

## Part I

### RELEVANCY OF FACTS

## Chapter I

### PRELIMINARY

1. **Short title**—This Act may be called the <sup>1</sup> \* \* \* Evidence Act, 1872.

**Extent**—It extends to <sup>2</sup>[the whole of <sup>3</sup>[Bangladesh]] and applies to all judicial proceedings in or before any Court, including Court-martial, <sup>4</sup>[other than Court-martial convened under the <sup>5</sup>[Army Act, 1952, the Naval Discipline Ordinance, 1961 or the Air Force Act, 1953]]. But not to affidavits<sup>6</sup> presented to any Court or officer, or to proceedings before an arbitrator;

**Commencement of Act**—And it shall come into force on the first day of September, 1872.

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1. The word "Indian" was omitted by Administrative Order, 1949, Schedule.

2. Substituted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), section 3 and 2nd Schedule, (with effect from the 14th October, 1955), for "all the provinces and the Capital or the Federation", which had been substituted by Administrative Order 1949, Arts, 3(2) and 4, for "the whole of British India".

3. The word "Bangladesh" was substituted for the word "Pakistan" by the Bangladesh Laws (Revision and Declaration), Act, 1973 (Act VIII of 1973), 2nd Schedule (with effect from the 26th March, 1971).

4. Inserted by the Repealing and Amending Act, 1919 (XVIII of 1919), section 2 and Schedule.

5. The words within square brackets were substituted for the words "Army Act, the Naval Discipline Act or that Act as modified by the Pakistan Navy (Discipline) Act, 1934, or the Air Force Act" by Act VIII of 1973, 2nd Schedule (with effect from the 26th March, 1971).

6. As to practice relating to affidavits, see the Code of Civil Procedure, 1908 (V of 1908), section 30(c) and Schedule I, Order XIX, see also the Code of Criminal Procedure, 1898, (V of 1898), sections 539 and 539A.

### Case Law

**Section 1**—Judicial proceedings—The term "judicial proceedings" is not defined by the Evidence Act, but it is defined by section 4(m) of the Criminal Procedure Code as a "proceeding in the course of which evidence is or may be legally taken on oath." An enquiry is judicial if the object of it is to determine a jural relation between one person and another or a group of persons or between him and the community. *QE vs Tulja*, 12 ILR (Bom) 36, P42.

**Section 1**—Section 2 of the Evidence Act speaks that it applies to all judicial proceedings except affidavit but section 139 of the Code of Civil Procedure provides that an affidavit may be administered by a Court of Magistrate, which has been done in this case. This affidavit has been duly proved as a documentary evidence but the onus of rebuttal that the affidavit is not validly executed and authenticated is on the defendants and they having not done so it is admissible as a piece of documentary evidence. *Additional Deputy Commissioner (Revenue) vs Serajuddin Ahmed and others* 3 BLC (AD) 114.

**Section 1**—Departmental enquiries—In departmental enquiries the strict laws of evidence according to the Evidence Act are not applicable. *Sisir Kumar Das vs State*, 1955 AIR (Cal) 183.

**Section 1**—The Act is not applicable to proceedings before an arbitrator—The Evidence Act in its rigour is not intended to apply to proceedings before an arbitrator. *Haji Ebrahim Kassam Cochinwalla vs Northern Indian Oil Industries, Ltd.* 1951 AIR (Cal) 230.

**Section 1**—The Act is not applicable to proceedings under the Income-tax Act—It is only in respect of certain specified matters that the Income-tax authorities are invested with the powers exercisable by a civil Court and it is only for a limited purpose that proceedings before them are declared to be deemed to be judicial proceedings. Therefore, the Evidence Act does not apply to proceedings under the Income-tax Act. *Seth Gurmukh Singh vs Commr of Income-tax*, 1944 AIR (Lah) 353(2); 121 TB 393(FB); *Anraj Narain Das vs Commr of Income-tax*, 1952 AIR (Punj) 46; 20 ITR 562.

**Section 1**—Writ proceedings—In Writ proceedings where summary procedure is adopted parties are permitted to give evidence by affidavit. Similarly, where documentary evidence is required the document must be proved in one of the ways mentioned in the Evidence Act. *PLD 1964 (SC) 636*, *The Province of East Pakistan vs Khiti Dhar Ray* 16 DLR (SC) 457.

**Section 1**—There is a distinguishing feature between the evidence before the Court in a judicial proceeding and before any other person not being a Court



and not dealing with a judicial proceeding. *Ayub Ali (Md) vs Bangladesh and others* 46 DLR 191.

2. [Repeal of enactments] *Repeal by the Repealing Act, 1938 (I of 1938), section 2 and Sch.*

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<sup>1</sup> and Magistrates<sup>2</sup> and all persons, except arbitrators, legally authorised to take evidence

"Fact" —"Fact" means and includes—

- (1) anything, state of things, or relation of things capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious.

### Illustrations

(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.

1. Cf section 2 of the Code of Civil Procedure, 1908 (V of 1908), section 19 of the Penal Code (XLV of 1860); and for a definition of "District Judge", section 3(15) of the General Clauses Act, 1897 (X of 1897).

2. Cf. section 3(31) of Act X of 1897, and the Code of Criminal Procedure, 1898 (V of 1898).

**"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<sup>1</sup> 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"<sup>2</sup> 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<sup>3</sup> is a document :

<sup>3</sup>Words printed, lithographed or photographed are documents;

A map or plan is a document:

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1. See now Act V of 1908; as to the settlement of issues, see Schedule I, Order XIV.

2. Cf. section 29 of the Pakistan Penal Code (XLV of 1860); and section 3(16) of the General Clauses Act, 1897 (X of 1897).

3. Cf. definition of "writing" in section 3(58) of Act X of 1897.

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) all documents 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 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 nor disproved.

### *Case Law*

**Section 3**—Affidavits and counter-affidavits—not legal evidence, *Salahuddin (1957) PLD Lahore 844.*

**Section 3**—The confessions of co-accuseds are not evidence. *Nathu (1956) PLD (SC) (Ind.) 186.*

**Section 3**—A confession of a co-accused is obviously evidence of a very weak type. *Bhuboni Sahu 2 DLR 39; (1949) PLD PC 90.*



**Section 3**—The word "Court" was not defined in the Act and the expression "Courts subordinate to the High Courts" would prima facie mean the courts of law subordinate to the High Courts in the hierarchy of courts established for the purpose of administration of justice. *Brajanadan (1956) PLD SC (Ind.)65.*

**Section 3**—A statement in the inquest report is not evidence. *Surjan (1957) PLD SC (India) 37*

**Section 3**—Murder—Circumstantial Evidence—not sufficient unless motive is proved. *Ghani (1960) (1) KLR 467 (DB)*

**Section 3**—The judgment regarding the probability must be that of a prudent man acting with due regard to all the circumstances of the case. *Abdul Ghani (1956) PLD (WP) Lahore 300.*

**Section 3**—Written statement filed on behalf of an accused—Not legal evidence though a court may consider it. *Tuti Baby (1946) AIR (33) Patna 373 (DB)*

**Section 3**—Confession is not evidence. *Satyapada Biswas 14 DLR 121*

**Section 3**—Admission of guilt by the accused at the commencement of the trial not treated as evidence *Satyapada Biswas 14 DLR 121*

**Section 3**—The mere fact of the story having been told to a number of relations shortly after the occurrence is insufficient corroboration *Muhammad Abdul Khaleque 12 DLR (SC) 165.*

**Section 3**—Confession of a co-accused—not evidence *2 DLR (FC)39*

**Section 3**—"Produced for the inspection of the Court" means produced in accordance with the provisions of the Evidence Act. Merely because a document was contained in the record of the committing court, it cannot be said that it automatically becomes evidence in the court of Sessions. *Saddha Sardar 9 DLR 645.*

**Section 3**—When a fact already stands proved according to the requirements of section 3 of the Evidence Act and there being no particular method specified for proving a fact any demand to require a higher standard of proof is an error of law. *Md Shahadat Hossain vs Kohiladdi Shaikh 37 DLR 126.*

**Section 3**—"Proved"—The meaning of the word "proved" explained. The expression "proved" as defined in section 3 of the Evidence Act denotes either of the two conditions : (1) when existence of a thing is so probable that a prudent man would assume its existence under the circumstances. Thus a fact may be

proved by direct evidence when the fact is attested by witness, things or documents, or it may be proved by indirect or circumstantial evidence by witness, things or documents which the law deems sufficiently proximate to the principal fact. This is not evidence direct to the point in issue but evidence of various facts other than the fact in issue which are so associated with the fact in issue that taken together they form a chain of circumstances indicating that the main fact exists.

There is no particular mode of proving a fact to the exclusion of all other modes unless there is a law requiring a particular mode of proof. *Md Shahadat Hossain vs Kohiladdi Shaikh* 37 DLR 126.

**Section 3**—Document and video cassette—A video cassette is a document within the meaning of the Evidence Act and is accordingly admissible in evidence. *Khaleda Akhtar vs State* 37 DLR 275

**Section 3**—The language of section 30 does not render the confession of a co-accused as evidence within the definition of section 3 of the Evidence Act. *Mamud Ali vs State* 37 DLR 261

**Section 3**—Statements in first information report which do not come in evidence cannot be used in finding the accused guilty of charge. Self-exculpatory confession of an accused cannot be legally used in finding co-accused guilty as it is no evidence as defined in section 3 of Evidence Act. *Moniruddin Sana vs State* 40 DLR 402.

**Section 3**—Court—Definition of the word is not exhaustive and is meant for the purpose of Evidence Act only, 1954 AIR (Punj) 286; 1954 AIR (Mad) 322: 38 DLR 270 Paras 7 & 9.

**Section 3**—When the document per se is not inadmissible, but its mode of proof irregular—Proper time to object to its admissibility is before it is marked and admitted. *Shah Banu Begum vs Eftikhar Md Khan* 8 DLR (WP) 133.

**Section 3**—When all the evidence are circumstantial its cumulative effect should be to exclude any reasonable hypothesis of innocence of the accused. *Keshab Ch. Mistry vs State* 1985 BLD (AD) 301; *Safiullah vs State* 1985 BLD (HC) 129 (b).

**Section 3**—There is no reason to disbelieve the circumstantial evidence of murder when the son and wife testified as to the calling away of the deceased after which he was not found till recovery of his dead body in the absence of any reasonable explanation as to the safe departure of the deceased from the company of the accused. *Anisur Rahman vs State* 1986 BLD (AD) 79.

**Section 3**—Mere suspicion or faint doubt in the mind of the Judge is no ground to give the accused benefit of doubt unless it is reasonable doubt. *State vs Tayeb Ali BLD 1987 (AD) 265 (a)*.

