RECAPITULATION OF SOME STRESSWORTHY POINTS

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1) Procedure as regards writing and pronnouncement of Judgment :

A judgment must be written in the language of the Court. It must be written by the Presiding Officer of the Court or from the dictation given by him. Where it is not in the hand of the Presiding Officer, every page of the such Judgment must be signed by him. The date and the signature must be affixed to the Judgment in open Court while pronouncing it. It shall be pronounced immediately after the termination of the trail or on some subsequent date of which notice must be given to the parties or their pleaders. The pronouncement of a Judgment in Civil cases must be made according to the provisions of Order XX Rule 1 of the C. P. Code. In Criminal cases the pronouncement must be made according to the provisions of section 353 (2) of the Cr. P.Code. The judgment cannot be delivered in piecemeal manner. There is difference between "delivery" and "pronouncement" of a Judgment. The "pronouncement" means declaration of the result of the trial by mouth. The "delivery" of a Judgment need not be expressed by mouth. In a civil case judgment can be pronounced in absence of the parties. However, in Criminal Trials, in Courts of orginal Jurisdiction, Judgment cannot be pronounced in absence of the accused unless his personal attendance is

dispensed with during the trial and he is to be acquitted or fined only. In civil cases it is obligatory upon a successor Judge to pronounce the Judgment written by his predecessor-in-chair. The position is reverse in Criminal cases. A successor Judge cannot pronounce Judgment written by his predecessor in a criminal case. The Judgement cannot be altered or changed except as provided under section 152 of the C. P. Code in Civil cases and under section 362 of Cr. P. Code. in Criminal cases.

2) Normal requirements of Judgment :

The judgment should contain : (1) point or points for decision, (2) the decision thereon, and (3) the reasons for the decision. In civil cases the issues which are framed in a suit are required to be answered. In criminal cases the points for determination are to be formulated having regard to the charge and the controversy. In order to bring about clarity, the Judgment should be divided into paragraphs. The art of paragraphing should not be ignored. The assessment of the evidence and the discussion should not be clummsy. The reasons given in support of the decision must reflect application of mind to the controversial issues or points. The language should be dignified and temperate. The Judgment should begin with precise nature of the case. The facts of the case should be given thereafter. The points for determination or issues should be given after having stated the facts of the case. The reasons should be set out thereinafter and the conclusions should be given in a seperate pragraph. The operative order should be given at the end of the Judgment. When sentence is to be awarded then some discussion about the reasons for giving a particular sentence should normally find place in a Judgment. The Judgement must be complete by itself. There should be adhearence to the sequence of facts and reasons. Logical arrangement in a Judgment make it more effective and reasonable. The Judgment need not be a resume of the entire evidence on the record. It should, however, appear from the Judgment that the entire evidence has been considered by the Presiding Officer. The Judgment

should not be elongated nor it should be sketchy. The language should not be flowery or vulgar. The Judgment should be self-speaking. It should reflect the personality of the Judge, rather than personalities of the lawyers or the parties in the case. Unnecessary adverse remarks against any party or witness or third person should be avoided. The Judgment should show that the case dealt with was considered in impartial manner. It must be noted that each party has got a right to know as to why the Judgment went adverse against it or in its favour. It should be convincing. It should communicate the reader as to *why* the case is decided in a particular way.

(3) *Appreciatton of Evidence* :

Mere statements of the witnesses or recitals of the documents do not take place of proof. It is the function of the Presiding Officer to consider quality and weight of the evidence. It is not important as to what is the bulk of the evidence. It is very important to see strength of the evidence. Normally, a witness is to be considered as an independent witness unless it is brought on the record that the witness has a reason to speak falsehood and further his evidence makes a room to doubt his version. It is noteworthy that burden of proof does not mean standard of proof. In civil cases the standard of proof must come in the range of probability and possibility. In a criminal case the standard of proof must be in the range of possibility and certainty. How ever, there is often wrong notion about degree of proof required in a criminal case. It is wrong to say that absolute certainty amounting to a demonstration of guilt, must be needed. The standard of proof in criminal cases does not change with the seriousness of the crime or magnitude of the offence. It depends upon the circusmtances of the case. Under certain circumstances a case can be decided on basis of testimony of a single witness by accepting his evidence. On the other hand, under different circumstances evidence of number of witnesses cannot take place of the proof when the standard of such evidence is in-adequate. Where prosecution

evidence is trust worthy, absence of motive for the crime or minor and immaterial discripancies in evidence do not matter. If a case is based on circumstantial evidence then such evidence should be so strong as to point out to the guilt of the accused. In a majority of cases it must only be judged, whether in the circumstances of that particular case the degree of probability is so high as to justify one in regarding it as a certainty. Thus, even in criminal cases all that is required is material whereon the Court can reasonably act upon the supposition that a fact exists.

