

## **Questions and answers of 1st Workshop ( Civil Side )**

**Que 1 :** How to record evidence of child witness ?

**Ans :** Generally, the Judges have rare occasion to record the evidence of child witness. Therefore, while recording evidence of a child witness, it is the duty of the court to see, whether he is able to understand the sanctity of giving evidence on a oath. For that purpose, the Presiding Officer must put some questions to ascertain the same. (**Himmat V. State of Maharashtra AIR 2009 SC 2292**). The examination of child witnesses once begun, the same shall be continued from day to day and court should not adjourn trial. (**Mohan Lal V. State of Punjab AIR 2013 SC 2408**)

**Que 2 :** What is the procedure to record evidence of deaf and dumb person ?

**Ans :** As stated above, the occasion to record the evidence of a deaf and dumb witness is also a rare occasion for judicial officers. While recording evidence of such witness, the court has to ascertain that such witness possesses the requisite amount of intelligence and that he understands the nature of an oath. On satisfaction administer oath by appropriate means including with the assistance of an interpreter. If witness is literate his examination should be in writing rather than any sign language. Here, the requirement of law is record of signs and not the interpretation of signs ( **State of Rajsthan V. Darshan Singh AIR 2012 SC 1973** )

**Que 3 :** In what circumstance it is necessary to give oath to a child witness ?

**Ans :** As per the provisions of Oath Act, all witnesses are required to take oaths or affirmation except a child below 12 years . When a witness is a child witness the Court should test the capacity of such witness to depose by putting proper questions to ascertain the extent of his intellectual capacity of understanding to determine whether he is able to give a rational account of what he has seen or heard or done or a particular occasion.

**Que 4 :** Whether an omission to administer oath to the witness invalidate his evidence ?

**Ans :** The omission to administer oath or affirmation does not invalidate any evidence. A witness has a choice either to make an oath in the name of the God or to make a solemn affirmation. ( S.7 Oaths Act ) Relevant paras regarding forms of Oath / affirmation are Para 506 to 515 of Chapter XXVI of Civil Manual.

**Que 5 :** Whether it is necessary to prove the reports of government scientific evidence ?

**Ans :** Under section 293 clause 4 of Code of Criminal Procedure, certain categories of Govt. officials are given their reports may be used as evidence in any inquiry, trial or other proceeding. However, the court may in its discretion require such documents to be proved. In the case of PSO Gadgenagar/Ajay Dayaram 2014 Cr.L.J.NOC 504 (Nag), it was held that P.M. Notes in murder cases should be proved by examining doctor.

**Que 6 :** Whether the D.N.A. is conclusive proof ?

**Ans :** Earlier, it was the view that the scientific tests are not conclusive proof of evidence. However, in **Nandlal V. Lata, AIR 2014 SC 932**, it is held “when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.

**Que 7 :** Whether the court commission can decide the objection ?

**Ans :** Any objection raised during the recording of evidence shall be recorded by the Commissioner and decided by the Court at the stage of arguments. Order XVIII R.4 (1) proviso clarifies that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along

with the affidavit shall be subject to the order of the court.

**Que 8 :** Whether the evidence regarding call details is admissible ?

**Ans :** The evidence of the telephone calls is admissible under section 8 to 27 of the Evidence Act. It is a very important piece of evidence in the case of circumstantial evidence. The procedure of the same has been laid down in the case of State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru decided on on 4 August, 2005 and Anwar P.V...vrs.. P. K. Bhaskar, 2014 ( 10) SCALE 660 ). In the case of Sidhartha Manu Sharma. V. State AIR 2010 SC 2352 , it was held that the evidence of phone calls is a very relevant and admissible piece of evidence.

**Que 9 :** How to prove the contents of computerized copy of bank- pass book ?

**Ans :** The Bank Passbook is not admissible in evidence. But certified copy of Statement of Account, if issued as per the provision of Sec. 2A of Bankers Book Evidence Act and section 65A, 65B of Evidence Act is admissible in evidence.