**Section 3**—Relationship no ground to discard testimony unless there is internal mark of falsehood in his evidence. *1985 BLD 110 (a)*.

**Sections 3**—The confessional statement of a co-accused is a matter for consideration against another co-accused if tried jointly. *Mamud Ali vs State 37 DLR 261*.

**Section 3**—Unless a contrary intention appears from the context—Generally a term or expression which occurs in different places in the same Act has the same meaning, as it would be unreasonable to hold that the Legislature used the same word in different senses in the same Act. *QE vs Nagla Kala, 22 ILR (Bin) 235,238*. Therefore, the terms defined in the interpretation clause have ordinarily the same meaning, wherever used in the Act. *Umachurn Bag vs Ajadannissa Bibee, 12 ILR (Cal) 430, 433*.

**Section 3**—Court—This definition of the word "Court" is not exhaustive, *E vs Ashootosh Chuckerbotty, 4 ILR (Cal) 483,493 (FB)*, and is meant for the purposes of Evidence Act alone. *QE vs Talja, 12 ILR (Bom) 36*. *Jyoti Narayan vs Brijnandan Singha, 1954 AIR (Pat) 289*; *Chaparala Krishna vs Gudurw Govar Dhanaiah, 1954 AIR (Mad) 822*. A Commissioner appointed under the Civil Procedure Code or the Criminal Procedure Code is legally authorised to take evidence and is therefore a "Court", See Order XXVI, rule 16 CPC and sections 503–505, CrPC but an arbitrator, though authorised to take evidence, section 13, Arbitration Act, 1940, is expressly excluded from the definition of "Court," The Act is not applicable to proceedings before an arbitrator, see section 1.

Direct and circumstantial evidence—English text-writers divide evidence into (a) direct or positive evidence and (b) indirect or circumstantial evidence. Direct evidence is that which goes expressly to the very point in question and which, if believed, proves the point in question without aid from inference or reasoning, e.g., the testimony of an eye-witness to a murder. *Governor of Bengal in Council vs Moti Lal Ghosh, 41 C 173; 20 I C 81*.

**Section 3**—Ordinarily, circumstantial evidence cannot be regarded as satisfactory as direct evidence. The circumstances may lead to particular inferences and the relationship to true facts may be more apparent than real. *Kenchegowda vs P Chaunaiya, 1953 AIR (Mys) 22*.



Proof—Proved, disproved, not proved—This clause indicates the degree of certainty which is required to treat a fact as proved, and is so worded as to provide for two conditions of mind; first, that in which a man feels absolutely certain of a fact, in other words, "believes it to exist," and, second, that in which though he may not feel absolutely certain of a fact, he thinks it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence. *E vs Ram Dat*, 143 IC 129: 1933 AIR (Ori) 340; *Bhaironprasad vs Laxmi Narayan Das*, 79 IC 709: 1924 N 385.

Circumstantial Evidence in Criminal Cases—As to the quantum of circumstantial evidence which can be a sufficient basis for conviction, the rule is that the facts proved must be incompatible with the innocence of accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. *Ram Kala vs E* 1946 AIR (All) 191; *Muhammad vs E* 1945 AIR (Lah) 27; *Hasan Din vs E* 1943 AIR (Lah) 56; *Mangal Singh vs KE* 1937 AIR (PC) 179.

Evidence Creating reasonable Doubt—Accused entitled to acquittal—Where the evidence fails to satisfy the Court affirmatively of the existence of circumstances entitling the accused to acquittal, the accused is entitled to be acquitted if, upon a consideration of the evidence as a whole, a reasonable doubt is created in the mind of the Court whether the accused person is or is not entitled to acquittal. *Parbhoo vs Emperor*, AIR 1941 A 402 : 43 Cr LJ 177 (FB); *State vs Sidh Nath Rai*, AIR 1959 A 233: 1958 ALJ 511.

**Section 3**—A statement under section 342 CrPC is not evidence within the meaning of section 3 of the Evidence Act. *Shah Alam vs State* 42 DLR (AD) 31.

**Section 3**—Conviction on circumstantial evidence—if it is proved beyond doubt that the deceased is seen last alive in the company of the accused, he is liable to offer satisfactory explanation as to the cause of death of the deceased or at least as to his company with the deceased. If circumstantial evidence leading to the irresistible conclusion that the accused alone caused the death of the victim is not considered sufficient for his conviction then there can never be any conviction on circumstantial evidence. In other words, the prosecution cannot prove its case by circumstantial evidence. Such a concept is contrary to time honoured principle of law regarding circumstantial evidence. *Rezaul Huq vs State* 42 DLR 440.

**Section 3**—Murder of wife—explanation of the accused—Ordinarily an accused has no obligation to account for the death for which he is placed on trial. The murder having taken place while the condemned prisoner was living with his wife in the same house he was under an obligation to explain how his wife had

met with her death. In the absence of any explanation coming from his side it seems none other than the husband was responsible for causing death in question. *State vs Kalu Bepari 43 DLR 249.*

**Section 3**—Circumstantial evidence—The rule as regards sufficiency of circumstantial evidence to be the basis for conviction is that the facts proved must be incompatible with the innocence of the accused and incapable of explanation by any other reasonable hypothesis than that of his guilt. *State vs Ali Kibria 43 DLR 512.*

**Section 3**—Material consistent with innocence—When some material is brought on record consistent with innocence of the accused, which may reasonably be true, even though it is not positively proved to be true, the accused is entitled to acquittal. *State vs Ali Kibria 43 DLR 512.*

**Section 3**—Circumstantial evidence—Its sufficiency to prove guilt—In the instant case circumstantial evidence on which trial Court relied do not conclusively point to guilt of the accused—Mere movement of the accused near the place of occurrence may raise a suspicion against the accused but this cannot be the basis for their conviction. *Ali Ahmed Malaker vs State 43 DLR 401.*

**Section 3**—PWs though relations they are natural and competent witnesses. Their evidence cannot be discarded only because they are relations. *Shadat Ali vs State 44 DLR 217.*

**Section 3**—The fundamental principle of criminal jurisprudence is that circumstantial evidence should inevitably be to the conclusion that the accused only were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused. *Taslimuddin vs State 44 DLR 136.*

**Section 3**—As the wife was murdered while in custody of her husband the natural presumption is that he is responsible for her death. Ordinarily an accused has no obligation to account for the death for which he is placed on trial. But the murder having taken place while this appellant was living with his deceased wife in the same house he was under an obligation to explain how his wife had met with her death and in the present case the appellant tried to explain that she committed suicide which was found to be a travesty of truth. In the absence of any satisfactory explanation and the explanation given found to be false we are of the view that none other than this appellant is responsible. *Shamsuddin vs State 45 DLR 587.*

**Section 3**—The evidence by trap party is tainted in nature and, as such, corroboration from independent and neutral witnesses is very much necessary. *AKM Mukhlesur Rahman vs State 45 DLR 626.*



**Section 3**—Circumstantial evidence—Circumstances forming evidence in proof of the crime must be conclusively established—They must form such a complete chain that it was not only inconsistent with the guilt of the accused but was inconsistent with any reasonable hypothesis of innocence. *State vs Sree Ranjit Kumar Pramanik 45 DLR 660.*

**Section 3**—Mere relationship cannot be a ground for discarding the evidence of a witness unless he is found to be biased and resorting to any falsehood. *Siraj Mal & others vs State 45 DLR 688.*

**Section 3**—In the absence of the practice of registration of birth in the official register kept by any public authority, one cannot really be sure of the date of birth of any particular person. Ultimately, it falls on the court to determine the age of the victim girl based on the impression received, by her behaviour and appearance when brought before this court. *Nurunnahar Khatun vs State 46 DLR 112.*

**Section 3**—It is true confession of an accused may be used as against other co-accused in the same trial. But this is for a limited purpose. Confession of a co-accused itself is not evidence but it may be used as such if it is found to be true and voluntary as against other co-accused not as a solitary basis but for the purpose of lending assurance to any other evidence found against him. *Abdul Hossain and others vs State 46 DLR 77.*

**Section 3**—Circumstantial evidence—If the circumstances are not proved beyond all reasonable doubt by reliable and sufficient evidence and if at all proved but the same cumulatively do not lead to the inevitable conclusion or hypothesis of guilt of the accused alone but to any other reasonable hypothesis compatible with the innocence of the accused then it will be a case of no evidence and the accused should be given benefit of doubt. *Bakul and others vs State 47 DLR 486.*

**Section 3**—Circumstantial evidence must be so strong as to eliminate the possibility of innocence of the accused person. *State vs Balai Chandra Sarker 47 DLR 467.*

**Section 3**—The statements under section 164 of the Code of Criminal Procedure recorded before an authority other than the Judge who tried the case was not the statement of the witnesses produced before him, and, as such, this could not be treated as oral evidence. Such statements could not be used as substantive evidence for arriving at any finding as to the guilt or innocence of the accused. *Babloo and another vs State 47 DLR 537.*



**Section 3**—A witness for the prosecution does not become partisan per se nor an eye-witness can be disregarded merely because he has come to support the prosecution party. It was necessary to consider the whole evidence and then to assess the worth of the witnesses as a whole. *State vs Abdul Khaleque alias Abdul Khaleq Howlader* 49 DLR (AD) 154.

**Section 3**—Recognition by torch and hurricane-lamp at dead of night is doubtful. *Abu Bakkar and others vs State* 49 DLR 480.

**Section 3**—A witness has a tendency to exaggerate, embroider and also to implicate falsely some other person in addition to the real offender. The Court is to scan the evidence so as to come to a decision as to which part is acceptable and only in case of impossibility to separate the truth from falsehood, the Court will be justified in rejecting the evidence in toto. *Masum and others vs State* 49 DLR 349.

**Section 3**—Evidence adduced by the prosecution being of a circumstantial nature and there being a missing link in the chain of circumstances, the prosecution failed to prove the guilt of the appellants beyond reasonable doubt. *Nuru Miah and another vs State* 49 DLR 97.

**Section 3**—Relationship of the witnesses with a party cannot be the sole ground of disbelieving their evidence unless contradiction and inherent infirmity are found in their evidence. *Bachu Miah vs Samad Miah and others* 50 DLR 564.

**Section 3**—Partisan evidence is no doubt suspect, but cannot be discarded without finding any inherent infirmity and/or contradictions therein making the same unworthy of credence. *Dulal Miah @ Dulal @ Nurun Nabi vs Ruhul Amin and others* 50 DLR 618.

