The Indian Evidence Act, 1872

February 22, 2013

Part I – RELEVANCY OF FACTS

Chapter I – Preliminary

1. SHORT TITLE, EXTENT, COMMENCEMENT. –

This Act may be called the **Indian Evidence Act, 1872.**

It extends to the whole of India [1][except the State of Jammu and Kashmir] and applies to all judicial proceedings in or before any Court, including Courts-martial, [2][other than Courts-martial convened under the Army Act] (44 & 45 Vict., c. 58) 3[the Naval Discipline Act (29 & 30 Vict., c. 109) or [4][***] the Indian Navy (Discipline) Act, 1934 (34 of 1934)[5] [6][or the Air Force Act] (7 Geo. 5, c. 51) but not to affidavits [7]presented to any Court or Officer, nor to proceedings before an arbitrator; and it shall come into force on the first day of September, 1872.

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1. **Subs. by Act 3 of 1951, sec. 3 and Sch., for "except Part B States".**
2. **Ins. by Act 18 of 1919, sec. 2 and Sch. I. See section 127 of the Army Act (44 and 45 Vict., c. 58).**
3. **Ins. by Act 35 of 1934, sec. 2 and Sch.**
4. **The words "that Act as modified by" omitted by the A.O. 1950.**
5. **See now the Navy Act, 1957 (64 of 1957)**
6. **Ins. by Act 10 of 1927, sec. 2 and Sch. I.**
7. **As to practice relating to affidavits, see, the Code of Civil Procedure, 1908 (Act 5 of 1908), sec. 30 (c) and Sch. 1, Order XIX. See also the Code of Criminal Procedure, 1973 (Act 2 of 1974), sections 295 and 297.**

2. [Repeal of enactment.] Rep. By the Repealing Act,1938 (1 of 1938), S.2 and Sch..

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3. Interpretation clause –

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court". —"Court" includes all Judges[1] and Magistrates, [2]and all persons, except arbitrators, legally authorized to take evidence.

"Fact".—"Fact" means and includes—

(1) any thing, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact.

"Relevant".—One fact is said to be relevant to another when the one is

connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue".—The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,[3]any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations

A is accused of the murder of B.

At his trial the following facts may be in issue:—

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document".—"Document"[4] means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing[5] is a document;

Words printed, lithographed or photographed are documents;

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document.

"Evidence".—"Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry,

such statements are called oral evidence;

(2) [6][all documents including electronic records produced for the inspection of the Court],

such documents are called documentary evidence.

"Proved".—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved".—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Not proved".—A fact is said not to be proved when it is neither proved nor disproved.

[7][**"India".**—"India" means the territory of India excluding the State of Jammu and Kashmir.]

[8][the expressions "Certifying Authority", "digital signature", "Digital Signature Certificate", "electronic form", "electronic records", "information", "secure electronic record", "secure digital signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act, 2000.]

COMMENTS

Admissibility of contemporaneous tape-record

A contemporaneous tape-record is admissible under section 8 if (i) the conversation is relevant to the matters in issue; (ii) there is identification of the voice; (iii) the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record; R.M. Malkani v. State of Maharashtra, AIR 1973 SC 157.

Court to scrutinize evidence

(i) It is the duty of court to scrutinize the evidence carefully and to see that acceptable evidence is accepted; State of Gujarat v. Gandabhai Govindbhai, 2000 Cr LJ 92 (Guj).

(ii) Court should adopt cautious approach for basing conviction on circumstantial evidence; State of Haryana v. Ved Prakash, 1994 Cr LJ 140 (SC).

Evidence of eye witness

(i) Having examined all the eyewitnesses even if other persons present nearby, not examined, the evidence of eyewitness cannot be discarded , courts are concerned with quality of evidence in a criminal trial. Conviction can be based on sole evidence if it inspires confidence; Sheelam Ramesh v. State of Andhra Pradesh, AIR 2000 SC 718: 2000 Cr LJ 51 (SC).

(ii) Where there are material contradictions creating reasonable doubt in a reasonable mind, such eye witnesses cannot be relied upon to base their evidence in the conviction of accused; Nathia v. State of Rajasthan, 1999 Cri LJ 1371 (Raj).

(iii) Evidence of an eye witness cannot be disbelieved on ground that his statement was not recorded earlier before he was examined in motor accident claim case by police; Fizabai v. Namichand, AIR 1993 MP 79.

(iv) Where court acquitted accused by giving benefit of doubt, it will not affect evidence of eye witnesses being natural witnesses; Krishna Ram v. State of Rajasthan, AIR 1993 SC 1386.

Identification by photo admissible

There is no legal provision that identification by photo is not admissible in evidence; Umar Abdul Sakoor Sorathia v. Intelligence Officer M.C. Bureau, 1999 Cr LJ 3972 (SC).

Interested witness

(i) It has been held regarding "interested witness" that the relationship is not a factor to affect credibility of witness; Rizan v. State of Chhattisgarh, AIR 2003 SC 976.

(ii) Testimony of injured eye witnesses cannot be rejected on ground that they were interested witnesses; Nallamsetty Yanasaiah v. State of Andhra Pradesh, AIR 1993 SC 1175.

(iii) The mechanical rejection of evidence on sole ground that it is from interested witness would invariably lead to failure or justice; Brathi alias Sukhdev Singh v. State of Punjab, 1991 Cr LJ 402 (SC).

Maxim "Falsus in uno falsus in omnibus"

(i) "Falsus in uno, Falsus in Omnibus" is not a rule of evidence in criminal trail and it is duty of the Court to engage the truth from falsehood, to shift grain from the chaff; Triloki Nath v. State of U.P., AIR 2006 SC 321.

(ii) The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. The maxim merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence"; Israr v. State of Uttar Pradesh, AIR 2005 SC 249.

Natural witness

Witnesses being close relations of deceased living opposite to house of deceased, are natural witnesses to be believed; Om Parkash v. State of Punjab, AIR 1993 SC 138.

Testimony: when to be relied

(i) The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds; Karamjit Singh v. State (Delhi Administration), AIR 2003 SC 1311.

(ii) Rejection of whole testimony of hostile witness is not proper; Ashok Kumar v. P.M.A. Chanchal, AIR 1999 Guj 108.

(iii) Where evidence of some witnesses was found not safe for conviction, whole of their testimony should not be rejected; Nadodi Jayaraman v. State of Tamil Nadu, AIR 1993 SC 777.

(iv) The testimony of a single witness if it is straightforward, cogent and if believed is sufficient to prove the prosecution case; Vahula Bhushan alias Vehuna Krishna v. State of Tamil Nadu, 1989 Cr LJ 799: AIR 1989 SC 236.

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1. **Cf. the Code of Civil Procedure, 1908 (Act 5 of 1908), sec. 2, the Indian Penal Code (Act 45 of 1860), sec. 19; and, for a definition of "District Judge," the General Clauses Act, 1897 (10 of 1897), sec. 3 (17).**
2. **Cf. the General Clauses Act, 1897 (10 of 1897), sec. 3 (32) and the Code of Criminal Procedure, 1973 (Act 2 of 1974).**
3. **See now the Code of Civil Procedure, 1908 (5 of 1908) as to the settlement of issues, see Sch. I, Order XIV.**
4. **Cf. the Indian Penal Code (Act 45 of 1860), sec. 29 and the General Clauses Act, 1897 (10 of 1897), sec. 3 (18).**
5. **Cf. definition of "writing in the General Clauses Act, 1897 (10 of 1897), sec. 3 (65).**
6. **Subs. by Act 21 of 2000, sec. 92 and Sch. II, for certain words "all documents produced for the inspection of the Court" (w.e.f. 17-10-2000).**
7. **Subs. by Act 3 of 1951, sec. 3 and Sch., for the definition of "State" and "States", which was ins. by the A.O. 1950.**
8. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

4. "May presume" –

Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"Shall presume" – Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Conclusive proof" – Where one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Chapter II – Of the relevancy of facts

5. Evidence may be given of facts in issue and relevant facts –

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation – This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.[1]

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue –

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b) A suitor does not bring with him and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to product the bond or prove its contents at a subsequent stage of the proceedings otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

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1. **See now the Code of Civil Procedure, 1908 (5 of 1908).**

6. Relevancy of facts forming part of same transaction –

Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after is as to from part of the transaction, is a relevant fact.

(b) A is accused of waging war against the [1]Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is whether certain goods ordered from B were delivered to A. the goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

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1. **Subs. by the A.O. 1950, for "Queen".**

7. Facts which are occasion, cause or effect of facts in issue –

Facts Which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

8. Motive preparation and previous or subsequent conduct –

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. – The word "conduct" in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. – When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B.

The facts that, A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, it relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B,A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A.

The facts that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate that he consulted vakils in reference to making the will, and that he caused drafts or other wills to be prepared of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favorable to himself, on that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence – "the police are coming to look for the man who robbed B" and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000.

The fact that, A asked C to lend him money, an that D said to C in A's presence and hearing "Advice you The Orient Tavern to trust A, for he owes B 10,000 rupees" and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The facts that, A absconded after receiving a litter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which the complaint was made, are relevant.

The facts that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause 1, or as corroborative evidence under section 157.

(k) The question is whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint, relating to the offence, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause 1, or as corroborative evidence under section 157.

COMMENTS

Ground for rejection of testimony of eye witness

The conduct of an eye witness in non-disclosing the incident to anybody for a number of days, is highly unnatural one and is sufficient to reject his testimony; *Ganpat Kondiba Chavan* v. *State of Maharashtra,* (1997) 2 Crimes 38 (Bom).

It is well settled that the conduct of a witness in not disclosing the incident to person(s) whom he must have met after the incident is indicative of the fact that he had not seen the accident; *Ganpat Kondiba Chavan* v. *State of Maharashtra,* (1997) 2 Crimes 38 (Bom).

Role of motive in an offence

If motive is proved, the case of prosecution becomes more easier to connect accused to the alleged incident; *P.V. Narayana* v. *State of Andhra Pradesh,* (1997) 2 Crimes 307 (AP).

Normally there is a motive behind every criminal act; *Barikanoo* v. *State of Uttar Pradesh,* (1997) 1 Crimes 500 (All).

When motive is not *sine qua non*

Where the ocular evidence is very clear and convincing and the role of the accused person in the crime stands clearly established, establishment of motive is not a *sine qua non* for proving the prosecution case; *Yunis alias Kariya* v. *State of Madhya Pradesh*, AIR 2003 SC 539.

It is well settled that where the direct evidence regarding the assault is worthy of the credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes the motive is shrouded in the mystery and it is very difficult to locate the same. If, however, the evidence of eye witnesses is credit-worthy and is believed by the court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant; *Raja* v*. State,* (1972) 2 Crimes 175.

Motive is a thing primarily known to the accused himself and it may not the possible for the prosecution in each and every case to find out the real motive behind the crime; *Barikanoo* v. *State of Uttar Pradesh*, (1997)1 Crimes 500 (All).

It is well established that where there is an eyewitness account regarding the incident, the motive loses all its importance; *Barikanoo* v. *State of Uttar Pradesh,* (1997) 1 Crimes 500 (All).

