

**PAPER ON THE SUBJECT "CONCEPT OF BENEFIT OF DOUBT IN THE
CONTEXT OF APPRECIATION OF EVIDENCE IN CRIMINAL TRIALS"**

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1) INTRODUCTION:-

Criminal trial is meant for doing justice not only to the victim but also to the accused and the Society at large. Every criminal trial is a voyage of discovery in which truth is the quest. The primary object of criminal trial is to ensure fair trial which is guaranteed under Art.21 of the Constitution of India. A fair trial has, therefore, two objects in view. It must be fair to the accused and must also be fair to the prosecution. The trial must be judged from this dual point of view. It is therefore, necessary to remember that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the judge has to perform. The object of criminal trial is thus to render public justice by punishing the criminal. As held by the Hon'ble Apex Court in the case of **Gangadhar Behera V/s State of Orissa, MANU/SC/0875/2002** "if unmerited acquittals become the general rule, they tend to lead to a cynical disregard of the law. A miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent".

In getting the true fruits of the real object of criminal trial, it must always be kept in view that a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of the witnesses. Every case in the final analysis would have to depend upon its own facts.

2) TWO SYSTEMS OF CRIMINAL JUSTICE:-

Mainly there are two systems of criminal justice. They are as follows:

A| Adversarial system:- India inherited the adversarial system from its colonial masters, the British. In the adversarial system, the accused is presumed to be innocent and the burden is on the prosecution to prove beyond reasonable doubt that he is guilty. The accused also enjoys the right to silence and cannot be compelled to reply. The aim of the Criminal Justice System is to punish the guilty and protect the innocent. The truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out.

B| Inquisitorial system:- In the inquisitorial system, power to investigate offences rests primarily with the judicial police officers. In France's judicial system, they investigate and draw the documents on the basis of their investigation. The Judicial police officer has to notify in writing of every offence which he has taken notice of and submit the dossier prepared after investigation, to the concerned prosecutor. If the prosecutor finds that no case is made out, he can close the case. If, however he feels that further investigation is called for, he can instruct the judicial police to undertake further investigation. The judicial police are required to gather evidence for and against the accused in a neutral and objective manner as it is their duty to assist the investigation and the prosecution in discovering truth. If the prosecutor feels that the case involves serious offences or offences of complex nature or politically sensitive matters, he can move the judge of instructions to take over the responsibility of supervising the investigation of such cases.

3) ADVERSARIAL SYSTEM IN INDIAN CONTEXT :-

As discussed above India has adopted the adversarial system of

trials. In criminal cases, both the prosecution and the defence are represented by legally qualified persons. It is for them to command to their aid all the information in favour of the respective parties before another legally qualified person, the trial Judge, who is the pivot of the criminal justice system.

Under adversarial system of trial it is the trial Judge who has been given enormous powers to conduct the trial properly. The Public Prosecutor under the adversarial system is statutorily authorized to represent the prosecution while the defence counsel is authorized to do so on being permitted by the Judge. Also, the defence counsel may be allowed to put only such questions to the witnesses as may be permitted by the trial Judge. And it is generally asserted adversarial system that there is presumption of innocence and the burden of proof is on the person who asserts the statement. Under the adversarial system it is usually the prosecutor who makes the accusation and as such it is for him to discharge the burden of proving the accusation beyond reasonable doubt.

In common law countries like India it was generally believed that the burden on the prosecution to prove its case beyond reasonable doubt was sacrosanct, that even if the burden is shifted to the accused what is expected to be proved was to establish a case on balance of probabilities and the trial starts with the presumption that the accused is innocent. Since the organized power of the State has been at the command of the prosecution, it was generally the impression that if there is any doubt on the veracity of the prosecution case the benefit of doubt should go to the defendant who is the weaker between the two.