**Que 10 :** What are the guideline to record statement U/s 164 of Cr. P. C of rape victim ?

**Ans :** Recently, the Hon'ble Apex Court in the case of State of Karnataka V. Shivanna (2014) 8 SCC 913, has laid down following guidelines ;

*(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173*

*Cr.P.C. is filed.*

*(ii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.*

*(iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.*

*(iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.*

*(v) Medical Examination of the victim: Section 164 A Cr.P.C.*

*inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.*

**Que 11 :** What is in Camera proceeding and when it has to be adopted ?

**Ans :** Normally, evidence is to be recorded in open Court. However, where obscene allegations or embarrassing evidence is there the proceedings should be in camera. Particularly, when the victim is a lady. (**Naresh Shridhar Mirajkar v. State of Mah. AIR 1967 SC 1**). For the purpose of recording the evidence of child victim under the provision of Protection of Children from Sexual Offences Act 2012 the evidence should be recorded in the chamber of the Presiding Officer.

**Que 12 :** Whether evidence can be record by video linkage ?

**Ans** : Generally, the evidence be recorded either in writing or mechanically in the presence of the Judge or the Commissioner. However, now a days the evidence is also recoded with the help of the electronic devices i.e. audio or audio - visual linkage. In the case of State of Maharashtra V. Dr. Praful B. Desai 2003 Cri. L. J. 2033 SC, some safeguards are laid down in this regard.

**Que 13 :** What is the procedure to withdraw a Vakalatnama ?

**Ans** : Once an Advocate files his Vakalatnama, the same continues to be in force till he obtains leave of the Court to withdraw the same. An Advocate has to serve a written notice of his intention to withdraw on his client at least seven days in advance Advocate shall file a note in writing requesting the Court for permission to withdraw appearance along with such notice. Govinda Kamble V. Sadu Bapu\_2005(1) Mah. L. J. 651)

**Que 14 :** How to record evidence of supporting and contesting defendants ?

**Ans** : When in a case some defendants support the plaintiff and some oppose, the order of leading evidence or cross examination amongst such defendants, will be as follows :

First, the defendants fully supporting

Thereafter the defendants partly supporting.

**(Shah Hiralal v. M.G. Pathakand AIR 1964 Guj 26)**

**(Sunil Kedar Vs. Y. S. Bagde 2004 (4) Mah. L. J. 620)**

**Que 15 :** Evidence of a witness is likely to leave the jurisdiction.

**Ans** : Where a witness is about to leave the jurisdiction of the court, the court may upon the application of the party or of the witness, take the evidence of such witness immediately. Order 18 Rule 16 of C.P.C.(**Laxmibai.....V..... Bhagwantbuva AIR 2013 SC 1204** ).

**Que 16 : What is the language of the court ?**

**Ans** : The evidence of witnesses shall be recorded in the language of the Court, i.e. in Marathi beyond the limits of Greater Bombay and in English within the limits of Greater Bombay. ( Para 254(3) of Civil Manual ) If both parties agree, evidence can be recorded only in English.

However, in view of G.R. Dt. 27 July 1998 Marathi shall be the language of all subordinate courts. If the first appeal lies to the High Court true translation in English of the evidence in Marathi should be simultaneously recorded.

**Que 17 : Is it necessary to sworn the affidavit of evidence filed on oath ?**

**Ans** : Generally, after filling of the evidence it was seems to necessary to sworn the affidavit to the witness by interring him in to the witness box. However, in the case of **Rasiklal Manikchand Dhariwal Vs.M.S.S. Food Products Ltd.2012(1)ALL MR968**, it was held that there is no necessity to sworn the witness again to prove the contents of affidavit.

However, If the party failed to mention certain facts in Affidavit, failure to mention details in affidavit does not preclude the party to the suit to enter the witness box to depose further. (**Rajesh Varma ..Vs.. M/s Aminex Holdings & Investments 2008(3)MhLj460 (Bom)**)

**Que 18 : Whether the contents of an affidavit can be excluded ?**

**Ans** : Where the evidence proposed to be led by a party is irrelevant and not in support of the issues that evidence must be excluded ( **Rajendra Singh Kushwaha..Vrs..Jitendrasingh & Ors 2013(6) Mh.L.J.802** ).