9. Facts necessary to explain or introduce relevant facts –

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A;B affirms that the matter alleged to be libelous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as a conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home he had sudden and urgent business at the place to which he went is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A.C, on leaving A's service, says to A – "I am leaving you because B has made me better offer." The statement is a relevant fact as explanatory of C's conduct which is relevant as a fact in issue.

(e) A, accused of theft is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it "A says you are to hide this." B's statement is relevant as explanatory of a fact which is pat of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

COMMENTS

Identification accused

(i) If the test identification parade regarding accused was not conducted properly and suffered from unexplained delay, he is entitled to benefit of doubt; *Rajesh Govind Jagesha* v. *State of Maharashtra* , AIR 2000 SC 160: 2000 Cr LJ 380 (SC).

(ii) The possibility of wrong identification due to loss of memory cannot be discounted; *Pravakar Behera* v. *State of Orissa* , (1997) 2 Crimes 108 (Ori)

(iii) When conviction was based on evidence of eye witness and not on identification parade it cannot be set aside on ground that identification was not reliable; *Mullagiri Vajiram* v. *State of Andhra Pradesh,* AIR 1993 SC 1243.

(iv) In dacoity case where all witnesses identified suspects as culprits without margin of error creating doubt in mind of court, such identification is liable to be set aside; *Tahir Mohamad, Kamad Girendra Singh and Badri Singh* v. *State of Madhya Pradesh,* AIR 1993 SC 931.

(v) Where both the trial court and the Appellate Court had assessed the evidence in the proper perspective and attached much importance to the evidence in regard to the identification of the

appellant in finding him guilty, the Supreme Court would not re-assess that evidence in absence of an exceptional ground necessitating such re-assessment; *Ramdeo Rai Yadav* v. *State of Bihar,* (1990) Cr LJ 1183 (SC).

(vi) If there is unexplained and unreasonable delay in putting up the accused persons for a test identification the delay by itself detracts from the credibility of the test; *Raj Nath* v *. State of Uttar Pradesh,* 1988 Cr LJ 422: AIR 1988 SC 345.

(vii) The test identification parade conducted three and a half months after the dacoity took place, it would be wrong to convict the accused on single testimony; *Wakil Singh* v. *State of Bihar,* 1981 BLJ 462.

10. Things said or done by conspirator in reference to common design –

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose showing that any such persons was a party to it.

Illustration

Reasonable grounds exists for believing that A has joined in a conspiracy to wage war against the [1]Government of India.

The facts that, B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D Persuaded persons to join the conspiracy in Bombay. E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

Comments

Existence of conspiracy

If prima facie evidence of existence of a conspiracy is given and accepted, the evidence of acts and statements made by anyone of the conspirators in furtherance of the common object is admissible against all; *Jayendra Saraswati Swamigal* v. *State of Tamil Nadu*, AIR 2005 SC 716.

Object

Section 10 has been deliberately enacted in order to make acts and statements of a co-conspirator admissible against the whole body of conspirators, because of the nature of crime; *Badri Rai* v. *State of Bihar,* AIR 1958 SC 953.

Significance of "common intention"

The words "common intention" signify a common intention existing at the time when the thing was said, done or written by the one of them. It had noting to do with carrying the conspiracy into effect; *Mirza Akbar* v. *Emperor,* AIR 1940 PC 176.

1. **Subs. by the A.O. 1950, for "Queen".**

11. When Facts not otherwise relevant become relevant –

Facts not otherwise relevant, are relevant.

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

(a) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D is relevant.

12. In suits for damages, facts tending to enable Court to determine amount are relevant –

In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

13. Facts relevant when right or custom is in question –

Where the question is as to existence of any right or custom, the following facts are relevant:

(a) any transaction by which the right or custom in question was created, claimed modified, recognized, asserted or denied, or which was inconsistent with its existence;

(b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustrations

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father irreconcilable with the mortgage particular instances in which A's father exercised the right or in which the exercise of the right was stopped by A's neighbors, are relevant facts.

14. Facts showing existence of state of mind or of body or bodily feeling –

Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence

of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

[1]Explanation 1 – A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally but in reference to the particular matter in question.

Explanation 2. – But where, upon the trail of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this Section, the previous conviction of such person shall also be a relevant fact.

Illustration

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

[2](b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew each and all of the articles of which he was in possession to be stolen.

The fact that, at the time of delivery A was possessed of a number of other pieces of counterfeit coin, is relevant.

The fact that, A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(c) A sues B for damage done by a god of B's which B knew to be ferocious.

The facts that, the dog had previously bitten X, Y and Z and that they had made complaints to B are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of payee was fictitious.

The fact that, A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that, there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbors and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, the question is whether, when he appropriated it, he believed in good faith, that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, the notice was given fraudulently by C who had heard of the loss of the property and wished to set up a false claim to it, is relevant as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j) A is charged with sending heartening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(l) The question is, whether A's death was caused by poison.

Statement made by A during hiss illness as to his symptoms, are relevant facts.

(m) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that, B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that, B was habitually negligent about the carriage which he let to hire is relevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that, A on other occasions shot a B is relevant as showing his intention to shoot B.

The fact that, A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p) A is tried for a crime.

The fact that, he said something indicating an intention to commit that particular crime is relevant.

The fact that, he said something indicating a general disposition to commit crimes of that class, is irrelevant.

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1. **Subs. by Act 3 of 1891, sec. 1, for the original *Explanation.***
2. **Subs. by Act 3 of 1891, sec. 1, for *Illustration* (b).**

15. Facts bearing on question whether act was accidental or intentional –

When there is a question whether an act was accidental or intentional, [1] or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrence, in each of which the person doing the act was concerned, is relevant.

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The fact that, A lived in several houses successively each of which he insured, in each of which he insured, in each of which a fire occurred, and after each of which fires A received, payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B.

It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether his false entry was accidental or intentional.

The facts that, other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

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1. **Ins. by Act 3 of 1891, sec. 2.**

16. Existence of course of business when relevant –

When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations

(a) The question is, whether a particular letter was dispatched.

The facts that, it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The fact that, it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions

17. Admission defined –

An admission is a statement, [1]oral or documentary which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

Comment

Admissibility is substantive evidence of the fact

Admissibility is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness; *Bishwanath Prasad* v*. Dwarka Prasad,* AIR 1974 SC 117.

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1. **Subs. by Act 21 of 2000, sec. 92 and Sch. II, for "oral or documentary" (w.e.f. 17-10-2000).**

18. Admission by party to proceeding or his agent

Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to made them, are admissions.

By suitor in representative character – Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by –

(1) by party interested in subject matter; persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding and who make the statement in their character of persons so interested; or

(2) by person from whom interest derived; persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Admissions by persons whose position must be proved as against party to suit-

Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against the made if they are made whilst the person making them occupies such position or is subject of such liability.

Illustration

A undertakes to collect rent for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owned B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. Admission by persons expressly referred to by party to suit –

Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is, whether a horse sold by A to B is sound A says to B "Go and ask CC knows all about it" C's statement is an admission.

COMMENTS

In eviction suit where person having power of attorney for tenant admits arrears of rent tenant subsequently cannot resile from such admission; *Ram Sahai* v. *Jai Prakash,* AIR 1993 MP 147.

21. Proof of admission against persons making them, and by or on their behalf –

Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they con not be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases.

(1) An admission ma be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead it would be relevant as between third person under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine nor con B Prove a statement by himself that the deed is gorged.

(b) A the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statement, because they would be admissible between third parties, if he were dead under Section 32, Clause (2).

(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because if A were dead it would be admissible under Section 32, Clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He officers to prove that he refused to sell them below their value.

A may prove these statements though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coins as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last proceeding illustration.

22. When oral admission as to contents of documents are relevant –

Oral admissions as to the contents of a document are not relevant unless and until the party proposing them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

22A.When oral admissions as to contents of electronic records are relevant.-

[1][22A. When oral admissions as to contents of electronic records are relevant.—Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.]

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

23. Admission in Civil cases, when relevant –

In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given

Explanation – Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under Section 126.

24. Confession by inducement, threat or promise when irrelevant in criminal proceeding –

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, [1]having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

COMMENTS

Extra judicial confession

Extra-judicial confession made to village Administrative Officer by accused is admissible; Shiv Kumar v. State by Inspector of Police, AIR 2006 SC 653.

It is difficult to rely upon the extra judicial confession as the exact words or even the words as nearly as possible have not been reproduced. Such statement cannot be said to be voluntary so the extra judicial confession has to be excluded from the purview of consideration for bring home the charge; C.K. Raveendran v. State of Kerala, AIR 2000 SC 369.

The extra-judicial confession cannot be sole basis for recording the confession of the accused, if the other surrounding circumstances and the materials available on the record do not suggest his complicity; Chaya Kant Nayak v. State of Bihar, (1997) 2 Crimes 297 (Pat).

An extra-judicial confession, if it is voluntary truthful, reliable and beyond reproach, is an efficacious piece of evidence to establish the guilt of the accused and it is not necessary that the evidence of extra-judicial confession should be corroborated on material facts; Laxman v. State of Rajasthan, (1997) 2 Crimes 125 (Raj).

Where confession was not disclosed to the wife of deceased but it was disclosed to the police officer and was not corroborated, the extrajudicial confession is not reliable; Surinder Kumar v. State of Punjab, AIR 1999 SC 215.

An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution where an extra-judicial confession is

surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extra-judicial confession; Balwinder Singh v. State of Punjab, (1995) Supp (4) SCC 259.

It is well settled now that a retracted extra-judicial confession, though a piece of evidence on which reliance can be placed, but the same has to be corroborated by independent evidence. If the evidence of witness before whom confession made was unreliable and his conduct also doubtful and there is no other circumstance to connect accused with crime, conviction based solely on retracted extra-judicial confession is not proper and the accused is entitled to acquittal; Shakhram Shankar Bansode v. State of Maharashtra, AIR 1994 SC 1594.

The extra-judicial confession not trustworthy cannot be used for corroboration of any other evidence; Heramba Brahma v. State of Assam, AIR 1982 SC 1595.

Where confessional statement is inconsistent with medical evidence, conviction of accused solely based on extra-judicial confession is not proper; Chittar v. State of Rajasthan, 1994 Cr LJ 245 (SC).

Tape-recording of confession denotes influence and involuntariness. Accused is entitled to be acquitted; State of Haryana v. Ved Prakash, 1994 Cr LJ 140 (SC).

The confessional statement recorded by 1st Class Magistrate rightly held to be correct; Manguli Dei v. State of Orissa, 1989 Cr LJ 823: AIR 1989 SC 483.

The general trend of the confession is substantiated by some evidence, tallying with the particulars of confession for conviction of the accused; Madi Ganga v. State of Orissa, AIR 1981 SC 1165: 1981 Cr LJ 628: (1981) 2 SCC 224: 1981 SCC (Cr) 411.

When statement Amounts to confession

A statement in order to amount to a 'confession' must either admit in terms of offence, or at any rate substantially all the facts which constitute the offence; Veera Ibrahim v. State of Maharashtra, AIR 1976 SC 1167.

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1. **For prohibition of such inducements, etc., see the Code of Criminal Procedure, 1973 (2 of 1974), section 316.**

25. Confession to police officer not to be proved –

No confession made to police officer[1] shall be proved as against a person accused of any offence.