4) CONCEPT OF "BENEFIT OF DOUBT" :-

"Beyond reasonable doubt", the well known principle of common law has acted like a savior for the guilty. Man is a rational being. Due to this 'rationality' everyone differs drastically from others. The reasonability of his thoughts and consequently his decisions cannot be measured. For instance a glass can be half full for one while it may be half empty for others. Similarly what might be reasonable for one might be totally absurd for others. The

Criminal justice systems of the world follow the principle that the guilt of an accused should be proved beyond reasonable doubt. Indian criminal justice system also works on the same lines and it is for the prosecution to prove beyond reasonable doubt that the accused has committed an offence with requisite mens rea.

There is no straight jacket formula on the basis of which the guilt of the accused is said to be proved beyond reasonable doubt. Moreover, there is no way to determine objectively, the reasonability of the doubt that the Judge might have. So it depends solely on the Judge to say whether he is convinced by the arguments of the prosecution or that there still remains a degree of reasonable doubt so as to impart the judgment in the favor of the defense.

5) MEANING OF CONCEPT OF “BENEFIT OF DOUBT” :-

The concept of “Benefit of Doubt” follows from the cardinal principle that the accused is presumed to be innocent unless proved to be guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. Thus giving false information or failing to prove his innocence is no ground to base conviction of accused and on the contrary it offends the very basic principle of Criminal Jurisprudence which lays the burden on the Prosecution to prove the offence against the accused. Another golden thread that runs through the web of administration of criminal justice is that if two views are possible on the evidence - one pointing to the guilt and other towards innocence, the view which is favorable to the accused should be accepted. It seems to be very similar to the principle, called Benefit of Doubt. This principle of reasonability is offspring of another principle on which our entire Criminal justice System is based- “let 100 criminals go untouched, but one innocent should not be punished”. That is the reason why the guilt of the accused is to be proved beyond any reasonable doubt.

As held by the Hon'ble Apex Court in the case of **State of U.P. V/s Ram Sevak, MANU/SC/1180/2002** that, “the criminal jurisprudence, no doubt, requires a high standard of proof for imposing punishment to an accused. But

it is equally important that on hypothetical grounds and surmises prosecution evidence of a sterling nature should not be brushed aside and disbelieved to give undue benefit of doubt to the accused". Furthermore, as held by the Hon'ble Apex Court in the case of *Shivaji Sahabrao Bobade V/s State of Maharashtra, MANU/SC/0167/1973*, "the law should not be stretched morbidly to embrace every hunch hesitancy and degree of doubt. Our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic".

In the case of *State of U.P. V/s Krishna Gopal, MANU/SC/0506/1988* the Hon'ble Supreme Court explained that, "Doubts must be actual and substantial as to the guilt of the accused person arising from the evidence or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary trivial or a merely possible doubt; but a fair doubt based upon reasons and common sense. Uninformed legitimization of trivialities would make a mockery of administration of criminal justice.

In para No. 18 of the judgment in the case of *Gangadhar Behera V/s State of Orissa, MANU/SC/0875/2002* after referring number of earlier judgments the Hon'ble Apex Court has made it clear that, "exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. Prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. Vague

hunches cannot take place of judicial evaluation. 'A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties.' Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

Whereas in the case of *Shivaji Sahabrao Bobade V/s State of Maharashtra, MANU/SC/0167/1973* the Hon'ble Supreme Court further held that, ".....the dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt....." and ".....a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent"

Therefore, to understand the concept of "benefit of doubt" it is necessary to know the concept of "proof beyond reasonable doubt". While explaining the concept of "proof beyond reasonable doubt" the Hon'ble Supreme Court in the case of *Krishnan and Anr. V/s State, MANU/SC/0505/2003* held that, "reasonable doubt means not imaginary, trivial or merely possible doubt. But fair doubt based on reasons and common sense. Doubts would be called reasonable if they are free from zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt ; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case". The Hon'ble Bombay High Court in the case of *Rohidas Manik Kasrale V/s State Of Maharashtra,*

MANU/MH/1514/2011, held that, “the phrase 'beyond reasonable doubt' has been often referred to and is well understood. However, attempts to define this term precisely have been held to be not advisable or practical. It is, however, settled that 'proof beyond reasonable doubt' does not mean 'proof beyond any doubt' whatsoever. It cannot be considered as if a mathematical formula”.