**Section 3**—'Document' occurring in section 3(16) of the General Clauses Act and in section 3 of the Evidence Act—Meaning of—Whether kabalas are documents as referred to in those Acts. *Abdus Sattar Bhuiya vs Deputy Commissioner Dhaka* 42 DLR 151.

**Section 3**—There is no bar to find an accused guilty on the basis of testimonies of police personnels if their testimonies appear to be reliable. *Nizam Hazari vs State* 53 DLR 475.

**Section 3**—There is no authority of law to suggest that if a part of the evidence of a case is disbelieved, the remaining part cannot be believed without independent corroboration, particularly when it is supported by the attending circumstances of the case. *Hazrat Khan @ Hazrat Ali Khan vs State* 54 DLR 636.

**Section 3**—If it is proved that the deceased was last seen alive in the company of the accused in the absence of any other reasonable explanation as to the safe departure of the deceased from the company of the appellant no conclusion other than the guilt of the accused can be drawn. *Bhola vs State 55 DLR 36*.

**Section 3**—The confession of co-accused can be considered to lend support to the other evidence, if any, but in this case there is no other evidence so far appellant Idris is concerned other than the confessional statement of the co-accused. Therefore the conviction Idris is based on no evidence and is liable to be set aside. *State vs Rafiqul Islam 55 DLR 61*.

**Section 3**—Circumstantial evidence may be and frequently is more cogent than the evidence of eye-witnesses. It is not difficult to produce false evidence of eye-witnesses. It is, on the other of hand, extremely difficult to produce circumstantial evidence of a convincing character and therefore, circumstantial evidence, if convincing, is more cogent than the evidences of eye-witnesses. *State vs Moslem 55 DLR 116*.

**Section 3**—Although all questions in a civil case are to be determined on preponderance of probability, an allegation of criminal nature in a civil case is to be proved with a higher degree of probability. *Islami Bank and others vs Dewan Md Yusuf 55 DLR 624*.

**Section 3**—Benefit of doubt to the accused would be available provided there is supportive evidence on record. For creating doubt or granting benefit of doubt, the evidence is to be such which may lead to such doubt. The law would fail to protect the community, if fanciful possibilities are admitted, thus, deflecting the course of justice. *Al-Amin and 5 others vs State 51 DLR 154*.

**Section 3**—পুলিশ সাক্ষীর সাক্ষ্য বিচার বিশ্লেষণ করে যদি তা বিশ্বাস যোগ্য মনে করেন তবে স্থানীয় সাক্ষী অভিযোগকারী পক্ষের সমর্থনে সাক্ষ্য না দিলেও বা সাক্ষ্য দিলে তা সত্য না হলে পুলিশ সাক্ষীর সাক্ষ্যের উপর নির্ভর করে আসামীকে দোষী সাব্যস্ত করতে আইনতঃ কোন বাধা নেই। *Abdul Razzak Talukder vs State, represented by the Deputy Commissioner, Barisal 51 DLR 83*.

**Section 3**—শুধুমাত্র সাক্ষীগন অভিযোগ কারীপক্ষের সাথে সম্পর্কিত হলে বা আসামীদের সাথে তাদের শত্রুতা থাকলেই তাদের সাক্ষ্য বর্জন করা যায় না যদি তাদের সাক্ষ্য অন্য নিরপেক্ষ সাক্ষীর সাক্ষ্যের দ্বারা বা ঘটনারও পারিপার্শ্বিকতার দ্বারা সমর্থিত হয়। *Sabur Alam and others vs State (Spl. Original) 51 DLR 16*.

**Section 3**—There is complete chain of circumstances that the appellants assaulted deceased victim Biswajit severely and dealt fatal blows causing his

death when appellant Gulzar participated in the occurrence most actively and he was found by PW 4 for the last time with the deceased victim when Gulzar was chasing by the eastern side of the khal and the circumstances of the case taken cumulatively are forming a chain so complete that there is no escape from the conclusion that the murder of victim Biswajit was committed by the accused appellant Gulzar and his associates and none else. *Gulzar Biswas and others vs State 5 BLC 278.*

**Section 3**—As the prosecution has failed to prove the motive to commit the heinous offence of murder it cannot be said that the six accused persons or all the fourteen inmates of the house are jointly liable for the murder. *Zahirul Alam Kamal and another vs State 1 BLC 325.*

**Section 3**—As the prosecution has failed to prove his case either by direct evidence or by indirect evidence or by any other circumstantial evidence in fixing liability for causing murder of Chapa by a particular inmate or inmates of the house, it is difficult to maintain the conviction and sentence and, as such, the convicts-appellants are entitled to acquittal on the ground of benefit of doubt. *Zahirul Alam Kamal and another vs State 1 BLC 325.*

**Section 3**—As the evidence adduced by the prosecution being of a circumstantial nature and there being a missing link in the chain of circumstances, the prosecution failed to prove the guilt of the appellants beyond reasonable doubt for which the appellants are given the benefit of doubt. *Nuru and another vs State 1 BLC 582.*

**Section 3**—Last seen—If the evidence of PWs 1 and 2 are read along with the evidence of PW 5 it is found that the victim Seru Mia was last found in the company of the accused persons including the appellant Md Salim which amply proves strong circumstantial evidence pointing to the guilt of the accused persons for committing the offence of kidnapping of the victim and as such they are guilty of the offence under section 364 of the Penal Code. *Md Selim vs State 4 BLC 261.*

**Section 3**—When the vital piece of information regarding the condemned prisoner was seen standing and then carrying the victim girl on his shoulder on the bank of the river was not mentioned in the First Information Report lodged by PW 1, 13 days after the incident which belies the evidence of PW 3 regarding happening of such incident and hence the evidence of PWs 1, 3, 4, 5, 8, 9 and 15 cannot be relied on and hence the prosecution has failed to prove the charge against the condemned prisoner beyond reasonable doubt and, as such, he is entitled to get benefit of doubt and is acquitted. *State vs Syed Habibur Rahman @ Rocket 4 BLC 545.*



**Section 3**—As the prosecutrix did not sustain any injury on her face, cheeks or breasts at the time of commission of the alleged rape and the Medical Board also did not detect any trace of sexual violence on the two victims the offence under section 376 of the Penal Code is not proved beyond all reasonable doubt for which the appellants are entitled to get benefit of doubt. *Abdul Aziz (Md) and another vs State 2 BLC 630.*

**Section 3**—Circumstantial evidence sought to be proved in this case is too shaky, suspicious and fragile to furnish a sound foundation for the conviction of the appellant. *State vs Monu Meah and others 6 BLC 402.*

**Section 3**—A careful scrutiny of evidence of prosecution witnesses indicate that the evidence of prosecution witnesses are discrepant and inconsistent and evidence are unworthy of credit. It is well recognised that discrepancies of serious nature which strike at the root of prosecution case is fatal and that makes prosecution case doubtful and out of court. Discrepancies occurred in testimonies of prosecution witnesses are fatal rendering prosecution case doubtful. *State vs Sabir Mia and others 8 BLC 235.*

**Section 3**—Mere relationship cannot be a ground to discard the evidence of relative witness unless it is found that such evidence is untrustworthy and biased. *Abdul Hakim @ Henju and others vs State 8 BLC 362.*

**Section 3**—Incriminating facts having not been disclosed in the first information report, although the witnesses met with the informant before lodging the first information report, their evidence cannot inspire confidence at all. *Abdul Hakim @ Henju and others vs State 8 BLC 362.*

**Section 3**—The law is now settled that mere relationship of the witnesses inter se or relationship with the victim do not make them unreliable or, in other words, their evidence is not worthy of consideration. The Court can very much rely on the evidence of a witness who is related to the victim or to other witnesses if the witness is considered by the Court reliable and such evidence of the witness is corroborated by other reliable witnesses who are not related to the victim. *Zahed Ali Foreman (Driver) and others vs State 9 BLC (AD) 122.*

**Section 3**—When in arms cases the police personnel stand in the witness box then their evidence cannot be rejected only on the ground that they are police witnesses and were members of raiding party. *Nazrul Islam vs State 9 BLC 418.*

**Section 3**—There is no law that the statement of a particular witness is liable to be discarded simply because he happens to be a close relation of the victim. Evidence of close relative has only to be scrutinised with greater care in order to

find out whether it suffers from internal mark of falsehood. A close relative who is a natural witness cannot be regarded as an interested witness. *State vs Ainul Haque* 9 BLC 529.

**Sections 3, 5 and 8**—Ordinarily an accused has no obligation to account for the death for which he was placed on trial, but the murder having taken place while the accused was living with his deceased wife in the same house, he was under an obligation to explain how his wife had met with her death. *Abul Kalam Mollah vs State* 51 DLR 544 .

**Sections 3 and 30**—Since the confessional statement is not required to be taken on oath and taken in presence of a co-accused and not tested by cross-examination it cannot be considered as substantive evidence against the co-accused. *Mojibar vs State* 51 DLR 507.

**Sections 3 and 30**—Confessional statement cannot be used against a co-accused without independent corroborative evidence. *Abu Sayed vs State* 53 DLR 559.

**Sections 3 and 5**—Evaluation of evidence of witnesses and conclusion from facts—On the face of direct evidence of four eye-witnesses, the High Court Division acted wrongly in acquitting the principal accused by entertaining doubts in mind as to the place, time and occurrence. *Bangladesh vs Mohammad Kha* 42 DLR (AD) 192.