COMMENTS

Admissibility

Any confessional statement given by accused before police is inadmissible in evidence and cannot be brought on record by the prosecution and is insufficient to convict the accused; Ram Singh v. State of Maharashtra, 1999 Cr LJ 3763 (Bom).

Scope

If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by section 25; Aghnu Nagesia v. State of Bihar, AIR 1966 SC 119.

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1. **As to statements made to a police officer investigating a case, see the Code of Criminal Procedure, 1973 (2 of 1974), section 162.**

26. Confession by accused while in custody of police not to be proved against him –

No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate[1], shall be proved as against such person.

'[2][Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George '[3][***] or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)'[4]].

COMMENTS

The confession made while in custody is not to be proved against the accused as the provisions of sections 25 and 26 do not permit it unless it is made before a magistrate; Kamal Kishore v. State (Delhi Administration), (1997) 2 Crimes 169 (Del).

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1. **A Coroner has been declared to be Magistrate for the purposes of this section, see the Coroners Act, 1871 (4 of 1871), section 20.**
2. **Ins. by Act 3 of 1891, sec. 3.**
3. **The words "or in Burma" omitted by the A.O. 1937.**
4. **See now the Code of Criminal Procedure, 1973 (2 of 1974).**

27. How much of information received from accused may be proved

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.

COMMENTS

Applicability

For the application of section 27 the statement must be split into its components and to separate the admissible portion. Only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be excised and rejected; Mohd. Inayatullah v. State of Maharashtra, AIR 1976 SC 483.

Condition for operation

The condition necessary to bring the section 27 into operation is that the discovery of a fact in a consequence of information received from a person accused of any offence in the custody of a

police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved; Pulukuri Kottaya v. Emperor, AIR 1947 PC 119.

Discovered fact

A fact discovered in an information supplied by the accused in his disclosure statement is a relevant fact and that is only admissible in evidence if something new is discovered or recovered from the accused which was not within the knowledge of the police before recording the disclosure statement of the accused; Kamal Kishore v. State (Delhi Administration), (1997) 2 Crimes 169 (Del).

Where a witness was related to deceased and resident of another place, even then his evidence regarding recovery of weapons and clothes cannot be discarded; State of Madhya Pradesh v. Rammi, 1999 (1) JLJ 49.

Scope

Under section 27 it is not necessary that a disclosure statement must be signed by maker of the same or that thumb impression must be affixed to it; K.M. Ibrahim alias Bava v. State of Karnataka, 2000 Cr LJ 197 (Karn).

A confession made by an accused person while he is in custody must be excluded from evidence and permits the admission of such a confession under the condition prescribed by this section; Kamal Kishore v. State (Delhi Administration), (1997) 2 Crimes 169 (Del).

28. Confession made after removal of impression caused by inducement, threat or promise, relevant –

If such a confession as is referred to in Section 24 is made after the impression caused by any inducement, threat or promise has, in the opinion of the Court been fully removed it is relevant.

29. Confession otherwise relevant not to become irrelevant because of promise of secretary etc. –

If such a confession is otherwise relevant, it does not become it was made under a promise of secrecy. or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to question which he need not have answered, whatever may have been the form of those question, or because he was not warned that he was bound to make such confession, and that the evidence of it might be given against him.

30. Consideration of proved confession affecting person making it and others jointly under trail for same offence –

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

[1]Explanation – "Offence" as used in this Section, includes the abutment of, r attempt to commit, the offence.

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said – "B and I murdered C". the court may consider the effect of this confession as against B.

(b) A is on his trail for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C". The statement may not be taken into consideration by the Court against A as B is not being jointly tried.

COMMENTS

Accused's confession cannot be used against co-accused

The statement of the accused leading to the discovery, or the informatory statement amounting to confession of the accused, cannot be used against the co-accused with the aid of section 303; Kamal Kishore v. State (Delhi Administration), (1972) 2 Crimes 169 (Del).

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1. **Ins. by Act 3 of 1891, sec. 4.**

31. Admissions not conclusive proof but may stop –

Admissions are not conclusive proof of the matters admitted, but they may operate as estopples under the provisions hereinafter contained.

Statements by persons who cannot be called as witnesses

32. Case in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant –

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases –

(1) When it relates to cause of death – When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) Or is made in course of business – When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods securities or property of any kind; or of a document used in commerce written or signed by him or of the date of a letter or other document usually dated, written or signed by him.

(3) Or against interest of maker – When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true it would expose him or would have exposed him to criminal prosecution or to a suit for damages.

(4) Or gives opinion as to public right or custom, or matters of general interest – When the statement gives the opinion of any such person, as to the existence of any public right or

custom or matter of public or general interest of the existence of which if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) Or relates to existence of relationship – When the statement relates to the existence of any relationship [1]by blood, marriage or adoption between persons as to whose relationship [1]by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) Or is made in will or deed relating to family affairs – When the statement relates to the existence of any relationship [1]by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) Or in document relating to transaction mentioned in section 13, Clause (a). – When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in Section 13, Clause (a).

(8) Or is made by several persons and express feelings relevant to matter in question – When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

(a) The question is, whether A was murdered by B ; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta , for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day. A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h) The question is, what was the cause of the wreck of a ship. A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way. A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married. An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

COMMENTS

Admissibility of dying declaration

It would be very unsafe and hazardous to sustain the conviction of the accused charged for offences under section 302 read with section 34 IPC on the basis of dying declaration recorded by special executive magistrate and police officer separately; Dada Machindra Chaudhary v. State of Maharashtra , 1999 Cr LJ 4009 (Bom).

Where there were infirmities in declaration regarding state of deceased to make oral dying declaration and unnatural conduct of witness to whom dying declaration was allegedly given by the deceased which was disclosed to the police after two days of death of deceased, accused was entitled to the benefit of doubt; Ram Sai v. State of Madhya Pradesh, 1994 Cr LJ 138 (SC).

Where father of deceased son lodged F.I.R. after admitting him in hospital and mentioned about oral dying declaration with necessary details, such dying declaration given to interested persons is reliable; Vishram v. State of Madhya Pradesh, AIR 1993 SC 258.

Where deceased victim knew assailants and gave their names to his family members at first opportunity, his dying declaration could be relied upon; Prakash v. State of Madhya Pradesh , AIR 1993 SC 65.

Admissions are not conclusive

There is no doubt that admissions are a good piece of evidence and they can be used against its maker. Admissions are, however, not conclusive and unless they constitute estoppel, the maker is at liberty to prove that they are mistaken or are untrue; Jagdish Prasad v. Sarwan Kumar , AIR 2003 P&H 3.

Dying declaration

That the FIR as well as the statement given by the injured to the investigating officer is not admissible as dying declaration under section 32; Sukhar v. State of Uttar Pradesh , 2000 Cr LJ 29 (SC).

Dying declaration must be made by deceased only

The declaration made by the deceased cannot be called dying declaration because it was not voluntary and answers were not given by her, it was her husband who was answering; Suchand Pal v. Phani Pal, AIR 2004 SC 973.

If the court is satisfied that the dying declaration is true and is free from any effort to prompt the deceased to make a statement and is coherent and consistent, there is no legal impediment in founding the conviction on such a dying declaration even if there is no corroboration; Kusa v. State of Orissa, AIR 1980 SC 559.

When dying declaration doesnot require further corroboration

Once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration; Khushal Rao v. State of Bombay, AIR 1958 SC 22.

When more than one dying declarations

In case of two conflicting dying declarations one recorded by doctor in the presence of two more doctors and second by a person attested by Sarpanch, in second one being not proved by competent witness cannot be relied upon; Harbans Lal v. State of Haryana, AIR 1993 SC 819.

Where there are more than one dying declarations and they are inconsistent there it is not possible to pick out one such declaration wherein accused is implicated and base the conviction on the sole basis of that dying declaration; Kamla v. State of Punjab, AIR 1993 SC 374.

Among three dying declarations recorded by doctor, police and Magistrate with no infirmity in any, the fact that third declaration was not in question and answer form is not material; Ganpat Mahadeo Mane v. State of Maharashtra, AIR 1992 SC 1180.

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1. **Ins. by Act 18 of 1872, sec. 2.**

33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated –

Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a letter stage of the same judicial proceedings, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept our of the way by the adverse party or if his presence cannot be obtained without, an amount of delay of expense which, under the circumstances of the case, the Court considers unreasonable;

Provided –

That the proceeding was between the same parties or their representatives in interest;

That the adverse party in the first proceeding had the right and opportunity to cross examine;

That the questions in issue were substantially the same in the first as in the second proceeding.

Explanation – A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

COMMENTS

Relevancy of evidence given by witness

Evidence given by a witness in a judicial proceeding is relevant for the purpose of proving a particular fact in later stage of the same judicial proceeding, when the witness cannot be found or is dead; Nandram v. State of Madhya Pradesh, 1995 FAJ 1 (MP).

Statements made under special circumstances

34. [Entries in books of account including those maintained in an electronic form] when relevant –

[1]Entries in books of accounts including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

COMMENTS

Admissibility

Entries in account books regularly kept in the course of business are admissible though they by themselves cannot create any liability; Ishwar Dass v. Sohan Lal, AIR 2000 SC 426.

Unbound sheets of paper are not books of account and cannot be relied upon; Dharam Chand Joshi v. Satya Narayan Bazaz, AIR 1993 Gau 35.

Books of account being only corroborative evidence must be supported by other evidence; Dharam Chand Joshi v. Satya Narayan Bazaz, AIR 1993 Gau 35.

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1. **Subs. by Act 21 of 2000, sec. 92 and Sch. II, for "Entries in the books of account" (w.e.f. 17-10-2000).**

35. Relevancy of entry in public [record or an electronic record] made in performance of duty –

An entry in any public or other official book, register or [1][record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or 1[record or an electronic record] is kept, is itself a relevant fact.

COMMENTS

Relevancy of Baptism certificate

It has been held regarding proof about legitimacy of child that the Birth Certificate proceeding on the basis of Baptism Certificate, containing fact that Baptism record was read and checked before the god parents and signed by person along with god parents, such certificate is valid. Thus, Birth Certificate proceeding on basis of Baptism Certificate, legally recognised legitimacy; Luis Caetano Viegan v. Esterline Mariana R.M.A. Da'Costa, AIR 2003 SC 630.

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1. **Subs. by the Act 21 of 2000, sec. 92 and Sch. II, for "record" (w.e.f. 17-10-2000).**

36. Relevancy of statements in maps, charts and plans –

Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of [1]the Central Government or any State Government, as to matters usually represented or stated in such maps, charts, or plans are themselves facts.

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1. **Subs. by the A.O. 1948, for "any Government in British India.**

notifications –

When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament [1][of the United Kingdom], or in any [2][Central Act, Provincial Act, or [3][a State Act], or in a Government notification or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of His Majesty is a relevant fact.]

[4][***]

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1. **Ins. by the A.O. 1950.**
2. **The original words were "Act of the Governor General of India in Council or of the Governors in Council of Madras or Bombay, or of the Lieutenant Governor in Council of Bengal, or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any L.G. or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact". This was amended first by the Repealing and Amending Act, 1914 (10 of 1914) and then by the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.**
3. **Subs. by Act 3 of 1951 sec. 3 and Sch., for "an Act of the Legislature of Part A State or a Part C State".**
4. **The last para added by Act 5 of 1899, sec. 2, and omitted by Act 10 of 1914, sec. 3 and Sch. II.**

38. Relevancy of statements as to any law contained in law books –

When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

39. What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

[1][39. What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.—When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.]