6) APPRECIATION OF EVIDENCE IN CRIMINAL TRIAL :-

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

Section 3 of the Indian Evidence Act, defines the term “Evidence” as follows:-

“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) all documents including electronic records produced for the inspection of the Court,
such documents are called documentary evidence.

From the above said definition it becomes clear that, the Indian Evidence Act, has classified evidence in two types i.e. oral evidence and documentary evidence. In appreciation of evidence the word proved, disproved and not proved play very vital role. Section 3 of the Indian Evidence Act defines above said words in following manner:

“Proved” - A fact is said to be proved when, after considering the matters before it, the Court either believes it be 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 disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.”

“Not proved” - A fact is said not to be proved when it is neither proved not disproved.

A) Oral Evidence and its appreciation :-

From Section 3 of the Indian Evidence Act, it becomes clear that, the oral evidence means and includes all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry. Section 118 of the Indian Evidence Act lays down that,

“All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or 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.”

Whereas Section 134 of the Indian Evidence Act lays down that,

“No particular number of witnesses shall in any case be required for the proof of any fact.”

Conjoint reading of Section 118 and Section 134 of the Indian Evidence Act envisages that all the persons are competent to testify, unless they are, in the opinion of the court unable to understand the questions put

to them or to give rational answer to those question. It is well settled that the Court can place reliance on a solitary witness provided, the same inspires confidence. If such evidence of a single witness is clear, cogent and consistent and there is no other infirmity, there is absolutely no impediment in placing reliance on such evidence and the Court need not seek for corroboration. The Hon'ble Supreme Court in the case of *Gulam Sarbar V/s State of Bihar, MANU/SC/1033/2013* held that, "in the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honored principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye-witness, if the same inspires confidence."

Section 137 of the Indian Evidence Act speaks about the mode in which oral evidence is to be recorded. Section 137 provides as follows:

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 as 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.

Before proceeding further it is necessary to mention that, the word "evidence" has been used in the Indian Evidence Act in different context. They are best evidence, direct evidence, circumstantial evidence, substantive evidence, corroborative evidence, hearsay evidence, indirect evidence, real evidence, etc. In the light of provisions of Indian Evidence Act

following factors are required to be considered, while appreciating oral evidence. They are Character of witness/Impeaching character of witness, conduct of witness, extent and manner of his interestedness, test of human probability regarding the story/evidence, opportunity of eye witnessing, hearing or perceiving by other senses, his prior and subsequent conduct, how a witness fares in cross-examination, discrepancies in evidence of witness and exaggerations/Contradictions/Omissions.

After knowing the definition of evidence, who can testify, order of oral examination of witness and factors needs to be considered at the time of appreciation of evidence, it is necessary to look towards these concepts practically. From the above said discussion it becomes clear that, in a criminal case, wherein a charge of penal offence is framed, the proof of charge should be beyond reasonable doubt and not on the basis of preponderance of probabilities. While an accused may establish his defence on the basis of preponderance of probabilities and not beyond reasonable doubt. Thus, standards for proof for a charge and for a defence are different and hence evidence is required to be appreciated in the light thereof.

To prove the case as stated above the prosecution examines number of witnesses. The ordinary presumption about a witness is that every witness testifying on oath before a court of law is a truthful witness unless he is shown to be unreliable or untruthful on any particular aspect. Witnesses solemnly deposing on oath in the witness box during a trial upon a grave charge of murder must be presumed to act with a full sense of responsibility of the consequence of what they state.

During the course of trial it may happen that, there might be minor differences between the evidence of prosecution witnesses or there might be minor omissions or draw-backs or infirmities. But, that may not affect on merit of the prosecution's case. The Hon'ble Supreme Court in the case of *Bharawada Bhoginbhai Hirjibhai V/s State of Gujrat, MANU/SC/0090/1983* explained various reasons for minor discrepancies in the evidence of witnesses and held that much importance cannot be attached to minor discrepancies. The various reasons for minor discrepancies

mentioned in above said judgment are as follows:

- (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen;
- (2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details;
- (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another;
- (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder;
- (5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person;
- (6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on; and
- (7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

In the case of State of Uttar Pradesh V/s M.K. Anthony,

MANU/SC/0123/1984 the Hon'ble Apex Court has made it clear that, While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.