**Sections 3 and 5**—Circumstantial evidence—Its conclusiveness—assessment of evidence—This is a case in which a minor boy, the victim of murder, was called away by and seen in the company of the two young accused for the last time before disappearance and then some time thereafter the body of the victim was found out. The fact of calling away of victim Khairul by accused Khasru was satisfactorily established as the first circumstance in support of the prosecution and witnesses have also satisfactorily proved that the victim travelled with the two accused from their village Noapara to a distant place called Takerhat by bus and got down there at 4-00/4-30 PM on 4-1-79. This is the second circumstances proved against the accused. From this point onward upto the time of recovery of the body of Khairul at about 3-00/3-30 PM on the following day the accused were alleged to have been seen along with the deceased. The third circumstance in the absence of ocular evidence of murder, by PWs 11 and 12. The High Court Division rejected their evidence due to apparent contradiction between their evidence and the statement made by them before the police and also for the reason that their identification of the accused in the TI Parade had lost all significance in view of the fact that they had chance to see the accused. There has



been no violation of any norm or procedure in assessing the evidence of the said two witnesses for which the finding of fact made by the High Court Division could be disturbed. The position, therefore, comes to this, that the third circumstance, that of seeing the three boys together near the bank of the river where the victim's body was found was not satisfactorily established. The circumstances of the case can never be said to be conclusive as to the guilt of accused Khasru and his brother Nowab. The High Court Division has correctly applied the rule as to circumstantial evidence in the facts of the present case. *State vs Khasru @ Syed Mostafa Hossain 43 DLR (AD) 182.*

**Sections 3 and 5**—Glaring inconsistencies between the existence of injuries on the body of the deceased as found by the post-mortem doctor and the evidence of prosecution witnesses about injuries caused by the appellants lead to the conclusion that the occurrence did not take place in the manner as alleged by the prosecution. *Kadu vs State 43 DLR 163.*

**Sections 3 and 30**—Long delay in examining the material witnesses casts a doubt on the whole prosecution case. *Syed Nazakat Hossain alias Ujjal vs State 48 DLR 139.*

**Sections 3 and 30**—Confession—Question of credibility when part of the occurrence is omitted or suppressed—It cannot be found nor it could be suggested by either the prosecution or the defence why throttling part of the occurrence was omitted or suppressed. Even if it be taken that accused Rina had deliberately suppressed the throttling part of the occurrence in her judicial confession that cannot mean that the confession was not true. *Shahjahan Manik vs State 42 DLR 465.*

**Sections 3 and 8**—Admitted enmity between the parties and the absence of corroboration of the evidence of the interested witnesses do not inspire confidence that the prosecution has proved its case beyond any shadow of doubt. *Babu Mollah and ors vs State 4 BLC 559.*

**Sections 3 and 30**—Confession of co-accused—The confession of an accused is no evidence against the co-accused. Such confession cannot be taken into consideration against his co-accused and it can only be used to lend assurance to other legal evidence. But in the absence of any substantive evidence the confession of a co-accused is of no consequence against other accused persons. *State vs Tajul Islam 48 DLR 305.*

**Sections 3 and 68**—Even if the 'Aposhbontannama', the Exhibit 'Ka', is excluded from judicial consideration since the document is not admissible in evidence on the ground that the original was not called for and the photostat copy



cannot be admitted in evidence the document itself is not a registered instrument according to the provision of Registration Act and that the same is not proved by any attesting witnesses but there are other materials to determine the question of oral partition. As there is no allegation of inconvenience to the enjoyment and possession of the plaintiff's property the claim of the plaintiff as regards infringement of privacy does not stand to reason. It cannot be said that the defendant's six-storied building is still part of the undivided dwelling house of the plaintiffs. Moreso, the decision of the Appellate Division on 13-1-98 in the matter of pre-emption case under section 24 of the Non-Agricultural Tenancy Act, has further affirmed the right of the defendant No. 1 to hold his purchased property. Having failed to pre-empt the land the suit has been instituted as a second device to oust the defendant No. 1 from his property and thus, from the materials on record, oral and documentary, the conclusion can be drawn that the suit property was amicably and orally partitioned between the co-owners. *Dr Ismat Mirza and other vs Md Mosaddek Hossain and ors 7 BLC 90*.

**Sections 3 and 157**—Circumstantial Evidence—There are as many as seven circumstantial evidence which do not connect anybody with murder of the victim Salma. The oral evidence as adduced by the PWs contradicted one another in material particular. *State vs Monu Meah and others 6 BLC 402*.

**Sections 3, 24, 30 and 45**—Considering the medical evidence along with Modi's Medical Jurisprudence and Toxicology, there is no doubt that the victim has not been raped by the accused persons before her death. The confessional statements of two accused persons were procured by torture which were neither true nor voluntary and no conviction can be based on such confessional statements, Moreso, both the confessional statements are exculpatory in nature. There is no other evidence on record regarding rape corroborating the confessional statements. A confession of a co-accused is very weak evidence. It does not come within the definition of evidence as defined in section 3 of the Evidence Act. Thus the confession of a co-accused implicating other co-accused is not legally admissible for the conviction of other co-accused. The Bishesh Adalat convicted accused Monsur, Mozam, Faruque and Montaz relying on the confessional statements made by Mohammad Ali and Rojab Ali which is not sustainable in law. *State vs Mozam @ Mozammel and others 9 BLC 163*.

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"**—When 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.


### *Case Law*

Presumptions of fact or natural presumptions—These are "inferences which the mind naturally and logically draws from given facts without the help of legal directions". *Woodroffe, Evidence 9th Edition, 124; Phipson, Evidence, 7th Edition 8; Bommadevara Chayadevamma Bahadur Zamindarini Garu vs Sana Venkatataswami, 1932 AIR (Mad) 343.*

Presumptions of law or artificial presumptions—These are "arbitrary" inferences which the law expressly directs the Judge to draw from particular facts. *Woodroffe, Evidence, 9th Edition, page 123; Bommadevara Chayadevamma Bahadur Zamindarini Garu vs Sana Venkataswami, 138 IC 40; 1932 AIR (M 343).*

## 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 fact 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<sup>1</sup>

#### **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 produce 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<sup>1</sup>.

#### **Case Law**

**Section 5**—Delay in investigation of case—case becomes suspicious—conviction set aside. *Santa Singh (1956) PLD (SC) (India) 327.*

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1. See now the Code of Civil Procedure, 1908 (Act V of 1908).



**Section 5**—The maxim "Falsus in uno falsus in omnibus"—not a rule of Law—only a rule of caution. *Nisar Ali (1957) PLD SC (Ind.) 297.*

**Section 5**—Inimical witnesses—not truthful—evidence may be brushed aside. *Ram Shawkar (1957) PLD (SC) (India) 79.*

**Section 5**—Interested witness—Corroboration of evidence necessary. *Mangal Singh (1957) PLD SC (Ind.) 179.*

**Section 5**—Relationship of witness to murdered man—does not make him incompetent witness. *Suracharan Singh (1957) PLD SC (Ind) 58.*

Logical relevancy and legal relevancy—A fact is said to be logically relevant to another when it bears such causal relation with the other as to render probable the existence or non-existence of the latter. All facts logically relevant are not, however, legally relevant. The Act exhaustively enumerates the kinds of causal connection which make a fact legally relevant to another. Hence relevancy under the Act is not a question of pure logic but of law, as no fact, however, logically relevant is receivable in evidence unless it is declared by the Act to be relevant. Except where section 11 is applicable, no presumption of legal relevancy attaches to facts logically relevant, and the person tendering evidence of a fact has to show that it is relevant under some section of the Act. *E vs Bhagwandas—Tulsidas, 47 ILR (Bom) LR 997; Dwijen Chandra Roy vs Narean Chandra Gupta, 1945 AIR (Cal) 492; see Lekhraj Kuar vs Mahpal Singh 5 ILR (Cal) 744, 754.*

Relevancy not affected by provisions of CrPC; consideration of public policy not recognised by the Act—Unless it is so specifically stated in the Code of Criminal Procedure, no rule about the relevancy of evidence in the Evidence Act is affected by any provision of that Code; *Kam Naresh vs E., 1939 AIR (All) 242.* and evidence that is relevant cannot be excluded on grounds of public policy not recognised by the Act. *Katikineni Venkata Gopala Narasimba Rama Rao vs Chitluri Veakataramayya, 1940 AIR (Mad)768; ILR 1940 (Mad) 969.*

Objections to evidence; at what stage may objection to relevancy or to mode of proof be raised—Objections to evidence should, as a rule, be decided by the Court at once and not reserved for future decision. *Bindeshwari Singh vs Ram Raj Singh, 1939 AIR (All) 61; 179 IC 974; Ramanuj Raj, etc. vs Dakshineshwar Rai, etc. 39 IC 101; 1926 AIR (Cal) 752; Laijam Singh vs E 86 IC 817.*

**Section 5**—Assessment of evidence by the Appellate Division—In the matter of assessment of evidence Trial Court's view is given great weight and when its finding is accepted as correct on reassessment by the Appellate Court

then the Appellate Division does not like to interfere. But when in accepting the evidence it is found that established principles of assessment of evidence have not been followed, then the Appellate Court's finding cannot claim sanctity (per *Shahabuddin Ahmed CJ concurred by MH Rahman and ATM Afzal JJ*). *Abu Taher Chowdhury vs State* 42 DLR (AD) 253.

**Section 5**—Defence version—Manner of occurrence—Prosecution having failed to prove their version of the manner of occurrence, the defence version became probable and the appellants were acquitted of the charges. *Gopal Rajgor vs State* 42 DLR 446.

**Section 5**—Appreciation of evidence—if there is contradiction of a substantial kind or a big difference as to time as given by witnesses and proved by other circumstances, then the time as to the occurrence may become doubtful and the court can disbelieve the prosecution case. The opinion of the doctor has been so narrowly construed as would betray even ordinary common sense. Considering all aspects of the matter, there has been a manifest disregard of the accepted principles of appreciation of evidence and consequently a miscarriage of justice. *State vs Abdus Sattar* 43 DLR (AD) 44.

**Section 5**—Chance witness—He is found to be at the place of occurrence by chance or coincidence at the time the offence was committed. His evidence need not be rejected outright, but it is to be weighed with caution and may be viewed with suspicion if witnesses are partisan or inimically disposed towards the accused. *State vs Md Shafiqul Islam* 43 DLR (AD) 92.

**Section 5**—Wife-killing case—In such a case, there could be no eye-witness of the occurrence, apart from inmates of the house who may refuse to tell the truth. The neighbours may not also come forward to depose. The prosecution is, therefore, necessarily to rely on circumstantial evidence. *State vs Md Shafiqul Islam* 43 DLR (AD) 92.

**Section 5**—Demeanour of witnesses—The observation of the demeanour of witness by the trial Court is not dismissed lightly by the Appellate Court, unless there are intrinsic weaknesses and blatant contradictions in his evidence. *Abdul Hai Sikder vs State* 43 DLR (AD) 95.

**Section 5**—Credibility of witness—Judges of the High Court Division have not considered the material discrepancies, contradictions and omissions of eye-witnesses for which an error has crept in the judgment resulting in the conviction of the appellants. On consideration of the evidence particularly of the eye-witnesses the appellants are held to be entitled to the benefit of doubt and acquitted. *Nurul Islam vs State* 43 DLR (AD) 6.



**Section 5**—The evidence of an injured person carries much weight since the injured person does not usually allow the real culprit to escape and falsely implicate an innocent person. *Ataur Rahman vs State 43 DLR 87*.

**Section 5**—In the matter of observation, perception and memorisation, different witnesses differ from each other. So is weight to be given to those which are of consensus as to the substance of their evidence. The standard of rural witness should not be comparable to that of urban witness in the matter of exactitude and consistency. Consideration in narration cannot militate against the veracity of the core of testimony provided that there is an impression of truth and conformity in substantial fabric of the testimony so delivered. *Ataur Rahman vs State 43 DLR 87*.