Marshalling of evidence is necessary before any opinion can be formed on the basis of such evidence. For this purpose, it is useful to firstly classify the evidence and thereafter proceed to consider as to what it tends to prove. For discarding evidence of a particular witness, or evidence appearing in a particular document, convincing reasons should be given. The application of mind to the evidence and process of sifting of the evidence should be clearly reflected in a Judgment. It is not suffice to say "I believe witness .." or "I disbelieve..." without recording reasons on the basis of which such opinion is expressed. Evidence given by a witness should not be given in a Judgment in verbatim manner unless for a particular purpose it is necessary to reproduce the same. It should be briefly mentioned as to what the evidence discloses and as to what is the effect of such evidence. The medical evidence should not be lightly ignored unless it is contradictory to the account given by the eye witnesses or that it is not possible to attirbute much importancee to the same owing to the intrinsic descripancies appearing therein. It is improper to draw adverse inference in each case of non-examination of a witness or non-production of evidence. It is noteworthy that under section 114 (g) of the Indian Evidence Act adverse inference *may* be drawn when material evidence is not produced by a party or prosecution, as the case may be. It is not a mandatory provision for raising such adverse presumption but it is the discretion of the Court to draw such presumption under particular circumstances. Such discretion must be used in judicial manner. Besides, it is

necessary to see as to whether after drawing such adverse inference against a party or the prosecution the other evidence adduced by that party or the prosecution is materially affected. the suggesstions of cross-examining counsel have no evidenciary value, unless the witness admits truth in them or they are proved to be truth bearing by some other evidence. Evidence of child witnesses should be cautiously examined as they do not possess the capacity to distinguish between what they have seen and what they have heard. Further, there is a possibility of such witness being tutored. It is, therefore, prudent to seek corroboration for the version of a child witness while accepting it. Attention should be given to the time of F. I. R. in criminal cases. It is well settled that undue delay in lodging F. I. R., normally, smacks of falsehood about the accussations. The F. I. R. is not, however, a substantive piece of evidence and ommisions there-in cannot be considered as a serious lacuna. In civil suits, the real test for either accepting or rejecting the evidence is to examine as to how far it is consistent with the story in support of which it is given, to examine, as to how far it stands, the test of cross examination and how far it fits in with the remaining evidence and the circumstances of the case. In criminal cases the procussion evidence has to be independantly examined, in the first instance, and then evidence of the defence, if any, should be looked into. Evidence of the prosucation witnesses should not be tested in the light of the defence evidence. Minor contradictions should not be given much importance. Benefit of doubt must go to the accused, but the doubt must be " Resonable " and it should not be an out come of mere obsession about doubtful nature of the evidence of the prosucation.

When defence falling under general exceptions under the Indian Penal Code is adopted and the accused could not prove such defence then also if upon a consideration of the evidence as a whole a reasonable doubt is created in the mind of the Court as to whether such accused is or is not entitled to the benifit of such exception then the accused person is entitled to be acquitted. The benefit of doubt dose not

mean absence of certainity. The doubt must be such that a reasonable mind will allow it to be entertained and it must not be the doubt of a weak hesitating mind, avoiding to take a decision about guilt of the accused because of possibility of its being mistaken. While appreciating evidence it is necessary to read, rather reread, each word of the testimony or document and consider such evidence in the light of probablites and possibilities. Unnecessary evidence, if any, should be shun firstly. Hearsay evidence is required to be over looked. In civil cases admissibility of documents should be considered while admitting such documents in to evidence. For example, a gift deed, about my immovable property, must be registered and is compulsorily required to be attested by two witnesses. So an unregistered gift deed is not admissible in evidence. Similarly, attention should be given to the provisions of The Stamp Act. and when necessary a document should be ordered to be impounded. Demenour of a witness should be noted, if found necessary, during his examination. His evidence should not be rejected on basis of his demenour which does not find place in the record of his depositation but the Judge writes about it on basis of his memory. The art of valuation of evidence and its use in the process of reaching a finding of fact should be acquired by developing logical and rational thinking. There are no hard and fast rules of law in this context. One has to use his knowledge of the law and common sense in appriciating the evidence. In Civil matters no amount of evidence shall be looked in to upon in any manner that was required to be pleaded or the evidence which is at variance with pleadings.

