2012) 5 SCC 777**

**@ Independent witnesses & effect of their non-examination :** If a witness examined in the court is otherwise found reliable and trustworthy, the fact sought to be proved by that witness need not be further proved through other witnesses though there may be other witnesses available who could have been examined but were not examined. Non-examination of material witness is not a mathematical formula for discarding the weight of the testimony available on record however natural, trustworthy and convincing it may be. ***It is settled law that non-examination of eye-witness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of pen.*** Court can convict an accused on statement of s sole witness even if he is relative of the deceased and non examination of independent witness would not be fatal to the case of prosecution. Non- examination of independent eye witnesses is inconsequential if the witness was won over or terrorised by the

accused.

**BUT**

## **Non-examination of material independent witnesses by prosecution adversely affects its case**

**Parminder Kaur Vs. State of Punjab, (2020) 8 SCC 811**

**@ Injured witness & appreciation of his evidence:** Deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies for the reason that his presence on the scene stands established in the case and it is proved that he suffered the injuries during the said incident.

**Bhagirath Vs. State of MP, AIR 2019 SC 264.**

**Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161**

**@ Non-examination of injured witness held fatal :** Where an injured witness had not been examined by the prosecution despite the fact that he attended the trial court regularly, the Supreme Court held that his non-examination was fatal to the prosecution since his presence at the place of occurrence was beyond doubt.

**@ Public prosecutor not bound to examine all witnesses :** Explaining the provisions of Sections 231, 311 CrPC and Sections 114 & 134 of the Evidence Act, the Supreme Court had ruled that prosecution need not examine its all witnesses. Discretion lies with the prosecution whether to tender or not witness to prove its case. Adverse inference against prosecution can be drawn only if withholding of witness was with oblique motive.

**Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016)10 SCC 537**

**Nand Kumar Vs. State of Chhatisgarh, (2015) 1 SCC 776**

**@ Injured witnesses and their reliability :** Presence of the injured witnesses at the time and place of the occurrence cannot be doubted as they had received injuries during the course of the incident and they should normally be not disbelieved.

**Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537**

**Maqsoodan Vs. State of U.P., (1983) 1 SCC 218 (Three-Judge Bench).**

**@ Presiding judge must play pro-active role to ensure fair trial (Sec. 165, Evidence Act):** Duty of presiding judge is to play pro-active role to ensure fair trial. Court cannot be a silent spectator or mute observer when it presides over trial. It is the duty of the court to see that neither prosecution nor accused play truancy with criminal trial or corrode sanctity of the Court proceedings. Presiding judge can envoke his powers u/s 165 of the Evidence Act and can put questions to the witness to elicit the truth.

**Bablu Kumar Vs. State of Bihar, (2015) 8 SCC 787.**

**Strict adherence of Section 309 CR.P.C. Cross-examination of witness not to be deferred at the pleasure or leisure of the defence counsel :** Sending copy of its judgment to the Chief Justices of all the High Courts for circulating the same among the trial judges, it has been ruled by the Hon'ble Supreme Court that the trial judges must bcommanded to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at the pleasure or leisure of the defence counsel. See : **Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220.**

**@ Evidence of police officer as witness to recovery not to be ordinarily disbelieved :** If anything or weapons etc. are recovered at the instance of the accused (**u/s 27, Evidence Act**) only in the presence of police party and there is no public witness to such recovery or recovery memo, the testimony of the police personnel proving the recovery and the recovery memo cannot be disbelieved merely because there was no witness to the recovery proceedings or recovery memo from the public particularly when no witness from public could be found by the police party despite their efforts at the time of recovery. Seizure memo need not be attested by any independent witness and the evidence of police officer regarding recovery at the instance of the accused should ordinarily be believed. The ground realities cannot be lost sight of that even in normal circumstances, members of public are very reluctant to accompany a police party which is going to arrest a criminal or is embarking upon search of some premises.

**Mukesh Vs. State for NCT of Delhi & Others, AIR  
2017 SC 2161**

**Investigating officer when not examined ? :** It is always desirable for prosecution to examine I.O. However, non-examination of I.O. does not in any way create any dent in the prosecution case much less affect the credibility of otherwise trustworthy testimony of eye-witnesses. If the presence of the eye-witnesses on the spot is proved and the guilt of the



accused is also proved by their trustworthy testimony, non-examination of I.O. would not be fatal to the case of prosecution :

**@ Incomplete or defective investigation & its effect :** Any irregularity or deficiency in investigation by I.O. need not necessarily lead to rejection of the case of prosecution when it is otherwise proved. The only requirement is use of extra caution in evaluation of evidence. A defective investigation cannot be fatal to prosecution where ocular testimony is found credible and cogent :

**Vinod Kumar Garg Vs. State NCT of Delhi, (2020) 2 SCC 88.  
Nawab Vs. State of Uttarakhand, (2020) 2 SCC**

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