**Section 5**—It is settled principle that when injured witness marked assailants it cannot be said that he would give up real assailant and falsely implicate person with whom there was no enmity. *Ataur Rahman vs State 43 DLR 87*.

**Section 5**—Interested witness—Conviction cannot be based on the uncorroborated testimony of the informant who is a police officer and is vitally interested in the result of the case. *Mati Miah vs State 44 DLR 554*.

**Section 5**—Demeanour of witness, appreciation of—when a finding of fact is based upon the credibility of evidence involving appreciation of the demeanour of witnesses, the view of the trial Court is entitled to great weight. *State vs M M Rafiqul Hyder 45 DLR (AD) 13*.

**Section 5**—Evidence of persons falling in the category of interested witnesses must be closely scrutinised. They should not be accepted on their face value. Their evidence cannot be rejected outright simply because they are interested witnesses. *Nowabul Alam and others vs State 45 DLR (AD) 140*.

**Section 5**—It is well-settled that the prosecution case is never proved by suggestions made by the defence to prosecution witnesses. The court cannot accept what is favourable to the prosecution and ignore the true purpose of suggestion : Per Mustafa Kamal J writing the majority Judgment. *Nowabul Alam and others vs State 45 DLR 140*.

**Section 5**—When discrepancies in testimony were mere discrepancies, and not contradictions, they did not affect the truth of what was stated in Court. *State vs Sree Ranjit Kumar Pramanik 45 DLR 660*.

**Section 5**—Where bitter enmity between the parties is admitted some sort of corroboration of the evidence of interested witnesses is required as a rule of prudence. *Serajul Islam and others vs State 48 DLR 165*.



**Section 5**—Courts must seek corroboration before acting upon interested witnesses in a criminal trial. It is the Court's solemn duty to assess the evidence legally not only to secure conviction but also to record acquittal. *State vs Khalilur Rahman* 48 DLR 184.

**Section 5**—Police witnesses are partisan or interested witnesses in the sense that they are concerned in the success of the raid. Their evidence must be tested in the same way as the evidence of the other interested witnesses by the application of diverse considerations which must vary from case to case. *Sirajul Islam (Md) vs State* 48 DLR 301.

**Section 5**—An unreasonable delay in lodging the first information report inevitably gives rise to suspicion as to the trustworthiness or otherwise of the prosecution version of the case. *State vs Tajul Islam* 48 DLR 305.

**Section 5**—When the alleged eye-witnesses recognised the miscreants and disclosed their names to the informant before lodging the first information report and still then the informant does not mention their names in the first information report, the evidence of such witnesses must be kept out of consideration. *State vs Tajul Islam* 48 DLR 305.

**Section 5**—If there are admixture of falsehood so that it becomes impossible for the courts to separate the grains of truth from mass of chaff, then such evidence of a witness must be rejected as a whole. *Bazlu Talukder and 2 others vs Deputy Commissioner Madaripur* 48 DLR 509.

**Section 5**—When the witness has animus against the accused her evidence cannot be relied on except with strong corroborative evidence. *State vs Raisuddin and others* 48 DLR 517.

**Section 5**—In the instant case where bitter enmity between the parties is admitted, some sort of corroboration of the evidence of interested witnesses is required as a rule of prudence. *Abdul Kader alias Kadu and others vs State* 49 DLR 577.

**Section 5**—The Court ought not to have rejected the evidence of witnesses merely on the ground that they were not disinterested witnesses when their examination-in-chief could not be shaken in cross-examination by the defence. *Samad Sikdar @ Somed Sikder vs State* 50 DLR (AD) 24.

**Section 5**—Mere placing no reliance upon confessional statement of the accused and non-examination of the Magistrate who held TI Parade are no grounds for acquittal where the order of conviction and sentence is based on

other sufficient and reliable legal evidence on record. *Abdul Hashem (Md) @ Bachchu Fakir and others vs State 52 DLR (AD) 117.*

**Section 5**—Calling and taking away of the victim by the appellant Billal and co-convict Saiful from his residence half an hour before his murder, recovery of the body of the victim, Billal's offer of love and threat to the PW 2 Mokseda, and absence of Billal immediately after the occurrence are circumstances to lead to the conclusion that he abetted the murder. *Billal vs State 52 DLR (AD) 143.*

**Section 5**—Even in case of non-examination of the seizure list witness or if the seizure list witnesses do not speak in terms of the prosecution case, the conviction cannot be set aside only for this reason. *Moshfiqul Islam alias Bilu vs State 52 DLR 593.*

**Section 5**—It is unfortunate that for not seizing the lungi of PW 1 the positive testimony of this witness and other witnesses who spoke about the presence of PW 1 in the occurrence have been discarded.

"Evidence false in part is false in entirety" —As a matter of fact this maxim is not supported by any authority and has got no relevance in the present time. *Mahmudul Islam alias Ratan vs State 53 DLR (AD) 1.*

**Section 5**—When a wife met with an unnatural death while in custody of the husband and also while in his house the husband is to explain under what circumstance the wife met with her death. *Ilias Hussain (Md) vs State 54 DLR (AD) 78.*

**Section 5**—Mere relationship by itself cannot be a ground for rejecting testimony of a witness unless it is shown that the witness was biased and resorted to falsehood. *Nure Alam and others vs State 54 DLR 242.*

**Section 5**—There is no reason to hold that the defence has been prejudiced for non-examination of the investigation officer, although non-examination of the investigation officer in a criminal case is usually viewed with disapproval. *Karam Ali vs State 54 DLR 378.*

**Section 5**—Non-examination of independent witnesses, particularly some of the neighbours, raised a presumption against the prosecution to the effect that had they been examined, they would not have supported the prosecution case. *Nepoleon Khondker alias Lepu and another vs State 54 DLR 386.*

**Section 5**—In the context of the existing enmity between the parties, it is wholly unsafe to rely on the uncorroborated testimony of informant. *Altaf Hossain and ors vs State 54 DLR 464.*



**Section 5**—A close relative who is a material witness cannot be regarded as an interested witness. The term "interestedness" postulates that the witness must have some direct interest in having the accused somehow or the other connected for some animus or some other reasons. *State vs Moslem 55 DLR 116.*

**Section 5**—If on consideration of the entire evidence and materials on record it appears to the Court that the prosecution case is doubtful, the benefit of doubt must be given to the accused and he should be acquitted of the offence charged. *Shahidul Islam (Md) alias HM Shahid vs State 56 DLR 35.*

**Section 5**—The murder having taken place where the accused person was living with his wife in the same house he was under an obligation to explain how his wife had met with her death. In the absence of any explanation coming from his side it seems none other than the husband was responsible for causing death in question. *Dulal Mia (Md) vs State 56 DLR 65.*

**Section 5**—Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution case doubtful. *Shibu Pada Acharjee vs State 56 DLR 285.*

**Section 5**—The evidence of eye-witnesses cannot be discarded on the ground that they are interested witnesses and such evidence is admissible in evidence if they are found to be truthful witnesses and telling the truth. *State vs Ful Mia 5 BLC (AD) 41*

**Section 5**—Although PWs 1, 2 and 4 are relations and interested witnesses but near relationship is not enough to discard their testimonies unless there is some internal marks of falsehood in their testimonies. Considering their testimonies it appears that they do not suffer from any defect but the rule of prudence requires corroboration of such evidence where bitter enmity is admitted between the parties when neutral and independent witnesses namely, the PWs 3, 9, 10, 13, 15, 16 and 21 have corroborated them. *Babul Mia and 2 others vs State 5 BLC 197.*

**Section 5**—When all the PWs being police persons and members of the police force are not disinterested witnesses as they are interested in the result of the case where corroboration on some facts with one another, if any, cannot be accepted as independent corroboration as required under law to prove the charge beyond doubt when no independent impartial disinterested neighbour witnesses as required under section 103 of the Code of Criminal Procedure could be examined to prove the recovery and seizure list and also to prove the charge beyond reasonable doubt, the prosecution has miserably failed to prove beyond



all reasonable doubt the recovery and seizure of the seized articles from the actual possession and control of the convict appellants who are entitled to get benefit of doubt and also are entitled to get acquitted. *Jewel and another vs State 5 BLC 248.*

**Section 5**—The prosecution has examined five PWs out of them one has been tendered and the PW 3 is found interested and the rest are none but close relations of the victim who have got admitted enmity with the accused and in such facts and circumstances of the case it is difficult to rely upon them. *Anaddi alias Ayenuddin and ors vs State 6 BLC 310.*

**Section 5**—Merely because the eye-witnesses, PWs 1, 3, 5, 9 and 10 are wife, daughter, brother and uncle their testimonies would not lose credibility if the same is found to be truthful. Their testimonies only require to be scrutinised with greater care in order to find whether those suffer from falsity and embellishment. With regard to interested witnesses specially blood related witnesses it is the duty of the court to separate the truth from falsehood and chaff from the grain. True it is that in view of close relationship witnesses naturally would have a tendency to exaggerate but while appreciating the evidences the exaggerated testimonies are not to be ignored unless it affects the substratum of the prosecution story. In this context it is also to be borne in mind that the incident took place at 4-00 AM. It may be difficult to get independent witnesses when murderous assault of the present type suddenly took place in the house of the deceased Fagu Matbar. PWs 1, 3, 5, 9, 10 and 11 were probable and competent witnesses to prove and support the prosecution case. Trial Judge considered and assessed the evidence of PWs 1, 3, 5, 9 and 10 in a proper way and the approach adopted by the trial Judge is unexceptionable. *Nepoleon Khondker alias Lepu and another vs State 7 BLC 296.*

**Section 5**—In a murder case when the occurrence took place on a Bazar day where many people had assembled when there was admitted hostility between the parties the conviction based on the testimonies of related, partisan and interested witnesses cannot be sustained in the absence of corroborative independent evidence. *Mirash Uddin and others vs State 7 BLC 342.*

**Section 5**—There is no law that testimony of a witness who is a relation and interested witness is liable to be flung to the wind. It is well settled that testimonies of the interested witnesses will be discarded only when it is manifested that the testimonies are characterised by internal marks of falsehood and do not inspire confidence in the mind of the Judge. Mere interestedness or relationship, thus is no ground to discard trustworthiness of statement of a witness. *State vs Md Saidul Huq 8 BLC 132.*

**Section 5**—Appreciation of evidence—Omission and contradiction in the evidence of eye-witnesses were not given consideration by the Courts below—When the defence case in a trial for murders appears to be more probable the appellants are entitled to acquittal as a matter of right. *Abul Kashem and others vs State 7 BSCD 86.*