4) Use of quatitions :

At the out set, I would like to invite attention of the reader to a quotation, which may appear to be ironical but is certinly a true statement. It is thus; " I hate quotations, Tell me what you know " (By EMERSON). The meaning is crystal clear. The judgment should not be a catalogue of number of quotations. There should be substance in the judgment which will show that the Judge knows the facts and

the law in the context of the case. Normally, authorities cited in respect of general observations as regards appreciation of evidence under the circumstances of the particular case may not be of much help in different circumstances. Citations of the case law on an obvious point should be avoided. It is necessary to firstly ascertain the facts of the matter and then after to examine as to whether the case law is applicable to those facts. I remember the words of former Chief Justice of the Bombay High Court, Honorable Shri B. N. Deshmukh J., who used to say to the judicial officers that it is not of much importance to see as to "*what*" has been decided in a case law but it is very important to see as to "*why*" it has been so decided. In fact authority handed down by Higher Courts do not cut down the express or clear words in the section of law or Code. It is however duty of the Court to ascertain and follow the latest case laws of the Supreme Court or the High Court, when any genuine question of law arrises for the consideration. The case law should be quoted in order to fortify the view taken by the Trial Judge and not mearly to show that he knows its existance. The case law should be quoted with necessary particulars of the ratio-decendi, the names of the parties, the name of the High Court, the name of the Law reporter and page on which the authority is reported. When elaborate discussion of the case law is found necessary then the relevant observations of the High Court or the Supreme Court should be quoted under in-verted commas. The particulars about the names of the parties and the law reporter etc. should be underlined. If the authority is not applicable to the facts of the case then it should be briefly shown as to why it is not applicable. How-ever, the authority cited by the parties should be fully read before considering its application to the matter in which it is cited. Some-times, head notes in the Digest or of the reported authority are misleading and there is possibility of the Judge's taking a wrong view of the ratio. The lower Court Judge, is in no way, competent to criticise the observations of superior Courts. For example, to criticise the opinion of a Sessions Judge by the Magistrate as " incorreet "certainly shows a lamen table went of respect

even if such conduct does not amount to an act of in-subordination or that the opinion of the Sessions Judge may not be binding upon the Magistrate. It may be noted that all authorites of the Supreme Court are binding precedents upon all the Courts in the Country under article 141 of the Constitution. The decisions of the High Courts are binding on the Lower Courts of that particuler state. The decisions of the other High Courts have persuasive effect. If there appears divergence of opinion between the High Court under which the Judge is working and some other Court then opinion of the High Court to which he is subordinate will have a binding effect upon him. Similarly, if there is difference of opinions expressed in previous authority and subsequent authority then the latter authority will be binding upon the lower Courts. Lastly, quotations from literary books should not be given in a Judgment.

(5) *Some usual defects in Judgments :*

A Judgment in a Civil Suit is sometimes commenced with the opening words "This is a Suit of plaintiff against defendant." This is, in fact, redundant since the suit is always of plaintiff and is against none else than defendant. The operative order in Civil matters is some times vague and clummsy. It should be clear and specific. Some times evidence which is not relevant to the controversy is discussed at length which makes the Judgment lengthy but devoid of merits. The Court is expected to convey the decision in minimum words, clearly and without leaving the material points touched. Normally, Judgments are considered to be defective when there is mistake in appreciation of facts and/or mistake in appreciation on the law point involved and misapplication of the case law or provisions of any statutory law to the facts of the case. To over come these defects, it is suggested that the Judge should firstly prepare synopsis of the facts before starting process, of course in his mind, of valuation and considering relevance of the evidence. So also meaning of the law in context of the facts should be comprehended. Grammatical mistakes are not uncommon in Judgments of the lower Courts. It should be, at lest, seen

that such mistakes are not plenty and of serious nature, amounting to "Blunders." The type-written Judgments are some times not corrected and the spelling mistakes are allowed to go on the record. It is not unlikely that due to such spelling mistakes the meaning of the sentence will be materially changed. Further, the Appellate Judge, while reading it in an appeal, is likely to form bad impression about the Judge of the lower Courts. In Criminal trial the words "may" or "might" should not be often used in reaching the conclusion. This is so because in criminal trials certainty about guilt of the accused is to be neared and in such a case the use of the word. "It might have been the accused who committed the office" will show that the trial Judge entertained some doubt about the guilt of the accused. Whatever conclusion one may reach, it should never appear from the Judgment that the Judge was in two minds while arriving at such conclusion. It is thus necessary to make out a complete frame-work of the Judgment, which is to be written, before proceeding to commence writing of the judgments.

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You have removed most of the roadblocks to success when you have learnt the difference between motion and direction.

—B. C.

PART TWO