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1. **Subs. by Act 21 of 2000, sec. 92 and Sch. II, for section 39 (w.e.f. 17-10-2000).**

Judgments of courts of justice, when relevant

40. Previous judgments relevant to bar a second suit or trail –

The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is, whether such Court ought to take cognizance of such suit or to hold such trail.

41. Relevancy of certain judgments in probate etc., jurisdiction –

A final judgment, order or decree of a Competent Court, in exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or to take away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing not as against any specified person but absolutely, is relevant when the existence of any legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof –

That any legal character which it confer accrued at the time when such judgment, order or decree come into operation;

That any legal character to which it declares and such person to be entitled, accrued to that person at the time when such judgment, [1]order or decree declares it to have accrued to that person;

That any legal character to which it takes away from any such person ceased at the time from which such judgment, [1]order or decree declared that it had cased or should cease.

And that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [1]order or decree declares that it had been or should be his property.

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1. **Ins. by Act 18 of 1872, sec. 3.**

42. Relevancy and effect of judgment, order or decrees, other than those mentioned in Section 41. –

Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; nut such judgments, orders or decrees are not conclusive proof of that which they state.

Illustrations

A sues B for trespass on his land, B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C or a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of ways exists.

43. Judgment etc., other than those mentioned in Section 40 to 42 when relevant –

udgments, orders or decrees other then those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant, under some other provision of this Act.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them C in each case says that the matter alleged to libelous is true and the circumstances are such that it is probable true in each case, or in neither.

A obtains a decree against C for damages on the ground that C filed The Orient Tavern make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. CC says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecuted B for stealing a cow, from him, B is convicted.

A, afterwards, sues C for cow. Which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against A,C,B's son murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

[1](e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under Section 8 as showing the motive for the fact in issue.

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1. **Ins. by Act 3 of 1891, sec. 5.**

44. Fraud or collusion in obtaining judgment, or incompetence of Court may be proved –

Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Section 40,41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Opinion of third persons, when relevant

45. Opinions of experts –

When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing [1]or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, [2]or in questions as to identity of handwriting [1]or finger impressions, are relevant facts.

Such person called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind, in capable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinion of experts on the question whether the two documents were written by the same person or by different persons are relevant.

Comments

Conflict of opinion of Experts

When there is a conflict of opinion between the experts, then the Court is competent to form its own opinion with regard to signatures on a document; Kishan Chand v. Sita Ram, AIR 2005 P&H 156.

Expert opinion admissibility

Requirement of expert evidence about test firing to find out whether double barrel gun is in working condition or not, not necessary; Jarnail Singh v. State of Punjab, AIR 1999 SC 321.

The evidence of a doctor conducting post mortem without producing any authority in support of his opinion is insufficient to grant conviction to an accused; Mohd Zahid v. State of Tamil Nadu, 1999 Cr LJ 3699 (SC).

Opinion to be received with great caution

The opinion of a handwriting expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution; Ram Narain v. State of Uttar Pradesh, AIR 1973 SC 2200.

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1. **Ins. by Act 5 of 1899, sec. 3. For discussion in Council as to whether "finger impressions" include "thumb impressions", see Gazette of India, 1898, Pt. VI, p. 24.**
2. **Ins. by Act 18 of 1872, sec. 4.**

46. Facts bearing upon opinions of experts –

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinion of experts when such opinions are relevant.

Illustrations

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain seawall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time is relevant.

COMMENTS

Admissibility

The science of identification of footprints is not a fully developed science and therefore if in a given case, evidence relating to the same is found satisfactory it may be used only to reinforce the conclusions as to the identity of a culprit already arrived at on the basis of other evidence; Mohd. Aman v. State of Rajasthan, (1997) 4 Supreme 635.

47. Opinions as to handwriting, when relevant –

When the Court has to form an opinion as to the person by whom document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation – A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received document purporting to be written by that person in answer to documents written by himself to under his authority and addressed to that person, or when in the ordinary course of business document purporting to be written by that person have been habitually submitted to him.

Illustrations

The question is whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. G is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted thee letters purporting to be written by A for the purpose advising with him thereon.

The opinions of B,C and D on the question, whether the letter is in the handwriting of A, are relevant though neither B, C or D ever saw A, write.

47A. Opinion as to digital signature when relevant –

[1]**47A. Opinion as to digital signature when relevant.**—When the Court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

48. Opinion as to existence of right or custom when relevant –

When the Court has to form an opinion as to existence of any general custom or right, the opinions as to the existence of such custom or rights, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation – The expression "general custom or right" includes customs or right common The Orient Tavern any considerable class of persons.

Illustrations

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. Opinion as to usage's, tenants, etc., when relevant –

When the Court has to form an opinion as to –

the usage's and tenants of any body of men or family,

the constitution and government of any religious or charitable foundation,

or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. Opinion on relationship, when relevant –

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).

Illustrations

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Comments

Contradiction in evidence of relationship of witness of triffle nature, not material in a partition suit; Gowhari Das v. Santilata Singh, AIR 1999 Ori 61.

51. Grounds of opinion when relevant –

Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant

52. In civil cases character to prove conduct imputed irrelevant –

In civil cases, the fact that the character of any person concerned is such as to render probable or improbably any conduct imputed to him, is irrelevant except in so far as such character appears from facts otherwise relevant.

53. In criminal cases, previous good character relevant –

In criminal proceedings the fact that the person accused is of good character, is relevant.

1["53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.".]

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1. Inserted by Section 53 of "The Criminal Law (Amendment) Act, 2013"
2. [1] Previous bad character not relevant, except in reply.- In criminal proceedings the fact that the accused person had a bad character is irrelevant, unless evidence has been given that he has a character in which case it becomes relevant.

54. Previous bad character not relevant except in reply –

Explanation 1. – This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2. – A previous conviction is relevant as evidence of bad character.

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1. **Subs. by Act 3 of 1891, sec. 6, for section 54.**

55. Character as affecting damages –

In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

Explanation – In Section 52,53,54 and 55, the word "character" includes both reputation and disposition; but [1]except as provided in Section 54, evidence may be given only a general reputation and general disposition and not of particular acts by which reputation or disposition was shown.

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1. **Ins. by Act 3 of 1891, sec. 7.**

Part II – ON PROOF

Chapter III – Facts which need not be proved

56. Fact judicially noticeable need not be proved –

No fact of which the Court will take judicial notice need be proved

COMMENTS

Judicial notice of fact that many blind persons have acquired great academic distinctions, can be taken by court; Jai Shankar Prasad v. State of Bihar, AIR 1993 Pat 22.

57. Facts of which Court must take judicial notice –

The Court shall take judicial notice of the following facts;

1. [1]All laws in force in the territory of India;
2. All public Acts passed or hereafter to be passed by Parliament [2]of United Kingdom, and all local and personal Acts directed by Parliament [2]of the United Kingdom to be judicially noticed;
3. Articles of War for [3]the Indian Army, [4]Navy of Air force;
4. [5]The course of proceeding of parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the Legislature established under any law for the time being in force in Province or in the States;
5. The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;
6. All seals of which English Courts take judicial notice; the seals of all the [6]Courts in [7]India and of all Courts out of [5]India established by the authority of [8]the Central Government or the Crown representative; the seals off Court of Admiralty and Maritime jurisdiction and of Notaries Public and all seals which any person is authorized to use by the [9]Constitution or an Act of Parliament of the United Kingdom or an Act or Regulation having the force of law in [7]India;
7. The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any state, if the fact of their appointment to such office is notified in any [10]official Gazette;
8. The existence, title and national flag of every State or Sovereign recognized by [11]the Government of India;
9. The divisions of time, the geographical divisions of the world, and public festivals, facts and holidays notified in the Official Gazette;
10. The territories under the dominion of [11]the Government of India;
11. The commencement, continuance and termination of hostilities between [11]the Government of India and any other State or body of persons;
12. The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;
13. The rule of the road, [12]on land or at sea.

In all these cases, and also on all matters of public history, literature, science or art, the Court may report for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Comments

What court may take judicial notice

Court may take judicial notice of widespread malaise of illegal immigration and exploitation of young-ones by unauthorised recruiting agents; M.D.K. Immigration Consultant, Chandigarh v. Union of India, 2000 Cr LJ 252 (P&H).

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1. **Subs. by the A.O. 1950, for para (1).**
2. **Ins. by the A.O. 1950.**
3. **Subs. by the A.O. 1950, for "Her Majesty's".**
4. **Subs. by Act 10 of 1927, sec. 25 and Sch. I, for "or Navy".**
5. **Subs. by the A.O. 1950, for para 4.**
6. **Subs. by the A.O. 1948, for "Courts of British India".**
7. **Subs. by Act 3 of 1951, sec. 3 and Sch., for "the States".**
8. **Subs. by the A.O. 1937, for the "the G.G. or any L.G. in Council".**
9. **Subs. by the A.O. 1950, "any Act of Parliament or other".**
10. **Subs. by the A.O. 1937, for "the Gazette of India, or in the Official Gazette of any L.G.".**
11. **Subs. by the A.O. 1950, for "the British Crown".**
12. **Ins. by Act 18 of 1872, sec. 5.**

58. Facts admitted need not be proved –

No fact need be proved in any proceeding, which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings;

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission.

COMMENTS

Implied admission

Implied admission in written statement cannot be allowed to be withdrawn. However, the plaintiff can be insisted upon to prove his case; Uttam Chand Kothari v. Gauri Shankar Jalan , AIR 2007 Gau 20.

Chapter IV – Of oral evidence

59. Proof of facts by oral evidence –

All facts, except the [1]contents of documents, may be proved by oral evidence.

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1. **Subs. by Act 21 of 2000, sec. 92 and Sch. II, for "contents of documents" (w.e.f. 17-10-2000).**

60. Oral evidence must be direct –

Oral evidence must, in all cases, whatever, be direct; that is to say;

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinions or to the grounds in which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds –

Provided that the opinion of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Chapter V – Of documentary evidence

61. Proof of contents of documents –

The contents of documents may be proved either by primary or by secondary evidence.

COMMENTS

Admission of contents

Admission of documents amounts to admission of contents but not its truth; Life Insurance Corporation of India v. Narmada Agarwalla, AIR 1993 Ori 103.

A man may lie but a document will never lie; Afzauddin Ansary v. State of West Bengal, (1997) 2 Crimes 53 (Cal).

62. Primary evidence –

Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1. – Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2. – Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but

no one of them is primary evidence of the contents of the original.

63. Secondary Evidence –

Secondary evidence means and includes.

1. Certified copies given under the provisions hereinafter contained;
2. Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies;
3. Copies made from or compared with the original;
4. Counterparts of documents as against the parties who did not execute them;
5. Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence, but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photo graph or machine copy of the original, is secondary evidence of the original.

COMMENTS

Admissibility

Application moved for permission to lead secondary evidence based on ground of loss of document. Presence of document proved from the facts pleaded – Allowing secondary evidence not illegal; Sobha Rani v. Ravikumar, AIR 1999 P&H 21.

Tape-recorded statements are admissible in evidence; K.S. Mohan v. Sandhya Mohan, AIR 1993 Mad 59.