**Sections 5 and 3**—Glaring inconsistencies between the existence of injuries on the body of the deceased as found by the post-mortem doctor and the evidence of prosecution witnesses about injuries caused by the appellants lead to the conclusion that the occurrence did not take place in the manner as alleged by the prosecution. *Kadu vs State 43 DLR 163.*

**Sections 5 and 3**—Circumstantial evidence—Its conclusiveness—assessment of evidence—This is a case in which a minor boy, the victim of murder, was called away by and seen in the company of the two young accused for the last time before his disappearance and then some time thereafter the body of the victim was found out. The fact of calling away of victim Khairul by accused Khasru was satisfactorily established as the first circumstance in support of the prosecution and witnesses have also satisfactorily proved that the victim travelled with the two accused from their village Noapara to a distant place called Takerhat by bus and got down there at 4-00/4-30 PM on 4-1-79. This is the second circumstances proved against the accused. From this point onward upto the time of recovery of the body of Khairul at about 3-00/3-30 PM on the following day the accused were alleged to have been seen along with the deceased, the third circumstance in the absence of ocular evidence of murder, by PWs 11 and 12. The High Court Division rejected their evidence due to apparent contradiction between their evidence and the statement made by them before the police and also for the reason that their identification of the accused in the TI Parade had lost all significance in view of the fact that they had chance to see the accused. There has been no violation of any norm or procedure in assessing the evidence of the said two witnesses for which the finding of fact made by the High Court Division could be disturbed. The position, therefore, comes to this that the third circumstance, that of, seeing the three boys together near the bank of the river where the victim's body was found was not satisfactorily established. The circumstances of the case can never be said to be conclusive as to the guilt of accused Khasru and his brother Nowab. The High Court Division has correctly applied the rule as to circumstantial evidence in the facts of the present case. *State vs Khasru @ Syed Mostafa Hossain 43 DLR (AD) 182.*

**Sections 5 and 3**—Evaluation of evidence of witnesses and conclusion from facts—On the face of direct evidence of four eye-witnesses, the High Court



Division acted wrongly in acquitting the principal accused by entertaining doubts in mind as to the place, time and occurrence. *Bangladesh vs Mohammad Kha* 42 DLR (AD) 192.

**Sections 5, 3 and 8**—Ordinarily an accused has no obligation to account for the death for which he was placed on trial, but the murder having taken place while the accused was living with his deceased wife in the same house, he was under an obligation to explain how his wife had met with her death. *Abul Kalam Mollah vs State* 51 DLR 544.

**Sections 5 and 24**—In view of the confessional statement coupled with circumstantial evidence and the evidence of the PWs the prosecution has proved the case of committing double murder by the condemned prisoner which she did intentionally and such intention is apparent from the nature of the injuries proved by PWs 9 and 10 and hence the accused has rightly been convicted under section 302 of the Penal Code by the trial Court. *State vs Romana Begum @ Nomi* 5 BLC 332.

**Sections 5 and 24**—Unretracted inculpatory confessional statement giving a true account of the prosecution case, excepting the allegation of attempt to commit rape on the minor girl but admitting removing the salwar of the minor girl and killing her by throttling, and rape was committed on the victim girl before she was strangled as testified by the doctor who held post-mortem examination coupled with extra-judicial confession made in presence of the witnesses on the night of occurrence before arrival of the police is relevant and admissible in evidence when both confessional statement and extra-judicial confession are voluntary and true supporting the prosecution case can form the basis of conviction. *State vs Azad Miah @ Md Azad* 5 BLC 304.

**Sections 5 and 27**—As it appears from the evidence on record that on the very showing of the accused appellant one pipe gun and cartridge were recovered from his house that is, from his exclusive possession and actual and effective control of accused-appellant Nizam, who was rightly found guilty under section 19A(f) of the Arms Act by the Special Tribunal. *Abu Mia and others vs State* 7 BLC 390.

**Sections 5, 114(g) and 134**—Although the occurrence took place on plot No. 406 belonging to Samir but he was not examined in this case and there are some huts of some persons quite a distance away from the place of occurrence plot and inmates of those houses were not cited as witnesses because none of them saw the occurrence and hence no adverse presumption can be drawn for their non-examination. The PWs 1 to 7 were natural witnesses to the occurrence



as they were all present close to the place of occurrence and, more particularly, except PWs 1, 2, 6 and 7, PWs 3, 4 and 5 are independent and disinterested witnesses and their evidence is full, complete and self-contained. It is a settled principle of law that even the testimony of a solitary witness can be relied on in basing the conviction of an accused, if such evidence is full, complete and self-contained. Similarly, even the evidence of interested witnesses can be accepted as valid and reliable evidence if their evidence do not manifest any bias or enmity. *State vs Mainul Haque @ Mainal 7 BLC 586.*



#### 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 bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against <sup>1</sup>[Bangladesh] 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. The word "Bangladesh" was substituted for the word "Pakistan" by Act VIII of 1973, section 3 and 2nd. Schedule (with effect from the 26th March, 1971).

### *Case Law*

**Section 6**—Rape—Statement made by the victim some time after the crime—statement not relevant. *Md Afzal 1950 PLD (Lahore) 189.*

**Section 6**—Witness stating that he heard bystanders saying that the accused had murdered the deceased—But the witness did not state who were these bystanders present on the spot. Such statement is not legal evidence to establish the charge of murder. *Eakhmir 22 DLR (WP) 27.*

**Section 6**—First information report—may not be used to contradict or corroborate persons other than the maker. *Mirza vs Crown (1952) PLD Lahore 609.*

**Section 6**—Document—Contemporaneous with the transaction—Plaintiff's case was that the defendant was an employee in his business. Defendant asserted that both of them were partners in the business. Plaintiff produced a document (Exhibit A), admittedly written by him in which the terms of arrangement were recorded and this document was written two months after the business was started and was in the custody of a lawyer. The dispute between the parties broke out eight years later. The High Court disbelieved plaintiff's oral evidence in Court and also the document (Exhibit 'A') holding that Exhibit 'A' might have a corroborative value of his evidence in court and his evidence being disbelieved Exhibit A was of no use to him.

**Held**—Exhibit A written eight years before cannot corroborate evidence to be given by the writer eight years later.

Exhibit A is a most important contemporary document which correctly stated the terms agreed between the parties. *Hubert James vs Gulam Hussain Pakseema 1 DLR (PC) 5.*

**Section 6**—Statement made by the victim of an offence, when it can have evidentiary value—In the absence of examination of the alleged victim, her statements allegedly made to the police or to the Magistrate cannot be treated as evidence against the accused. As neither the victim girl nor the magistrate was examined, the statements recorded by the latter is not even a secondary evidence and in that view it is no legal evidence to prove the prosecution case. *Abul Kashem vs State 43 DLR 420.*

**Section 6**—What a witness heard from the crowd cannot be the substantive evidence and it can only be used as corroborative evidence, if there is substantive evidence in this respect. *Ashu and 3 others vs State 2 BLC 465.*

**Section 6**—None of the public witnesses (PWs 4, 5, and 6) supported the prosecution case that the appellant had made a statement to the police that he had

kept the pipegun on the mancha of their cow-shed and the police pursuant to the said statement in fact recovered the said arms from the cow-shed. PWs 4, 5 and 6 categorically denied that the recovery of the pipegun was made in their presence when PW 6 rather told that he had never seen the appellant with any gun and hence it would not be safe to act on the lone evidence of the police personnel and as such the prosecution has not been able to prove the offence under section 19A of the Arms Act beyond reasonable doubt. *Zillur Rahman @ Zillur vs State 6 BLC 254*.

**Sections 6 and 7**—Evidence of the doctor and the two nurses as to the request of stomach-wash made by the persons who brought the deceased to the hospital are admissible in evidence as *res gestae* and sections 6 and 7, Evidence Act allow it as an exception to hearsay rule. *State vs Yahiya alias Thandu & ors 1 BLC 185*.

**Sections 6 and 32**—Statement of Mafia, the daughter of condemned-prisoner Monu Meah, was recorded by the Headmaster of the High School implicating her father and others in the killing of victim Salma cannot be treated as a substantive piece of evidence as she despite being a charge-sheet witness has not been examined by the prosecution and it can at best be treated as a formal statement of a witness and such statement even if proved can be used only for the purpose of contradicting or corroborating the maker of a statement but it can never be treated as extra judicial confession as has been done by the trial Court. Statement of Mafia does not come under any clauses of hearsay evidence as contemplated by section 32 of the Evidence Act because it does not emanate from the same transaction nor any section within the clauses of section 6 of the Evidence Act. *State vs Monu Meah and others 6 BLC 402*.

✓  
**7. Facts which are the 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.

### Case Law

**Section 7**—Tape record—The process of tape record offers an accurate method of storing and later reproducing sounds. A contemporaneous tape record of a relevant conversation is a relevant fact and admissible in evidence. *Yusuf Ali vs State, AIR 1968 (SC 147)*.

**Section 7**—Footprints—Evidence that there were footprints at or near the scene of an offence or that these footprints came from or led to a particular place is relevant under this section. *Sidik vs E 1942 S. 11; 198 IC 110; 43 CrLJ 308*.

**Section 7**—When the ocular evidence of PWs 1 to 7 speaks of head injury of deceased Rezaul Karim inflicted by accused Khalil and this finds corroboration from the inquest report, the learned Sessions Judge was not justified in acquitting accused Khalil relying on the photograph of the dead body of Rezaul Karim, which cannot be accepted as an evidence safely to rely and act on, particularly in a murder case, moreso when the photographer was not examined. *State vs Mainul Haque @ Mainal 7 BLC 586*.

**Sections 7 and 6**—Evidence of the doctor and the two nurses as to the request of stomach-wash made by the persons who brought the deceased to the hospital are admissible in evidence as *res gestae* and sections 6 and 7, Evidence Act allow it as an exception to hearsay rule. *State vs Yahiya alias Thandu & ors 1 BLC 185*.

**Sections 7 and 8**—Conduct—The accused-husband was not a docile person but a very arrogant and assertive person. This part of his character and conduct is relevant to be considered as to who is capable of doing what. *State vs Nurul Hoque 45 DLR 306*.

**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 statement; 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.

(a) A sues B upon a bond for the 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, is 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 of other wills to be prepared of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, 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 favourable to himself, or 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 <sup>1</sup>[Taka] 10,000. The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B <sup>1</sup>[Taka] 10,000" and that A went away without making any answer, are relevant facts.

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

The fact that A absconded after receiving a letter 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 fact 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.

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1. The word "Taka" was substituted for the word "rupees" by Act VIII of 1973, section 3 and 2nd Schedule (with effect from the 26th March, 1971).



The fact, 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.