Whereas in the case of Shashidhar Purandhar Hedge V/s State of Karnataka, MANU/SC/0905/2004 the Hon'ble Supreme Court held that, "Minor discrepancies cannot be termed as contradictions unless it affects the credibility of the evidence tendered by a witness". In the case of Baldev Singh V/s State of Punjab, MANU/SC/0972/2013 the Hon'ble Supreme Court held that, "Unless omission in statement recorded under Section 161 Cr.P.C. of a witness is significant and relevant having regard to the context in which omission occurs, it will not amount to a contradiction to the evidence of witnesses recorded by the court".

Very often during the Course of argument the learned Advocate for the accused labels witness as interested and partisan witness, child witness, hostile witness, police witness and inimical witness. Therefore, before parting with this topic it is necessary to see above said concepts and appreciation of above said labeled witnesses one by one.

D) Interested and partisan witness:-

Generally the interested witness means a witness who derives some benefit from litigation or who is interested in seeing an accused person punished. The related witness is often termed as interested witness. But, there is difference between related witness and interested witness. The related witness means the witness who is related with deceased or victim. Therefore, related witness is not equivalent to interested witness. In the case of **Takdir Samsuddin Sheikh V/s. State of Gujrat, MANU/SC/1270/2011**, the Hon'ble Supreme Court held that, "Term 'interested' postulates that witness must have some direct interest in having accused somehow or the other convicted for some other reason".

The evidence of interested witnesses cannot be thrown out and the only requirement for the Court is to consider their evidence with great care and caution and if such evidence does not satisfy the test of credibility, then the Court can disbelieve the same. The mere relationship of witnesses cannot be the sole basis of discarding their evidence, if the same is otherwise found to be believable and trustworthy. In **State of Rajasthan V/s Chandagi Ram, MANU/SC/0788/2014**, the Hon'ble Apex Court held that, "the evidence of the witnesses can not be discarded solely on the ground that the said witnesses are related to the deceased. It is well settled that the credibility of a witness and his/her version should be tested based on his/her testimony vis-à-vis the occurrence with reference to which the testimonies are deposed before the Court. Pithily stated, if the version of the witness is credible, reliable, trustworthy, admissible and the veracity of the statement does not give scope to any doubt, there is no reason to reject the testimony of the said witness, simply because the witness is related to the deceased or any of the parties." (Para.17). Whereas in the case of **Takdir Samsuddin Sheikh V/s. State of Gujrat, MANU/SC/1270/2011** it is held that, "'interested witness' not always suspected -their evidence has to be scrutinized with caution and can be accepted if found reliable- if some improvements or exaggerations found, which do not change the prosecution story, it can be separated and rest can

be relied upon”.

II) Child witness:-

Child witness is also a competent witness under Section 118 of the Indian Evidence Act, if he is capable of understanding the questions put to him and is capable of giving rational answers to those questions. Under Section 4 of the Oaths Act all witnesses are to take oaths or affirmation. However, proviso of Section 4 and 5 of Oaths Act shall not apply to child witness below twelve years of age. Therefore, child below 12 years of age are exempted from administering oath or affirmation. Therefore, cautious view is to be taken while recording evidence of child witness. A preliminary inquiry must be made to the child to conclude his understanding.

In *State of M.P. V/s. Ramesh & Anr. reported in MANU/SC/0255/2011* it is held that, “It is desirable that Judges and magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected”. In *Gul Singh V/s State of M.P., MANU/SC/0822/2014* it is held that, “evidence of child witness cannot be rejected unless the same is tutored or unless the same is unreliable”.

In *Nivrutti Pandurang Kokate V/s State of Maharashtra, MANU/SC/7172/2008* it is held that, “The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto”.