Certified copies of money lender's licences are admissible in evidence;

9. Shivalingaiah v. B.V. Chandrashekara Gowda, AIR 1993 Kant 29.

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1. **See section 76 infra.**

64. Proof of documents by primary evidence –

Documents must be proved by primary evidence except in the cases hereinafter mentioned.

65. Cases in which secondary evidence relating to documents may be given –

Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it;

(b) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) When the original is of such a nature as not to be easily movable;

(e) When the original is a public document within the meaning of Section 74;

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [1]India to be given in evidence[2];

(g) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collections.

In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Comments

When attesting witness not necessary

In case the document is registered then except in the case of a will it is not necessary to call an attesting witness, unless the execution has been specifically denied by the person by whom it purports to have been executed; Ishwar Dass Jain (dead) through L.R. v. Sohanlal (dead) by LRs, AIR 2000 SC 426.

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1. **Subs. by Act 3 of 1951, sec. 3 and Sch., for "the States".**
2. **Cf. the Bankers' Books Evidence Act, 1891 (18 of 1891), section 4.**

65A. Special provisions as to evidence relating to electronic record –

[1]65A.Special provisions as to evidence relating to electronic record.- The contents of electronic records may be proved in accordance with the provisions of section 65B.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

65B. Admissibility of electronic records –

[1]65B. Admissibility of electronic records.- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) infomation shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

66. Rules as to notice to produce –

Secondary evidence of the contents of the documents referred to in Section 65, Clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [1]or to his attorney or pleader such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case;

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:

1. When the document to be proved is itself a notice;
2. When from the nature of the case, the adverse party must know that he will be required to produce it;
3. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
4. When the adverse party or his agent has the original in Court;
5. When the adverse party or his agent has admitted the loss of the document;
6. When the person in possession of the document is out of reach, or not subject to, thee process of the Court.

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1. **Ins. by Act 18 of 1872, sec. 6.**

67. Proof of signature and handwriting of person alleged to have signed or written document produced –

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his hand writing.

Comments

Admissibility

Non-examination of executants of receipt, admissibility of receipts not proper; Ramkrishna Dode v. Anand, AIR 1999 Bom 89.

67A. Proof as to digital signature –

[1]67A. Proof as to digital signature.- Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved.

————————

1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

68. Proof of execution of document required by law to be attested –

If a document is required by law to be attested it shall not be sued as evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to he process of the Court and capable of giving evidence:

[1]Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act,1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specially denied.

Comments

Endorsement by Sub-Registrar

Endorsement by Sub-Registrar that executant had acknowledged execution before him amounts to attestation; Pentakota Satyanarayana v. Pentakota Seetharatnam, AIR 2005 SC 4362.

Scope

One of the requirements of due execution of will is its attestation by two or more witnesses which is mandatory. Section 68 speaks of as to how a document required by law to be attested can be proved. It flows from this section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence; Janaki Narayan Bhoir v. Narayan Namdeo Kadam, AIR 2003 SC 761.

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1. **Ins. by Act 31 of 1926, sec. 2.**

69. Proof where no attesting witness found –

If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.

70. Admission of execution by party to attested document –

The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

71. Proof when attesting witness denies the execution –

If the attesting witness denies or does not recollect the execution of the document its execution may be proved by other evidence.

Comments

Object

Section 71 is in the nature of a safeguard to the mandatory provisions of section 68, to meet a situation where it is not possible to prove the execution of the will by calling attesting witnesses, though alive. Aid of section 71 can be taken only when the attesting witnesses, who have been called, deny or fail to recollect the execution of the document to prove it by other evidence; Janaki Narayan Bhoir v. Narayan Namdeo Kadam, AIR 2003 SC 761.

Section 71 is meant to lend assistance and came to the rescue of a party who had done his best, but driven to a state of helplessness and impassibility cannot be left down without any other means of proving due execution by "other evidence" as well; Janaki Narayan Bhoir v. Narayan Namdeo Kadam, AIR 2003 SC 761.

72. Proof of document not required by law to be attested –

An attested document not required by law to be attested may be proved as if it was unattested.

73. Comparison of signature, writing or seal with others admitted or proved –

In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with

the one which s to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[1]This section applies also with any necessary modifications, to finger-impressions.

Comments

Power of court

The court is entitled to make comparison of disputed and admitted signature for just conclusion as a rule of prudence expert opinion can be obtained. Reasons necessary to reach conclusion; Ashok Kumar Uttam Chand Shah v. Patel Mohmad Asmal Chanchad, AIR 1999 Guj 108.

It is within jurisdiction of court to instruct a party to submit his writing or signature, enabling court to compare and decide a case, if the instructions are not followed court is free to presume what is most closer to the justice; Shyam Sundar Chowkhani v. Kajal Kanti Biswas, AIR 1999 Gau 101.

It is not open for court to compare a handwriting and/or a signature of its own, services of experts are liable to be taken for this purpose; Shyam Sundar Chowkhani v. Kajalkanti Biswas, AIR 1999 Gau 101.

Under the law the court has power to compare signatures/handwriting strengthening its finding based on other cogent material and evidence on record; Satish Jayanthilal Shah v. Pankaj Mashruwala, (1997) 2 Crimes 203 (Guj).

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1. **Ins. by Act 5 of 1899, sec. 3.**

73A. Proof as to verification of digital signature –

[1]73A. Proof as to verification of digital signature.- In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct—

(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Explanation.—For the purposes of this section, "Controller" means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

Public Documents

74. Public documents –

The following documents are public documents :—

(1) Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, [1][of any part of India or of the Commonwealth], or of a foreign country;

(2) Public records kept [2][in any State] of private documents.

———————

1. **The original words "whether of British India, or of any other part of Her Majesty's dominions" have successively been amended by the A.O. 1948 and the A.O. 1950 to read as above.**
2. **Subs. by the A.O. 1950, for "in any province".**

75. Private documents –

All other documents are private.

76. Certified copies of Public Documents –

Every [1]public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officers with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation

Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

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1. **A Village-officer in the Punjab has been declared for the purposes of this Act to be a public officer having the custody of a public document—*see* the Punjab Land Revenue Act, 1887 (17 of 1887), section 151(2).**

77. Proof of documents by production of certified copies –

Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

78. Proof of other official documents –

The following public documents may be proved as follows –

(1) Acts, orders or notifications of [1]the General Government in any of its departments, [2]or of the Crown Representative or of any State Government or any department of any State

Government.

By the records of the departments, certified by the heads of those departments respectively, or

By any document purporting to be printed by order of any such Government [2]or as the case may be, of the Crown Representative;

(2) The proceedings of the Legislatures –

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting The Orient Tavern be printed [3]by order of the Government concerned;

(3) Proclamations, orders or regulations issued by [4]Her Majesty or by the privy Council, or by any department of Her Majesty's Government, By copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer;

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country –

By journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some [5]Central Act;

(5) The proceedings of a municipal body in a [6]State, –

By a copy of such proceedings certified by the legal keeper thereof of by a printed book purporting to be published by the authority of such body,

(6) Public documents of any other class in a foreign country, –

by the original, or by a copy certified by the legal keeper thereof with a certificate under the seal of a notary public, or of [7]an Indian consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country.

STATE AMENDMENT

West Bengal

After section 78, insert the following section, namely:—

78A. Copies of public documents, to be as good as original documents in certain cases.— Notwithstanding anything contained in this Act or any other law for the time being in force, where any public documents concerning any areas within West Bengal have been kept in Pakistan, then copies of such public documents shall, on being authenticated in such manner as may be prescribed from time to time by the State Government by notification in the Official Gazette, be deemed to have taken the place of and to be, the original documents from which such copies were made and all references to the original documents shall be construed as including references to such copies."

[Vide West Bengal Act 29 of 1955, sec. 3 (w.e.f. 6-10-1955) as amended by West Bengal Act 20 of 1960, sec. 3 (w.e.f. 5-1-1961)].

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1. **Subs. by the A.O. 1937, for "the Executive Government of British India"..**
2. **Ins. by the A.O. 1937.**
3. **Subs. by the A.O. 1937, for "by order of Government".**
4. **The words "Her Majesty" stand unmodified see the A.O. 1950.**
5. **Subs. by the A.O. 1937, for "public Act of the Governor General of India in Council".**
6. **Subs. by the A.O. 1950, for "a Province".**
7. **Subs. by the A.O. 1950, for "a British Consul".**

79. Presumption as to genuineness of certified copies –

The Court shall presume [1]to be genuine every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer [2]of the Central Government or of a State Government, or by any officer [3]in the State of Jammu and Kashmir who is duly authorized there to by the Central Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed, the official character which he claims in such paper.

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1. **Ins. by the A.O. 1948.**
2. **The original word beginning from "in British India" and ending with the words "to be genuine" have been successively amended by the A.O. 1937, A.O. 1948 and A.O. 1950 to read as above.**
3. **Subs. by Act 3 of 1951, sec. 3 and Sch., for "in a Part B State".**

80. Presumption as to documents produced as records of evidence –

Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume –

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents –

The Court shall presume the genuineness of every document purporting to be the London Gazette, [1]or any official Gazette or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of private Act of Parliament [2]of the United Kingdom printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

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1. **Subs. by A.O. 1937, for "the Gazette of India or the Government Gazette of any L.G., or".**
2. **Ins. by the A.O. 1950.**

81A. Presumption as to Gazettes in electronic forms –

[1]81A. Presumption as to Gazettes in electronic forms.- The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

82. Presumption as to document admissible in England without proof of seal or signature –

When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine and that the person signing it held at the time when he signed it, the judicial or official character which he claims;

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. Presumption as to Maps or Plans made by authority of Government –

The Court shall presume that maps or plans purporting to be made by the authority of [1]the Central Government or any State Government were so made, and are accurate, but maps or plans made for the purposes of any cause must be proved to be accurate.

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1. **The original word "Government" has successively been amended by the A.O. 1937, A.O. 1948, Act 40 of 1949, A.O. 1950, to read as above.**

84. Presumption as to collections of laws and reports of decisions –

The Court shall presume the genuineness of every book purporting to be printed and published under the authority of the Government of any country, and to contain any of the laws of that country; and of every book purporting to contain reports of decisions of the Courts of such country.

85. Presumption as to powers of attorney –

The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, [1][Indian] Consul or Vice-Consul, or representative [2][***] of the [3][Central Government], was so executed and authenticated.

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1. **Subs. by the A.O. 1950, for "British".**
2. **The words "of Her Majesty, or" omitted by the A.O. 1950.**
3. **Subs. by the A.O. 1937, for "Government of India".**

85A. Presumption as to electronic agreements –

[1]85A. Presumption as to electronic agreements.- The Court shall presume that every electronic record purporting to be an agreement containing the digital signatuers of the parties was so concluded by affixing the digital signature of the parties.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

85B. Presumption as to electronic records and digital signatures –

[1]85B. Presumption as to electronic records and digital signatures.- (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that—

(a) the secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure digital signature, nothing in this section shall cerate any presumption, relating to authenticity and integrity of the electronic record or any digital signature.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

85C. Presumption as to Digital Signature Certificates –

[1]85C. Presumption as to Digital Signature Certificates.- The Court shall presume, unless contrary is proved, that the information listed in a Digital Signature Certificate is correct, except for information specified as subscriber information which has not been verfied, if the certificate was accepted by the subscriber.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

86. Presumption as to certified copies of foreign judicial records –

The Court may presume that any document purporting to be a certified copy of any judicial record of [1][2][***] any country not forming part of India] or of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of [3][***] the [4][Central Government] [5][in or for] [6][such country] to be the manner commonly in use in [7][that country] for the certification of copies of judicial records.