### *Case Law*

Accused producing weapons of offence from places where they were concealed—Conduct relevant. *Rawa Prasad AIR (1946) Nagpur 119.*

Silence of accused when statement incriminating him is made before him; admissible. *Haji Yar Md 13 DLR (WP) 58.*

**Section 8**—Statement unconnected with the accused's conduct, not admissible. *Jagannath Biswas 9 DLR 508.*

**Section 8**—Extra judicial confession—only one of three accused speaking—others keeping quiet—Evidence of confession admissible. *Yar Muhammad PLD (1960) Karachi 769.*

**Section 8**—Joint statement by the two accused leading to discovery of dead body—who pointed out the body, not clear—No evidentiary value. *Ameer Ali PLD (1960) Kar. 753.*

**Section 8**—Motive for murder—Evidence showing another murder committed by accused—Admissible. *Natha Singh AIR (33) 1946, PC 187.*

**Section 8**—When motive is important—Motive is sometimes important as evidencing a state of mind which is a material element in the offence charged, *Nausher Ali vs State 39 DLR (AD) 194.*

**Section 8**—Hearsay evidence—statement of Keramat Ali is relevant and admissible under section 8 of the Evidence Act showing accused's conduct which is influenced by the fact in issue. *SM Qamruzzaman vs State 33 DLR 156.*

**Section 8**—Where evidence not struck down as hearsay evidence but referred to as it afforded evidence of the accused's conduct immediately after the occurrence and as such furnished support to prosecution case. *SM Qamruzzaman vs State 33 DLR 156*.

Factum of statement and truth of a statement

A distinction has always been made between factum and the truth of a statement, the object of the evidence is to recount certain statement made by another person necessary to introduce certain relevant facts or fact in issue which should otherwise be inadmissible as hearsay if the object is to prove the truth of those statements. There should be no objection in receiving them. *SM Qamruzzaman vs State 33 DLR 156*.

**Section 8**—It is true that statement made in presence of an accused person even upon an occasion which should be accepted reasonably to call for some explanation or denial for him is not evidence against him of the facts stated, save so far as he accepts the statement so as to make it in effect his own. But the acceptance of the statements may be either by word or by conduct or action or demeanour. *Md Yusuf vs Crown 7 DLR 302 (313 rt hand cl bottom)*.

**Section 8**—Illustration (i) says that if a woman without making a complaint and without wishing some action to be taken merely states that she has been ravished, that statement is not relevant under section 8, though it may be relevant under section 157, Evidence Act. *1950 PLD (Lah) 189*.

**Section 8**—Accused Khasru brought out a dagger (Exhibit 1) from inside the Baraghar of the deceased Natub Ali. The Investigating-officer stated that a seizure of knife meant for slaughtering cattle was made from the dwelling house of Natub Ali from within a paddy 'dol' on the statement of accused Khasru. The incised wounds as were found on the person of deceased Natub Ali are caused by a sharp-cutting weapon, like the dagger Exhibit 101(3). Dagger brought out by accused from the place of concealment is admissible in evidence under section 8 of the Evidence Act *Khashru alias Khorsed vs State 35 DLR 119*.

**Section 8**—If the accused does not say anything but takes police or the witnesses to place and points out from where incriminating object brought out—Such a matter is admissible under section 8 as an act or 'conduct.' *Bachchu vs State 35 DLR 170*.

Motive is "that which moves or induces a person to act in a certain way". Murray's Dictionary; *Gangaram Hari Parit, etc. vs E 62 IC 545; 22 CrLJ 529*, it is that which is in his mind and which moves him to act, and whether the belief which produces that state of mind is true or false; the motive remains the same, and the truth or falsity of the belief is not really in question, *Gangaram Hari, Parit, etc vs E 62 IC 545; 22 Cr LJ 529*.



Proof of motive—The evidence of motive should be of the Strictest Kind. *Q vs Zahir, etc 10 WR Cr 11*. Under section 8 of the Evidence Act, a motive is provable as a relevant fact; but it cannot be proved by hearsay evidence. *Venkatasubba Reddi vs E 54 ILR (Mad) 931; 134 IC 1143; 1931 AIR (Mad) 689; 33 CrLJ 51*.

When motive is important—But motive is sometimes important as evidencing a state of mind which is a material element in the offence charged. *Per Lord Watson, in King vs Henderson, (1898) AC 732*.

Preparation—Premeditated crime must necessarily be preceded by appropriate preparations. Possession of the instruments or means of crime as of poison, coining instruments, house-breaking implements, and other acts of preparation are important factors in the judicial investigation of imputed crime. In many cases, the possession of such instruments and other acts indicative of purpose to commit crime are made by statute *prima facie* presumptions of guilt. *Wills' Cir Ev 6th Ed 79*.

Conduct—Preparations and previous attempts to commit the offence are instances of previous conduct of the party, influencing the facts in issue or relevant facts. The accused was charged with cheating for importing goods in port Karachi, by deceiving the Customs authorities. Evidence of a previous similar attempt by him at another port was held admissible under this section. *Mohan Bhana Lal vs E 1937 AIR (Sind) 293; 1721 C 374; 39 CrLJ 123*.

Absconding—The conduct of a person in absconding after the commission of the offence is evidence to show that he was concerned in the offence, *Manzoor Elahi vs State PLD 1965 Lah 656; Permashwar Din vs E 1941 AIR (Ori) 517; Crown vs Fateh Mohammad, 35 PLR 740*, but it is usually a very small item in the evidence on which a conviction can be based. *Crown vs Fateh Mohammad 35 PLR 740; Mahla Singh vs E 130 IC 410*.

First Information Report—The first information report is admissible under this section as evidence of part of the conduct of the person making it. *See Vallon Kochol vs State, AIR 1956 TC 207*.

The first information report is not a substantive piece of evidence. It can be used either for corroboration or for contradiction of the maker of the statement, but not if the maker is dead, *State of Orissa vs Chakradhar, AIR 1964 Orissa 262. AIR 1966 SC 119*.

**Section 8**—Absconson of an accused is corroboration of direct evidence of eye-witnesses connecting the accused with the crime but it is no corroboration of confessional statement of a co-accused. *Amir Hussain Howlader vs State 1984 BLD (AD) 193 (c)*.



**Section 8**—Non payment of rent alone will not extinguish or disprove a tenancy but when it is a question of the very existence of the tenancy, payment of rent will be relevant as conduct subsequent of the parties concerned. *1984 BLD (HC) 291 (a) Sahabuddin vs Saijuddin Talukder.*

**Section 8**—Intention—Accused absconding immediately after the murder and remaining in hiding for a long time—Are relevant facts that accused was concerned in the murder. *Mobarak Hussain vs State 33 DLR 274.*

**Section 8**—Evidence of a statement made to a witness by a person not called as a witness may or may not be hearsay. It is hearsay and inadmissible when it is proposed to establish by the evidence the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made. Hearsay evidence may be relevant and admissible under section 8 showing accused's conduct which is influenced by fact in issue. *Ehteshamuddin vs State 1981 BLD 107.*

**Section 8**—Motive (by majority) : Evidence of motive, when necessary—there is no reference at all in the dying declaration to any fact or circumstances for which it can be even remotely inferred that there was any reason whatever for which the appellant was likely to make an attempt on the life of the deceased nor is there any reason for the deceased to suspect the appellant as his possible killer. In a case of this nature based only upon the dying declaration there should have been some evidence of motive, although motive may not be proved in case of direct evidence or as an ingredient of the offence. *Sk. Shamsur Rahman vs State 42 DLR (AD) 200.*

**Section 8**—Murder charge resting on circumstantial evidence—Accused's motive in calling out and accompanying the victim boy—There is absolutely no material on record to show that anybody had at any stage expressed any suspicion that the accused might have had any evil motive in calling out the victim. All that the father said at the trial was that the motive for murder was to give him pain. This is no motive. He did not say why the young accused would cause him pain. There is also no material to suggest even that there might have been some immediate and on-the-spot reason for the accused to cause violence to the victim or that they were acting at some others' behest—Per ATM Afzal J with whom Shahabuddin Ahmed CJ & MH Rahman J concurred. *State vs Khasru @ Syed Mostafa Hossain 43 DLR (AD) 182.*

**Section 8**—Motive—If the prosecution assigns a particular motive in proof of its case, then the motive has to be established by the prosecution failing which the prosecution must suffer on that account, not the defence. *Khelu Mia vs State 43 DLR 573.*

**Section 8**—Prosecution is not generally required to prove any motive behind a crime. But if some motive is assigned, the prosecution needs to prove it. *Gadu Mia vs State 44 DLR 246.*

**Section 8**—Motive for murder—Though motive is one of the important factors for a murder, prosecution is not always bound to allege motive, and if alleged, need not prove it and for the absence of motive or proof thereof the prosecution will not fail, if the guilt of the accused is otherwise proved by reliable and cogent evidence. *Taslimuddin vs State 44 DLR 136.*

**Section 8**—Motive—Motive is not always necessary to prove murder, but if it was established, it would be a corroborative circumstance leading to complicity of the accused in the offence. *State vs Nurul Hoque 45 DLR 306.*

**Section 8**—Abscondence—guilty mind—it is true mere abscondence is not sufficient to hold the accused guilty. But in this case his wife was in his house and her body was recovered from the nearby jute field. He neither informed her parents nor brought the matter to the notice of the police—he simply vanished from his house and remained absconding for months. From these circumstances there can be no other hypothesis except that of his guilt. *Abdul Khaleque vs State 45 DLR 75.*

**Section 8**—Motive—Prosecution is not obliged to suggest any motive where there is direct evidence but in a case which depends on circumstantial evidence motive is an important factor. If motive is suggested in any case by the prosecution, it accepts the burden to discharge for making the suggested motive plausible one. *Farid Karim vs State 45 DLR 171.*

**Section 8**—Abscondence—Corroboration of evidence—Abscondence of an accused though can be treated as corroboration of the direct evidence of eye-witnesses connecting the accused with the crime but the abscondence cannot be treated to be corroboration of the confessional statement of another accused so as to base thereon the conviction of the absconding accused. *Sanwar Hossain vs State 45 DLR 489.*

**Section 8**—Abscondence—Abscondence by itself was not conclusive either of guilt or of guilty conscience. *State vs Sree Ranjit Kumar Pramanik 45 DLR 660.*

**Section 8**—Motive—Failure to prove motive does not always affect prosecution case. *State vs Sree Ranjit Kumar Pramanik 660.*

**Section 8**—Mere abscondence for some time without any guilty mind cannot be an incriminating circumstance against the accused to be relied upon for basing his conviction. *Shahjahan vs State 46 DLR 575.*



**Section 8**—As the condemned-accused absconded from the very beginning of the case, it appears that the learned Sessions Judge has been influenced for the same in awarding the capital sentence against him which is against the decided principle of law. *State vs Balai Chandra Sarker* 47 DLR 467.