From the above said discussion it becomes clear that, though a child may be competent witness, a closer scrutiny of its evidence should be done before it is accepted. The competency of a child is not consistent and

her statement probably may be drawn upon her imagination sometimes. So the deposition of a child witness may require corroboration, but in case if the deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court should reject his statement partly or fully. However, an inference as to whether a child has been tutored or not, can be drawn from the contents of his deposition. Thus it can be concluded that a child witness is a privileged witness and their competency and credibility is to be decided by the court which may differ from case to case.

III) Hostile witness:-

Generally a witness is labeled as hostile, when he furnishes a certain statement on his knowledge about commission of a crime before the police but refutes it when called as witness before the court during the trial. The term 'hostile witness' does not find any explicit or implicit mention in any Indian laws, be it Indian Evidence Act or the Code of Criminal Procedure or any other law. Historically, the term Hostile Witness seems to have its origin in Common Law. The term 'hostile witness' was first coined in the common law to provide adequate safeguard against the "contrivance of an artful witness" who willfully by hostile evidence "ruin the cause" of the party calling such a witness.

In today's scenario the problem of witnesses turning hostile is quite evident. The crucial part played by the witnesses in bringing offenders to justice is central to any modern criminal justice system, since the successful conclusion of each stage in criminal proceedings from the initial reporting of the crime to the trial itself usually depends upon the cooperation of witnesses. Their role at the trial is particularly important in adversarial system where the prosecution must prove its case by leading evidence, often in the form of oral examination of witnesses, which can then be challenged by

the defence at a public hearing. By deposing in a case, they assist the court in discovering the truth. But the witnesses turning hostile is a common thing happening in the criminal justice system. The whole case of the prosecution can fall only on a false statement of the witness. The result is that more and more citizens are losing faith in the effectiveness of the system in providing justice to the victims.

Before proceeding further it is necessary to mention that, doctrine of *Falsus in uno falsus in omnibus* means false in one thing, false in everything has no application in India. The Hon'ble Apex Court in the case of **Sheesh Ram V/s State of Rajasthan, Criminal Appeal No. 191 of 2004, decided on 29/01/2014** it is held that, "the doctrine of *Falsus in uno falsus in omnibus* has no application in India. The evidence of hostile witness can be accepted to the extent his version found to be dependable on a careful scrutiny thereof". In **Sat Paul V/s Delhi Administration, MANU/SC/0203/ 1975** it is held that, "Even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

IV) Police witness:-

Often the learned Advocate for the accused argues that, the prosecution has examined only police witnesses. Therefore, the accused

cannot be convicted only on the basis of their evidence as they are the interested witnesses. In *Rohtash Kumar V/s State of Haryana, MANU/SC/0573/2013*, the Hon'ble Apex Court made it clear that, "testimony of police officials cannot be discarded merely on ground that they belonged to police force and are either interested in investigating or prosecuting agency". No doubt, the evidence of the police officials must be subject to strict scrutiny, however, same cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigation or in the prosecution. However, as far as possible the corroboration of their evidence on material particulars should be sought.

B) Documentary Evidence and its appreciation :-

In criminal trial mainly the judge has to look into First information report, inquest *panchanama*, Statements under Section 161 and Section 164 of the Code of Criminal Procedure, discovery under Section 27 of the Indian Evidence Act, dying declaration, electronic evidence, etc. Under this heading we are going to discuss about how to appreciate above said evidence.