[8][An officer who, with respect to [9][***] any territory or place not forming part of [10][India or] Her Majesty's dominions, is a Political Agent therefore, as defined in section 3, [11][clause (43)],

of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the [12][Central Government] [13][in and for the country] comprising that territory or place].

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1. **Subs. by A.O. 1950, for "any country not forming part".**
2. **The words "a Part B State or of" omitted by Act 3 of 1951, sec. 3 and Sch.**
3. **The words "Her Majesty or of" omitted by the A.O. 1950.**
4. **Subs. by the A.O. 1937, for "Government of India".**
5. **Subs. by Act 3 of 1891, sec 8, for "resident in".**
6. **Subs. by Act 3 of 1951, sec. 3 and Sch., for "such Part B State or country".**
7. **Subs. by Act 3 of 1951, sec. 3 and Sch., for "that State or country".**
8. **Subs. by Act 5 of 1899, sec. 4, for the para added by Act 3 of 1891, sec. 3.**
9. **The words "a Part B State or" which were ins. by the A.O. 1950, omitted by Act 3 of 1951, sec. 3 and Sch.**
10. **Ins. by the A.O. 1950.**
11. **Subs. by the A.O. 1950, for "clause (40)".**
12. **Subs. by the A.O. 1937, for "Government of India".**
13. **Subs. by Act 3 of 1951, sec. 3 and Sch., for "in and for that Part B State or country".**

87. Presumption as to Books, Maps and Charts –

The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. Presumption as to Telegraphic Messages –

The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

88A. Presumption as to electronic messages –

[1]88A. Presumption as to electronic messages.- The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation

For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

89. Presumption as to due execution etc., of documents not produced –

The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

90. Presumption as to documents thirty years old –

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation

Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This Explanation applies also to section 81.

Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

STATE AMENDMENTS

Uttar Pradesh.—(a) Renumber section 90 as sub-section (1) thereof;

(b) in sub-section (1) as so renumbered, for the words "thirty years", substitute the words "twenty years";

(c) after sub-section (1) as so renumbered, insert the following sub-section, namely:—

"(2) Where any such document as is referred to in sub-section (1) was registered in accordance with the law relating to registration of documents and a duly certified copy thereof is produced, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person, it is that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to have been executed or attested".

(d) After section 90, insert the following section, namely:—

"90A. (1) Where any registered document or a duly certified copy thereof or any certified copy of a document which is part of the record of a Court of Justice, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the original was executed by the person by whom it purports to have been executed.

(2) This presumption shall not be made in respect of any document which is the basis of a suit or of defence or is relied upon in the plaint or written statement."

The Explanation to sub-section (1) of section 90 will also apply to this section;

[Vide Uttar Pradesh Act 24 of 1954, sec. 2 and Sch. (w.e.f. 30-11-1954).]

COMMENTS

Presumption

Assuming that the document is more than thirty years old and comes from proper custody, there would be no presumption that contents of the same are true; Mohinuddin v. President, Municipal Committee, Khargone, AIR 1993 MP 5.

90A. Presumption as to electronic records five years old –

[1]90A. Presumption as to electronic records five years old.- Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Explanation

Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This Explanation applies also to section 81A.

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1. **Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).**

Chapter VI – Of the exclusion of oral by documentary evidence

91. Evidence of terms of contracts, grant and other dispositions of property reduced to form of documents –

When the terms of a contract, or of a grant, or of any other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence[1] shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained.

Exception 1.

When a public officer is required by law to be appointed in writing, and when it is shown that any particular person had acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.

Wills [2]admitted to probate in [3]India may be proved by the probate.

Explanation 1.

This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.

Where there are more originals than one, one original only need be proved.

Explanation 3.

The statement, in any document whatever of a fact other than the facts referred to in this section shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letter, all the letters in which it is contained must be proved.

(b) If a contract is contained I a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing with B, for the delivery of indigo upon certain

terms. The contract mentioned the fact that B had paid A the price of other in contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

———————

1. **Where, however, a criminal court finds that a confession or other statements of an accused person has not been recorded in the manner prescribed, evidence may be taken that the recorded statement was duly made see the Code of Criminal Procedure, 1973 (2 of 1974), section 463.**
2. **Subs. by Act 18 of 1872, sec. 7, for "under the Indian Succession Act".**
3. **Subs. by Act 3 of 1951, sec. 3 and Sch., for "the States".**

92. Exclusion of evidence of oral agreement –

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the

last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1)

Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [1][want or failure] of consideration, or mistake in fact or law:

Proviso (2)

The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Proviso (3)

The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved:

Proviso (4)

The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents:

Proviso (5)

Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract:

Proviso (6)

Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Calcutta to London". The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the 1st March, 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called "the Rampure tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of

the estate and was meant to pass by the deed, cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words "Bought of A a horse for Rs. 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Comments

Deed of collateral security: manner of execution

If it is a deed of collateral security of defendant, then the defendant would have had to execute a deed in favour of plaintiff and not vice versa, where the plaintiff has executed the mortgage the plea of evidence of collateral security offered by defendant appears not to fit into a situation; Ishwar Dass v. Sohan Lal, AIR 2000 SC 426.

Inference can be drawn regarding proof of document by admission of parties either oral or other evidence; B.B. Lohar v. P.P. Goyal, AIR 1999 Sikkim 11.

Position of stranger

The rule as to exclusion of oral by documentary evidence governs the parties to the deed in writing. A stranger to the document is not bound by the terms of the document and is, therefore, not excluded from demonstrating the untrue or collusive nature of the document or the fraudulent or illegal purpose for which it was brought into being; Parvinder Singh v. Renu Gautam, (2004) 4 SCC 794.

———————

1. **Subs. by Act 18 of 1872, sec. 8, "for want of failure".**

93. Exclusion of evidence to explain or amend ambiguous document –

When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A agrees, in writing, to sell a horse to B for "Rs. 1,000 or Rs. 1,500".

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. Exclusion of evidence against application of document of existing facts. –

When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustrations

A sells to B, by deed "my estate at Rampur containing 100 bighas" . A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. Evidence as to document unmeaning in reference to existing facts. –

When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration

A sells to B, by deed "my house in Calcutta."

A had not house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. Evidence as to application of languages which can apply to one only of several persons

When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one of several persons or things evidence may be given of facts which show of those persons or things it was intended to apply to.

Illustrations

(a) A agrees to sell to B, for Rs.1,000 "my white horse". A has two white horse. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Hyderabad. Evidence may be given of facts showing whether Hyderabad in the Deccan or Hyderabad in the Deccan or Hyderabad in Sind was meant.

97. Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies –

When the language used applies partly to one set of existing facts and, partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration

A agrees to sell to B "my land to X in the occupation of Y." A has land at X, but not in occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence as to meaning of illegible characters, etc. –

Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local or provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration

A, a sculptor, agrees to sell to B, "all my moods" A has both models and modeling tools. Evidence may be given to show which he meant to sell.

99. Who may give evidence of agreement varying term of document –

Person who are not parties to document, or their representatives in interest may give evidence of any fact tending to show a contemporaneous agreement varying the terms of the document.

Illustration

A and B make a contract in writing that B shall sell certain cotton, to be paid for on delivery. At the same time they made an oral agreement that "three months" credit shall be given to A. This could not be shown as between A and B, but it might be shown by C if it affected by his interests.

100. Saving of provisions of India Succession Act relating to Wills. –

Nothing in this Chapter contained shall be taken to affect any of the provisions of the Succession Act (X of 1965) as to the construction to Wills.

Part III – PRODUCTION AND EFFECT OF EVIDENCE

Chapter VII – Of the burden of proof

101. Burden of Proof –

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence to facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustration

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies to be true.

A must prove the existence of those facts.

COMMENTS

Joint family property

Merely because some of properties continue to stand in the name of plaintiff that by itself cannot lead to any conclusion that the property purchased by any one member of the family would necessarily be a part of joint family property and when evidence shows that the person who has purchased property had been engaged in an independent business for a sufficient long period; Baban Girju v. Namdeo Girju Bangar, AIR 1999 Bom 46.

Reasonable proof of ownership

In absence of any reasonable proof that defendant was the actual owner of the property, and plaintiff was only a name given does not prove that respondent was owner and plaint maker was only a name given to the property; Rama Kanta Jain v. M.S. Jain, AIR 1999 Del 281.

What to be proved by prosecution

It is well settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the court on its own make out a new case for the prosecution and convict the accused on that basis; Narain Singh v. State, (1997) 2 Crimes 464 (Del).

102. On whom burden of proof lies. –

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustration

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. Burden of proof as to particular fact. –

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration

[1][(a)] A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

COMMENTS

Plea of alibi

Plea of alibi taken by accused, it is he who has to prove it; State of Haryana v. Sher Singh, AIR 1981 SC 1021: 1981 SC Cr R 317: 1981 Cr LJ 714: (1981) 2 SCC 300.

———————

1. **Sic. In the Act as published in Gazette of India, 1872, Pt. IV, p. 1, there is no illustration (b).**

104. Burden of proving fact to be proved to make evidence admissible –

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations

A wishes to prove a dying declaration by B.A must prove B's death.

B wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

105. Burden of proving that case of accused comes within exceptions –

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind,

he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges, that by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code, (45 of 1860), provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

COMMENTS

Plea of self-defence

When the prosecution has established its case, it is incumbent upon the accused, under section 105 to establish the case of his private defence by showing probability; Samuthram alias Samudra Rajan v. State of Tamil Nadu, (1997) 2 Crimes 185 (Mad).

The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of material on record; Rizan v. State of Chhattisgarh, AIR 2003 SC 976.

106. Burden of proving fact specially within knowledge –

When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had ticket is on him.

107. Burden of proving death of person known to have been alive within thirty years. –

When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Burden of proving that person is alive who has not been heard of for seven years. –

[1]Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [2]shifted to the person who affirms it.

———————

1. **Subs. by Act 18 of 1872, sec. 9, for "When".**
2. **Subs. by Act 18 of 1872, sec. 9, for "on".**

109. Burden of proof as to relationship in the case of partners, landlord and tenant, principal and agent –

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it.

110. Burden of proof as to ownership –

When the question is, whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. Proof of good faith in transactions where one party is in relation of active confidence. –

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

111A. Presumption as to certain offences. –

[1]111A. Presumption as to certain offences.- (1) Where a person is accused of having committed any offence specified in sub-section (2), in-

(a) any area declared to be disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely –

(a) an offence under section 121, section 121-A, section 122 or Section 123 of the Indian Penal Code (45 of 1860);

(b) criminal conspiracy or attempt to commit, or abatement of, an offence under section 122 or section 123 of the Indian Penal Code (45 of 1860).

————————–

1. **Ins. by Act 61 of 1984, sec. 20 (w.e.f. 14-7-1984).**

112. Birth during marriage, conclusive proof of legitimacy –

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Comments

'Conclusive evidence' and 'conclusive proof' not different

There is no difference between 'conclusive evidence' and 'conclusive proof', the aim of both being to give finality to the establishment of the existence of a fact from the proof of another; Somwanti v. State of Punjab, AIR 1963 SC 151.