In **Harish Loyalka..Vrs.. Dileep Nevatia 2014(4) ABR 545**, the Hon'ble Bombay High Court laid down the guidelines regarding the testimony of a witness.

**Que 19:** How should court approach a non-conforming affidavit ?

**Ans :** When the contents of an affidavit are clearly inadmissible or demonstrably irrelevant. The party be permitted to replace his affidavit. However, replacing such an affidavit is the discretion of the court. The court's power to delete any portion of an affidavit is completely taken away, a court may still rule on portions of the affidavit to which objections are taken and direct that those portions be excluded from consideration as testimony.

**Que 20:** How to decide the objections during the course of evidence ?

**Ans :** In the case of **Hemendra R. Ghia case, 2009 (2) AIR Bom R 296**, the Full Bench of Hon'ble Court has dealt with the point as to when the question of admissibility of document can be raised and laid down following-principles ;

(i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;

(ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case.

**Que 21 :** What is the purpose of cross-examination ?

**Ans :** The right of cross-examination is a valuable and Constitutional right of the accused. The purpose of cross-examination is to test the veracity of the statement made by a witness in his examination-in-chief as also to impeach his credit.

The object of the cross-examination is two-fold to weaken, qualify or destroy the case of the opponent and to establish a party's own case by means of his opponent's witnesses.

**Que 22** : Whether marking an exhibit to a document in cross-examination will dispense with the proof of the document in accordance with law of evidence ?

**Ans** : Marking a document as exhibit by such a process based on consistent practice followed in the Court of law does not dispense with the requirement of proof of the execution, contents and genuineness of the document in accordance with law of evidence unless the witness concerned admits the execution and genuineness of the document. A practice followed in the Courts is that when a document is referred during the course of cross-examination of a witness, the said document is marked as an exhibit. The practice of marking a document referred to in the cross-examination is only the purposes of locating and identifying the said document. Therefore, marking a document in cross-examination in this manner will not dispense with the proof of the document in accordance with law of evidence. (2009 Cri. L J 910, 2009 (2) Mah. L J 410)

**Que 23** : How to prove the documents ?

**Ans** : Mere production and marking of a document as an exhibit is not enough. Execution of a document is to be proved by admissible evidence. The admissible evidence is by way of:-

- i] Admission by a signatory to the document of its execution( Section 58).
- ii] Examination of a scribe (Section 67)
- iii] Examination of an attesting witness (Section 67 & 68)
- iv] By proof of signature and handwriting of a person, who is alleged to have signed or written the document produced (Section 67).
- v] By proof of digital signature (Section 67-A)
- vi] By opinion as to, or comparison of, signature, writing, or seal with



other admitted or proved document ( Sections 45, 47 or 73 )

**Fakhruddin V. State of Madhya Pradesh 1967 Cri.L.J 1197,**

**State ...V.... Pali Ram AIR 1979 SC 14.**

vii] Proof as to verification of digital signature (Section 73-A)

**Que 24 : How can it be proved that document is thirty years old?**

**Ans :** The date of execution shown on the face of the document is prima facie evidence of its age. If no date is given in the document, “it can be proved by extraneous evidence” that it is thirty years old. Where a document was not thirty years old when filed in the court but becomes so by the time that is considered by the court as part of the evidence, the presumption will apply.

**Que 25 : Whether the presumption of 30 years old is applicable to 'Will' ?**

**Ans :** A presumption regarding documents 30 years old does not apply to a Will. A Will has to be proved in terms of Section 63(c) of Indian Succession Act r/w Sec. 68 of the Evidence Act. ( **Bharpur Singh -v- Samsher Singh, ( 2009)3 SCC 687** )

**Que 26 : Whether the evidence recorded by Tape recorder and Video is admissible in evidence ?**

**Ans :** Tape recorded or Video recorded conversation can be produced before courts as an evidence. In such cases, the court has to face various questions regarding admissibility, nature and evidentiary value of such a tape-recorded conversation. In the case of Ram Singh v. Col. Ram Singh, AIR 1986 SC 3 the Hon'ble Apex Court examined the question of admissibility of tape recorded conversations under the relevant provisions of the Indian Evidence Act and laid down conditions under which it will be admissible.

Submitted with due respect.