I) FIR :-

Section 154 of the Code of Criminal Procedure, 1973 envisages the provision of information in respect of cognizable offence. In entire code no were stated about word FIR. The evidential value of F.I.R. is far greater than that of any other statement recorded by the police. The F.I.R. is not substantive evidence and can be used only for limited purposes. In certain circumstances, F.I.R. may be relevant under Section 8 and 11 of the Evidence Act. The F.I.R. may be considered for the purpose of corroboration under Section 157 of the Evidence Act. The F.I.R. can be used to contradict him if the informant makes a statement subsequently in Court when he is called as witness at the time of trial under Section 145 of the Evidence Act. The F.I.R. cannot be used for the purposes of corroborating or contradicting any witness other than the one lodging the F.I.R. It is admissible in evidence

against the maker or informant. The F.I.R. can be used as part of the informant's conduct under Section 8 of the Evidence Act. The F.I.R. can be used to show for being tendered in a proper care under Section 32(1) of the Evidence Act. Section 32(1) of the Evidence Act relates to statement of relevant facts as to the cause of his death 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 unreasonable amount of delay or expense. FIR is not an encyclopedia. It is only to set the law in motion. It need not elaborate but should contain necessary allegations to constitute cognizable offences.

The Hon'ble Apex Court in *State of H.P. V. Gian Chand, MANU/SC/0312/2001* has held that, delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

If the F.I.R. is given to the police by the accused himself, it cannot possibly be used either for corroboration or contraction because accused cannot be a prosecution witness, and he would very rarely offer himself to be a defence witness under Section 315 of the Code of Criminal Procedure. If the FIR is of a confessional nature it cannot be proved against the accused because according to Section 25 of the Evidence Act, no confession made to a police officer can be proved as against a person accused of any offence. But it might become relevant under section 8 of the Evidence Act as to his conduct. If FIR given by the accused person is non- confessional, it may be admissible in evidence against the accused as an admission under section 21 of the Evidence Act, In *Aghnoo Nagesia Vs State of Bihar, reported in*

MANU/SC/0079/1965 it is observed by the Hon'ble Supreme Court that If F.I.R. is not a confession but contains admissions made by the accused, the F.I.R. is admissible in evidence under Section 21 of the Evidence Act. If the F.I.R. is a document containing not only the confession of the accused for committing the crime with which he is charged, but also relates to several other matters which are relevant to the trial, there is nothing in the provisions of the Evidence Act making the latter inadmissible.

II) Statement under Section 161 of Cr.P.C. :-

Statement recorded under Sec. 161 Cr.P.C. shall not be used for any purpose except to contradict a witness in the manner prescribed in the proviso to Section 162 (1) Cr.P.C. Statement under Section 161 Cr.P.C. is not a substantive piece of evidence. The prosecution witnesses have deposed something else for the first time in court which is not stated by them when statement was recorded by the police during course of investigation u/s 161 of Cr. P .C. There are several modes of impeaching the credit of the witnesses. The modes Proving is laid down under sec. 155 of Indian Evidence Act, 1872. As per sub section (3) of S. 155 of Indian Evidence act, the credit of a witness may be impeached by the adverse party or with the consent of the court by the party who calls him, by contradicting former statement which is inconsistent or any part of his evidence which is liable to be contradicted. Hence, proving the omissions and contradictions in criminal trial is one of the modes to impeach the credibility of the witness. After hearing the defence counsel on the point of proof of contradictions, court has to scrutinize said contradictions. Proving contradictions is a strong weapon in the hands of counsel to get acquittal of the of defence accused.

III) Confession :-

The confession is the statement of accused suggesting the inference that he committed crime. Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him. Confession if

deliberately and voluntarily made may be accepted as conclusive of the matters confessed. As per section 30 of Evidence Act, Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused. A confession may occur in many forms. When it is made to the Court itself then it will be called judicial confession and when it is made to anybody outside the Court, in that case it will be called extra-judicial confession.

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 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 supporting that by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceeding against him.

A confessional statement made by the accused before a magistrate is a best evidence and accused be convicted on the basis of it. A confession can obviously be used against the maker of it and is in itself sufficient to support his conviction. A conviction can be based on confession only if it is proved to be voluntary and true.

The evidence of extra-judicial confession is a weak piece of evidence. The extra-judicial confession must be received with great care and caution. It can be relied upon only when it is clear, consistent and convincing. The court has to decide whether the person before whom the admission is said to have been made are trustworthy witnesses.