DNA Test

The DNA test cannot rebut the conclusive presumption envisaged under section 112 of the Indian Evidence Act. The parties can avoid the rigor of such conclusive presumption only by proving non-access which is a negative proof; Shaik Fakruddin v. Shaik Mohammed Hasan,AIR 2006 AP 48.

Presumption of proof

Refusal by wife on a genuine ground, to go to Delhi and get hers and her child's blood got tested there, does not support drawing an adverse inference against her; Devesh Pratap Singh v. Sunita Singh, AIR 1999 MP 174.

In absence of dislodging of presumption by proof a husband cannot derive much help from her admission that when she met him, she was in period of menses and after that she gave birth to a child who is an illegitimate one, born validly out of wedlock of hers with her husband; Devesh Pratap Singh v. Sunita Singh, AIR 1999 MP 174.

Scope

Section 112 read with section 4 really have the effect of completely closing and debarring the party from leading any evidence with respect to the fact which the law says that to be the conclusive proof of legitimacy and paternity of child covered by 112. The Parties to the marriage had no access to each other and to test blood group violates right under article 21 of Constitution; Ningamma v. Chikkiah, AIR 2000 Karn 50.

113. Proof of cession of territory –

A notification in the Official Gazette that any portion of British territory has [1]before the commencement of Part III of the Government of India Act,1935, (26 Geo. 5 Ch. 2) been caddied to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

————————–

1. **Ins. by the A.O. 1937, (Pt. III of the Government of India Act, 1935 came into force on the 1st April, 1937).**

113A. Presumption as to abatement of suicide by a married women –

[1]113A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a women had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband has subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation

For the purposes of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860).

COMMENTS

Relevant portion of section 498A of the Indian Penal Code, (45 of 1860), is reproduced below:

Explanation

For the purpose of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limit or health (whether mental or physical);

or

(b) harassment of the woman where such harassment is with a view to view concerning her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

————————–

1. **Ins. by Act 46 of 1983, sec. 7.**

113B. Presumption as to dowry death –

[1]113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.

Explanation

For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).

COMMENTS

Husband being the direct beneficiary can be inferred to have caused life of wife so miserable that she was compelled to commit suicide; Surinder Singh v. State of Punjab, 1999 (1) Crimes 4296.

Relevant portion of section 304B of the Indian Penal Code, (45 of 1860), is reproduced below:

304B. Dowry death.—(1) Where the death of a woman is caused by any burn or bodily injury or occurs otherwise than normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "dowry death".

————————

1. **Ins. by Act 43 of 1986, sec. 12 (w.e.f. 19-11-1986).**

114. Court may presume existence of certain facts –

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration

The Court may presume –

(a) That a man who is in possession of stolen goods after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) That an accomplice is unworthy of credit, unless he is corroborated in material particular;

(c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(e) That judicial and official acts have been regularly performed;

(f) That the common course of business had been followed in particular cases;

(g) That evidence which could be and is not produced would, if produced be unfavorable to the person who withholds it;

(h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavorable to him;

(i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it –

As to illustration (a)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

As to illustration (b)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was young and ignorant person, completely under A's influence;

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances;

As to illustration (f)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

As to illustration (i)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

COMMENTS

Presumption

(i) Presumption is rebuttable. If there is any such circumstance weakening such presumption, it cannot be ignored by the court; Sobha Hymavathi Devi v. Setti Gangadhara Swamy, AIR 2005 SC 800.

(ii) When oral and other reliable evidences are satisfactorily giving evidence that the pair lived together as husband and wife, merely because family register does not show them as husband and wife is not a clinching evidence to deny their relationship of husband and wife; Lalta v. District IVth upper Distt. Judge Basti, AIR 1999 All 342.

(iii) Execution of will made under fraud and under influence not denied. Evidence not adduced in support of allegation inference drawn that will is valid; S. Kaliyammal v. K. Palaniammal, AIR 1999 Mad 40.

(iv) Genuine and correctness of document have to be proved by a person believes upon it by cogent and direct evidence; Ashok Kumar Uttam Chand Shah v. Patel Mohmad Asmal Chanchad, AIR 1999 Guj 108.

(v) A court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder; Mukund alias Kundu Mishra v. State of Madhya Pradesh, (1997) 4 Supreme 359.

(vi) The recovery made some days after the dacoity does not raise a presumption under section 114(a) in respect of the offence of dacoity; Vasant alias Roshan Sogaji Bhosale v. State of Maharashtra, (1997) 2 Crimes 104 (Bom).

114-A Presumption as to absence of consent in certain prosecutions for rape –

1[‘114A. In a prosecution for rape under clause (*a*), clause (*b*), clause (*c*), clause (*d*), clause (*e*), clause (*f*), clause (*g*), clause (*h*), clause (*i*), clause (*j*), clause (*k*), clause (*l*), clause (*m*) or clause (*n*) of sub-section (*2*) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation.— In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (*a*) to (*d*) of section 375 of the Indian Penal Code.’.]

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1. Inserted by Section 114A of “The Criminal Law (Amendment) Act, 2013”

Chapter VIII – Estoppel

115. Estoppel –

When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Comments

Doctrine of Election

‘The Doctrine of Election’ is a branch of rule of estoppel. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them; National Insurance Co. Ltd. v. Mastan, AIR 2006 SC 577.

Effect of estoppel

(i) An estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. But where such is not the case a right may be claimed as having come into existence on the basis of estoppel and it is capable of being enforced or defended as

against the person precluded from denying it; B.L. Sreedhar v. K.M. Munireddy (dead), AIR 2003 SC 578.

(ii) It is settled canon of law that equity follows the law. Equity would tilt in favour of law and not against violation thereof. To claim equity, the petitioner must explain previous conduct; Bhopal Singh v. Chatter Singh, AIR 2000 P&H 34.

(iii) In terms of compromise name of tenant is deleted, order reached to finality. Dispute regarding tenancy in the subsequent proceeding are estopped; Vijayabai v. Shriram Tukaram, AIR 1999 SC 431.

(iv) The party in one hand volunteered before the Arbitration for extension of time and opposed to extension of time, the plea reverse to such conduct cannot be said to be good; F.C.I. v. Dilip Kumar, AIR 1999 Cal 75.

(v) The petitioner did not raise the print that the State Transport Authority was not properly constituted at the time of consideration of her petition, thereby taking a chance of succeeding in the proceedings before it. Therefore, she is now debarred by her own conduct from raising the contention before the Court; Sushila Chand v. State Transport Authority, AIR 1999 Ori 1.

(vi) Where rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights; B.L. Sreedhar v. K.M. Munireddy, AIR 2003 SC 578.

Object

The object of estoppel is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. Therefore, when one person makes a misrepresentation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation; Maddanappa v. Chandramma, AIR 1965 SC 1812.

Promissory Estoppel

Doctrine of promissory estoppel is not applicable to ultra vires decisions; M. Deo Narain Reddy v. Govt. of Andhra Pradesh, AIR 2004 NOC 332 (AP).

When plea of estoppel does not arise

If the statutory requirements for grant of lease are not fulfilled, the question of raising any plea of estoppel would not arise; Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia, AIR 2004 SC 1159.

116. Estoppel of tenant and of license of person in possession –

No tenant of immovable property of person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and not person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person has a title to such possession at the time when such license was given.

COMMENTS

Tenant can contest title of landlord

If old tenancy continues, notwithstanding attornment, tenant can always contend that plaintiff who claims to be landlord had not really derived title from original inductor; Sambhunath Mitra v. Khaitan Consultant Ltd., AIR 2005 Cal 281.

117. Estoppel of acceptor of bill of exchange, bailee or licensee –

No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority of draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1)

The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2)

If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

Chapter IX – Of witnesses

118. Who may testify? –

All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answer to those questions, by tender years, extreme old age, disease, whether of body and mind, or any other cause of the same kind.

Explanation

A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

COMMENTS

Reliability of witness

Testimony of a relation or a friend normally would not falsely implicate a person thereby shielding the actual culprit; Narasingh Challan v. State of Orissa, (1997) 2 Crimes 78 (Ori).

It is true that by itself the evidence of a chance witness may not necessarily be false but as has often been said that it is unsafe to be relied upon; Ganpat Kondiba Chavan v. State of Maharashtra, (1997) 2 Crimes 38 (Bom).

It is thoroughly unsafe to rely on the evidence of the tutored witness; Krishna Mohali v. State of Bihar, (1997) 2 Crimes 146 (Pat).

Relative or interested witnesses are not necessarily unreliable witnesses; Sawai Ram v. State of Rajasthan, (1997) 2 Crimes 148 (Raj).

No doubt, an approver in the eye of law is a competent witness; Murlidharan v. State of Tamil Nadu, (1997) 1 Crimes 515 (Mad).

Evidence of child witness is not reliable who is under the influence of tutoring; Changan Dame v. State of Gujarat, 1994 Cr LJ 66 (SC).

Testimony of independent witness

It is true that there is no immutable rule of appreciation of evidence that the testimony of independent witnesses should be ipso facto accepted but all the same the circumstance that witnesses are independent goes miles and miles to ensure their truthfulness. Criminal Courts decide cases and the question of acceptance of evidence of witnesses on sound common sense and when they find witnesses to be wholly independent they endeavour to fathom the reason as to why their evidence should not be accepted. Ordinarily it is a safe and sound rule of appreciation of evidence to accept the testimony of an independent witness provided it is in consonance with probabilities. It is better if it is corroborated by inbuilt guarantees which ensure the truthfulness of the prosecution case, such as a prompt F.I.R., recoveries at the instance of accused person and the presence of injured eyewitnesses, etc.; Shravan Dashrath Datrange v. State of Maharashtra, (1997) 2 Crimes 47 (Bom).

119. Dumb witnesses –

1["119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed.".]

COMMENTS

Where the witness is dumb, recording of his evidence should be of his signs and not interpretation of signs; Prakash Chand v. State of Himachal Pradesh, 1999 (1) Crimes 675 (HP).

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1. Inserted by Section 119 of "The Criminal Law (Amendment) Act, 2013"

120.Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial –

In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. Judges and Magistrates –

No Judge or Magistrate shall, except upon the special order of some Court of which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to any thing which came to his knowledge in Court as such Judge or Magistrate but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations

(a) A, on his trail before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer question as to this, except upon thee special

order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B, cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trail before B, a Session Judge. B may be examined as to what occurred.

122. Communications during marriage –

No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. Evidence as to affairs of State –

No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except wit the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. Official communications –

No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. Information as to commission of offences –

5. [1] Information as to commission of offences.- No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation

"Revenue officer" in this section means an officer employed in or about the business of any branch of the public revenue.

1. **Subs. by Act 3 of 1887, sec. 1, for section 125.**

126. Professional communications –

No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any [1][illegal] purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the

commencement of his employment.

It is immaterial whether the attention of such barrister, [2][pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation

The obligation stated in this section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney—"I have committed forgery, and I wish you to defend me".

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue".