IV) Dying declaration :-

A leading and landmark decision rendered by a five-Judge Bench of the Hon'ble Apex Court in respect of Dying Declaration is ***Laxman V. State of Maharashtra reported in (2002) SCC (Cri.) 1491*** in which the Hon'ble Apex Court has held the situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his

statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the victim, the dying declaration is not acceptable.

A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the witness that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

V) Discovery of fact :-

Section 27 of Indian Evidence Act is based on doctrine of confirmation by subsequent events. It lays down that during the period of investigation or during police custody any information is given by the

accused of an offence to the police officer that leads to discover any fact, may be proved whether such information amounts to confession or not. Section 27 is by way of a proviso to Sections 25 and 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused.

If evidence of Investigating Officer who recovered material object is convincing, evidence as to recovery need not be rejected on ground that seizure witnesses did not support prosecution case. There is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Cr.P.C., to obtain signature of independent witnesses on the record in which statement of an accused is written.

In *Manohar Amrut Satpudke Vs. The State of Maharashtra* reported in MANU/MH/1338/2000 the Hon'ble Bombay High Court observed that, there are cases in which the Police act on prior information. There are cases in which panchas are easily available and the search can be made or the articles can be seized in their presence. If in a case, the Court will have to examine the evidence of the Police witnesses carefully, bearing in mind the fact that independent evidence is available for the Court.

Section 27 of the Indian Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of Sections 25 and 26 of the Indian Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under Section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Section 27 aforesaid, is limited "...as it relates distinctly to the fact thereby discovered....". The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. Discovery of facts itself, therefore, substantiates the truth of the confessional statement.

VI) Electronic evidence :-

Digital evidence or electronic evidence is any probative information stored or transmitted in digital form that a party to a court case may use at trial. Before accepting digital evidence a court will determine if the evidence is relevant, whether it is authentic, if it is hearsay and whether a copy is acceptable or the original is required. E-evidence is found in e-mails, digital photographs, word processing documents, internet browser histories, Contents of computer memory, Computer generated printouts, Digital video or audio files etc. Computer forensics is a branch of forensic science pertaining to legal evidence found in computers and digital storage mediums. The Information Technology Act, the Indian Evidence Act 1872, the Indian Penal Code 1860 and the Banker's Book Evidence Act 1891 provides the legislative framework for transactions in electronic world. New Section 22A has been inserted into Evidence Act to provide for the relevancy of oral evidence regarding the contents of electronic records. It provides that oral admissions regarding the contents of electronic records are not relevant unless the genuineness of the electronic records produced is in question.

Sections 65A and 65B are introduced into the Evidence Act. Section 65A provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B. The conditions specified in Section 65(B)(2) are: Firstly, the computer output containing the information should have been produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer. The second requirement is that it must be shown that during the said period the information of the kind contained in electronic record or of the kind from which the information contained is derived was 'regularly fed into the computer in the ordinary course of the said activity'. A third requirement is that during the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time that break did not affect either

the record or the accuracy of its contents. The fourth requirement is that the information contained in the record should be a reproduction or derived from the information fed into the computer in the ordinary course of the said activity. Under Section 65B(4) the certificate which identifies the electronic record containing the statement and describes the manner in which it was produced giving the particulars of the device involved in the production of that record and deals with the conditions mentioned in Section 65(B)(2) and is signed by a person occupying a responsible official position in relation to the operation of the relevant device 'shall be evidence of any matter stated in the certificate'.

7) Conclusion :-

The law of evidence is the edifice on which the system of dispensation of justice rests. In fact, the purpose and object of evidence is to guide the Courts to come to a conclusion regarding a case at hand. Appreciation of evidence is a term used in Indian law to refer to the consideration or examination of the evidence by the court. It involves weighing the credibility and reliability of the evidence presented in the case. As stated above primary object of criminal trial is to ensure fair trial which is guaranteed under Art.21 of the Constitution of India. A fair trial has, therefore, two objects in view. It must be fair to the accused and must also be fair to the prosecution. The trial must be judged from this dual point of view. It is therefore, necessary to remember that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the judge has to perform. The object of criminal trial is thus to render public justice by punishing the criminal.