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

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1. **Subs. by Act 18 of 1872, sec. 10, for "criminal".**
2. **Ins. by Act 18 of 1872, sec. 10.**

127. Section 126 to apply to interpreters etc. –

The provisions of Section 126 apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

128. Privilege not waived by volunteering evidence –

If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in Section 126, and if any party to a suit or proceeding calls any such barrister, [1]pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

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1. **Ins. by Act 18 of 1872, sec. 10.**

129. Confidential communication with Legal Advisers –

No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain any evidence which he has give, but not others.

130. Production of title-deeds of witness, not a party –

No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

131. Production of documents or electronic records which another person, having possession, could refuse to produce –

1. [1] Production of documents or electronic records which another person, having possession, could refuse to produce.- No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession, or control, unless such last-mentioned person consents to their production.

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1. **Subs. by Act 21 of 2000, sec. 92 and Sch. II, for section 131 (w.e.f. 17-10-2000).**

132. Witness not excused from answering on ground that answer will criminate –

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provison

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. Accomplice –

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

COMMENTS

Accomplice need not be judged by independent evidence

Every detail of the story of the accomplice need not be confirmed by independent evidence although some additional independent evidence must be looked for to see whether the approver is speaking the truth and there must be some evidence, direct or circumstantial which connects the co-accused with the crime independently of the accomplice; Haroon Haji v. State of Maharashtra, AIR 1968 SC 832.

Importance of corroboration

On reading section 133 with illustration (B) to section 114. It is not illegal to act upon the uncorroborated evidence of an accomplice it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material respect so as to implicate the accused and further that the evidence of one accomplice cannot be used to corroborate the evidence of another accomplice; Bhuboni Sabu v. Emperor, AIR 1949 PC 257.

Every approver comes to give evidence in some such manner seeking to purchase his immunity and that is why to start with he is an unreliable person and the rule of caution calling for material corroboration is constantly kept in mind by the court by time-worn judicial practice; Ravinder Singh v. State of Punjab, AIR 1975 SC 856.

The evidence of approver in regard to complicity of accused appellant in the conspiracy lacks corroboration on certain material particulars necessary for connecting the appellant; Balwant Kaur v. Union Territory of Chandigarh, 1988 Cr LJ 398: AIR 1988 SC 139.

134. Number of witness –

No particular number of witness shall in any case be required for the proof of any fact.

COMMENTS

Merit of the statement is important

It is well known principle of law that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution; Raja v. State, (1997) 2 Crimes 175 (Del).

The courts are concerned with the merit of the statement of a particular witness. They are not concerned with the number of witnesses examined by the prosecution; Raja v. State, (1997) 2 Crimes 175 (Del).

The time-honoured rule of appreciating evidence is that it has to be weighed and not counted; State of Maharashtra v. Suresh Nivsutti Bhaunare, (1997) 2 Crimes 257 (Bom).

Requirement

The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony of a single witness, the court may classify the oral testimony into three categories, namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court as to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness; Lallu Manjhi v. State of Jharkhand, AIR 2003 SC 854.

Chapter X – Of the examination of witnesses

135. Order of production and examination of witness –

The order in which witness are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and in the

absence of any such law, by the discretion of the Court.

136. Judge to decide as to admissibility of evidence –

When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of the alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved or acquire evidence to be given of the second fact before evidence is given of the first fact.

Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

137. Examination-in-chief –

The examination of a witness, by the party who calls him, shall be called his examination-in-chief.

Cross-examination

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Order of examinations –

Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts but the cross-examination need not to be confined to the facts which the witness testified on his examination-in-chief.

Direction of re-examination

The re-examination shall be directed to the explanation of matters referred to in cross-examination, and if new matter by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

COMMENTS

Scope

Section 138 lays down the manner of examining a particular witness and creates three distinct rights viz., examination-in-chief, cross-examination and re-examination so far as the examination of a witness is concerned. The right of cross-examination available to opposite party is a distinct and independent right. When accused declined to cross-examine witness and thereafter the said witness is not available for cross-examination, the evidence of such witness recorded is admissible in evidence but that will have to be true to that account; Nandram v. State of Madhya Pradesh, 1995 FAJ 1 (MP).

139. Cross-examination of person called to produce a document –

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examination, unless and until he is called as a witness.

140. Witness to character –

Witnesses to character may be cross-examined and re-examined.

141. Leading questions –

Any questions suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

142. When they must not be asked –

Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed or which have, in its opinion, been already sufficiently proved.

143. When they must be asked –

Leading questions may be asked in cross-examination.

144. Evidence as to matters in writing –

Any witness may be asked whilst under examination, whether any contract, grant or other disposition of property as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.Explanation – A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration

The question is, whether A assaulted B.

C deposes that he heard A, say to D – "B wrote a letter accusing me of theft, and I will be revenged on him. "This statement is relevant as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. Cross-examination as to previous statements in writing –

5. [1] Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matter in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

COMMENTS

Effect of contradiction

Two statements sought to be contradicted in addition should be drawn to previous

statement; Mohanlal Ganga Ram Gehani v. State of Maharashtra, AIR 1982 SC 839.

If a contradiction is put to witness and it is denied by him even then it will not amount putting contradiction to witness; Shaik Subhani v. State of Andhra Pradesh, 2000 Cr LJ 321 (AP).

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1. **As to the application of section 145 to police-diaries, see the Code of Criminal Procedure, 1973 (2 of 1974), section 172.**

146. Questions lawful in cross-examination –

1["Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.".]

COMMENTS

Role of cross-examination

Weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined in examination-in-chief. By the process of cross-examination the defence can test the evidence of a witness on anvil of truth; Nandram v. State of Madhya Pradesh, (1995) FAJ 1 (MP).

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1. Inserted by Section 146 of "The Criminal Law (Amendment) Act, 2013"

147. When witness to be compelled to answer –

If any such question relates to a matter relevant to the suit or proceeding, the provisions of Section 132 shall apply thereto.

148. Court to decide when question shall be asked and when witness compelled to answer –

If any such question relates to matter not relevant to the suit or proceeding, except in so far it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion the Court shall have regard to the following considerations;

(1) Such questions are proper if they are of such nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(2) Such questions are proper if they are of such nature that he truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(3) Such questions are improper if there is a great disproportion between the importance of the imputations made against the witness's character and the importance of his evidence.

(4) The court may if it sees fit, draw from the witness's refusal to answer, the in ference that the answer if given would be unfavorable.

149. Question not to be asked without reasonable grounds –

No such question as is referred to in Section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living gives unsatisfactory answer. This may be a reasonable ground for asking him if he is a dakait.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living gives unsatisfactory answer. This may be a reasonable ground for asking him if he is a dakait.

150. Procedure of Court in case of question being asked without reasonable grounds –

If the court is of opinion that any such question asked was without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney report the circumstances of the case to the High court or other authority to which barrister, pleader, vakil or attorney is subject in the exercise of his profession.

151. Indecent and scandalous questions –

The Court may forbid any question or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court unless they relate to fact in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. Question intended to insult or annoy –

The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. Exclusion of evidence to contradict answer to questions testing veracity –

When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him, but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1

If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2

– If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. Question by party of his own witness –

[1][(1)] The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

[2][(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.]

COMMENTS

Grounds

Mere possibility of not supporting case by person without any positive indication is no ground to invoke section 154 and permit cross-examination. More so, when said person is not yet examined as witness; Rehana Begum v. Mirza M. Shaiulla Baig (Dead) by L.Rs., AIR 2005 Kant 446.

Cross-examination of own witness

Grant of permission by court to cross examine his own witness by a party should be judicially exercised—deposition in opposition, permission by court to declare him hostile not proper; S. Murugesan v. S. Pethaperumal, AIR 1999 Mad 76.

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 to consider the fact in each case whether as a result of such examination and contradiction, the witness stands thoroughly discreted 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; Pandappa Hanumappa Nanamar v. State of Karnataka, (1997) 3 Supreme Today 63.

Evidence of hostile witness

The fact that witnesses have been declared hostile does not result in automatic rejection of their evidence. Even the evidence of a hostile witness if it finds corroboration from the facts of the case may be taken into account while judging the guilt of an accused; Lella Srinivasa Rao v. State of Andhra Pradesh, AIR 2004 SC 1720.

Reliability of hostile witness

It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence; Koti Lakshman Bhai v. State of Gujarat, AIR 2000 SC 210.

The entire evidence of a prosecution witness, who turns hostile and is cross-examined by the Public Prosecutor with the leave of the court, is not to be discarded altogether as a matter of law; Pandappa Hanumappa Nanamar v. State of Karnataka, (1997) 3 Supreme Today 63.

Cross-examination of a hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence; Pandappa Hanumappa Nanamar v. State of Karnataka, (1997) 3 Supreme Today 63.

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1. **Section 154 renumbered as sub-section (1) thereof by Act 2 of 2006, sec. 9 (w.e.f. 16-4-2006).**
2. **Ins. by Act 2 of 2006, sec. 9 (w.e.f. 16-4-2006).**

155. Impeaching credit of witness –

The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:—

(1) By the evidence of persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has [1][accepted] the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

[2][***]

Explanation

A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says the B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

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1. **Subs. by Act 18 of 1872, sec. 11, for "had".**
2. **Clause (4) omitted by Act 4 of 2003, sec. 3 (w.r.e.f. 31-12-2002). Clause (a), before omission, stood as under:**

"(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character"."

156. Questions tending to corroborate evidence of relevant fact, admissible –

When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fat which he testifies.

Illustration

A, an accomplice, gives an account of robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. Former statements of witness may be proved to corroborate later testimony as to same fact –

In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. What matters may be proved in connection with proved statement relevant under Section 32 or 33 –

Whenever any statement relevant under Section 32 or 33 is proved, all matters may be proved either in order to contradict or to corroborate, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

159. Refreshing memory. –

A witness may, while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within time aforesaid, if when he read it he knew it to be correct

When witness may use copy of document to refresh his memory –

Whenever a witness may refresh his ness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document.

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Comments

Objection to check records not legal

Objection to check records or entries by investigating officer is not legal and liable to be rejected; State of Karnataka v. K. Yanappa Reddy, 2000 Cr LJ 400.

160. Testimony to facts stated in document mentioned in Section 159 –

A witness may also testify to facts mentioned in any such document as is mentioned in Section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. Right of adverse party as to writing used to refresh memory –

1. [1] Right of adverse party as to writing used to refresh memory.- Any writing referred to under the provisions of the two last preceding Sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness there upon.

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1. **As the application of section 161 to Police-Diaries, see the Code of Criminal Procedure, 1973 (2 of 1974), section 172.**

162. Production of document –

A witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees, fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence : and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860).

163. Giving, as evidence, of document called for and produced on notice –

When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

164. Using, as evidence, of document, production of which was refused on notice –

When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration

A sues B on an agreement and gives B notice to produce it. At the trail, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. Judge’s power to put questions or order production –

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, The Orient Tavern cross-examine any witness upon any answer given in reply to any such question.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this Section shall not authorize an Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it

would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.

166. Power of jury or assessors to put questions –

In cases tried by jury or with assessors, the jury or assessors may put any question to the witnesses, through or by leave of the Judge, which the judge himself might put and which he considers proper.

Chapter XI – Of improper admission and rejection of evidence

167. No new trail for improper admission or rejection of evidence –

This improper admission or rejection of evidence shall not be ground of itself for a new trail or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.