**Section 8**—Motive is not imperative in every case of murder and even if motive is not established that does not throw the prosecution case overboard. *Ashraf Ali Munshi vs State* 48 DLR 590.

**Section 8**—Abscondence—Though the fact that the accused absconded soon after the crime is not an evidence itself but it may lend weight to other evidence. *Ashraf Ali Munshi vs State* 48 DLR 590.

**Section 8**—In a case where bitter enmity is admitted between the parties, it is required as a rule of prudence that there should be some corroboration of the evidence of the interested witness. *Amir Hossain Dhali and other vs State* 49 DLR 163.

**Section 8**—The deceptive conduct of accused petitioner to turn into a fugitive by jumping the bail is a clear indication of his guilty conscience. *Babar Hossain vs State* 52 DLR 326.

**Section 8**—In view of the evidence as to motive of the condemned prisoner, his previous attempt to assault the victim, comes within the purview of section 8 of the Evidence Act and this said conduct is relevant for determination of the issue of the case. *State vs Md Khosbar Ali* 52 DLR 633.

**Section 8**—Unless the court is told what exact words were used by the accused persons it cannot act on the inference supplied by the witnesses from what they have heard or not heard. *Abul Khair and another vs State* 55 DLR 437.

**Section 8**—Accused remained absconding with clear guilty knowledge about his overt act in the occurrence resulting in the murder and, as such, his absconsion will create adverse opinion against him. *Zakir Hossain and another vs State* 55 DLR 137.

**Section 8**—Abscondence by itself does not prove any offence against any person unless such abscondence is substantiated by evidence in favour of his guilt incompatible with his plea of innocence. *Zahid Hossain @ Paltu and others vs State* 55 DLR 160.

**Section 8**—Abscondence of the condemned prisoner furnished strong corroboration to prosecution case that he is the culprit. *State vs Moslem* 55 DLR 116.

**Section 8**—Absconsion itself is not an incriminating matter inasmuch as even an innocent person implicated in a serious crime sometimes absconds during



the investigation to avoid repression by the police. *Abul Kashem and others vs State 56 DLR 132.*

**Section 8—Motive—**Motive, if proved, affords a key to scan the evidences of the case in its proper perspective and motive proved indicates the high degree of probability and provides a link in the chain to connect the accused with the offence. *State vs Abdul Hatem 56 DLR 431.*

**Section 8—**Although the trial Court convicted the appellant only on the ground of his absconsion but mere absconsion cannot always be a circumstance to lead an inference of guilt of the accused as sometimes out of fear, self-respect and to avoid unnecessary harassment even an innocent person remains absconding. *Munsurul Hossain vs State 1 BLC 421.*

**Section 8—**Subsequent conduct may be considered along with other evidence but it cannot be accepted as ground for awarding conviction in a murder case. *Zahirul Alam Kamal and another vs State 1 BLC 325.*

**Section 8—**Absconding by itself is not conclusive either of guilt or of guilty conscience. The fact that the accused absconded soon after the crime was committed is no evidence by itself and it may only lend weight to other evidence. *Mashuque alias Masauq Ullah vs State 1 BLC 539.*

**Section 8—**Mere suspicion or absconsion does not prove the prosecution case against any particular accused. *State vs Hasen Ali 4 BLC 582.*

**Section 8—**The prosecution is not bound to prove the motive of the accused persons for committing the crime, for motive is not an ingredient of the offence and if the evidence connecting the accused persons with the crime is unimpeachable in character, they may be held guilty even without proof of their motive. *Babul Mia and 2 others vs State 5 BLC 197.*

**Section 8—**The husband wanted to sell 4 ducks belonging to the wife which she kept at her paternal house and on her refusal there was a quarrel between them and the husband assaulted her and also throttled her to death which appears to be the motive for the murder has been well proved. *Fazer Pk. (Md) alias Fazer Ali vs State 5 BLC 542.*

**Section 8—**Although the prosecution is not bound to prove the motive of killing in every case but when any motive is suggested it becomes the duty of the prosecution to prove the same. In the instant case the prosecution has not been able to prove the motive suggested by them. *State vs Sarowaruddin 5 BLC 451.*

**Section 8—**In a criminal case no motive is necessary for proving the prosecution case. *State vs Hemayet Khan and others 3 BLC 56.*

**Section 8**—As the condemned prisoner, Gous absconded soon after the occurrence and still he is absconding attracting the provision of illustration (1) of section 8 of the Evidence Act for proving the prosecution case of strong circumstantial evidence of absconsion besides the ocular evidence. *State vs AKM Gousuddin alias MP Gous & others 3 BLC 536.*

**Section 8**—The conviction of appellant Golam Hossain Pinto as solely based on his absconsion cannot be sustained without corroborative evidence. *Pear Ali Khan alias Pear Ali vs State, represented by the DC 3 BLC 555.*

**Section 8**—As there have been sheer enmity, hatred and litigation for three generations between the parties which might have implicated the accused Madris in the case of murder and the old man or leader is often implicated now a days when he possibly is incapable of doing overt act for which he is entitled to get benefit of doubt. *Madris Miah and others vs State 2 BLC 249.*

**Section 8**—Mere absconsion of an accused without any corroborative evidence as to the offence alleged to have been committed cannot be the basis of conviction for which the appellant is entitled to be acquitted. *Sanaullah vs State 2 BLC 544.*

**Section 8**—Death had occurred to Renu owing to the injuries as noticed by PW 13 who held post-mortem examination and because of that accused Shawkat Iqbal made all attempts including procuring of certificate from accused Dr AKM Akhter Azam and that he completed burial without informing Renu's husband and that upon making entries in the death register of Azimpur graveyard giving incorrect information and hence there is no reason to interfere with the impugned judgment of conviction and sentence of the appellants. *Dr AKM Akhter Azam and others vs State 6 BLC 231.*

**Section 8**—In a criminal trial the question of motive bears very little importance when there is direct and reliable evidence to prove the crime but in the present case there is no direct or reliable evidence to prove the crime and hence the motive became a vital element but no such motive was found in the present case. Admittedly, there was neither any dispute between the informant and the convict-appellant nor was there any eye-witness to the occurrence nor was there any evidence to connect the appellant with the murder of deceased Joynal. *Abdul Qaiyum vs State 6 BLC 415.*

**Section 8**—The condemned prisoner found no option but to cause serious head injuries by the jack-lever and managed to throw it away through the western side grill of the place of occurrence flat and the blood-stained jack-lever was recovered from the south-western part of the backyard of the place of occurrence house in the following morning on 5-12-94 and the arrest of the condemned



prisoner from the place of occurrence flat are all but strong circumstantial evidence which conclusively points to the complicity of the condemned prisoner in causing the death of Salina Banu. *State vs Md Shahjahan alias Babu* 7 BLC 602.

**Section 8—Motive**—The prosecution has alleged previous enmity as the motive for committing the murder but it appears from the evidence that the prosecution has miserably failed to establish such motive. Normally, prosecution is not required in law to prove motive in order to bring home the charges against the accused. But when such motive is alleged, prosecution must prove the same. Since the prosecution has failed to prove the alleged motive, this has the effect of demolishing the prosecution case. *State vs Samsuddin and Ali Akbar @ Md Ali Akbar* 7 BLC 742.

**Section 8**—Section 8 of the Evidence Act lays emphasis upon the conduct of an accused as one of the influencing factors in resolving his guilt. But this could not be treated as an unfailing evidence against him unless other evidence on record was sufficient enough to hold him guilty. Abscondence by itself was not thus conclusive proof of guilt or guilty conscience of an accused but it might lend support to other evidence on record. But such other evidence on record is lacking in the instant case. *State vs Siraj Mondal @ Siraj* 8 BLC 52.

**Section 8**—Abscondence by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and to evade arrest and trial may abscond when suspected of grave crime like murder. The act of abscondence is, no doubt, a relevant piece of evidence to be considered along with other evidence but its value should always depend upon circumstances of each case. Abscondence can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of guilt of accused. *State vs Ershad Ali Sikder and others* 8 BLC 275.

**Section 8**—Prosecution case as brought out through Informant PW 1 that the condemned prisoner and appellants were caught hold by public in the Bazar and PW 1 and other persons belonging to Informant PW 1 side passed through in front of Begumganj Police Station on way to Noakhali General Hospital with the body of deceased Delu Mia and came back to the scene of occurrence at 11-00 or 11-30 AM but curiously enough Informant PW 1 and other person did not approach Police Station for supplying information of the incident and commission of murder of Delu Mia by condemned prisoner. This is absolutely against human conduct and circumstances casts a great doubt on prosecution case.

It is in the evidence of Informant PW 1 that the dead body was taken to the scene of occurrence but the ordinary human conduct indicates that the dead body



would be carried to the house of the deceased and not to the scene of crime for exhibition that he was stabbed to death. The case put forward by defence that dead body was never taken to Noakhali Sadar Hospital cannot be ruled out. *State vs Sabir Mia and others* 8 BLC 235.

**Section 8**—In this case prosecution pictured motive in the murder of victim Jaynal Khan. For laying of a criminal case as counterblast of Sonadanga Police Station Case No. 26 dated 26-2-95 lodged by Taslimuddin alias Babul for murder of his brother, a dead body was required by condemned prisoner Ershad Ali Sikder and Joynal Khan was fixed as the body and victim Joynal Khan was done to death by gunshots as testified by accomplice PW 20. When charges appear to have been proved by direct evidence of PWs 17, 19, 20 and also, 21 the motive itself lost its importance. *State vs Ershad Ali Sikder and another* 8 BLC 107.

**Section 8**—Whether a partisan witness is reliable or trustworthy on whose testimony reliance could be implicitly placed or not to sustain conviction depends upon circumstances of an individual case. As there is no internal marks of falsehood in the testimonies of PWs 17 and 19, such evidence cannot be discarded. *State vs Ershad Ali Sikder and another* 8 BLC 107.

**Section 8**—Abscondence of an accused person in some circumstances may not be an incriminating circumstances against him in respect of his guilt but long abscondence is an important circumstances against him and furnishes corroboration of prosecution evidence. In the instant case, abscondence of the condemned prisoner after the incident, the evidence of PWs 17, 19, 20 and 21 and medical evidence against the condemned prisoners the legitimate inference that can be drawn is that abscondence furnished sufficient corroboration to their guilt. *State vs Ershad Ali Sikder and another* 8 BLC 107.

**Section 8**—Condemned prisoner has been in abscondence since the incident. He did not submit to process of Court. He was tried *in absentia*. He is, thus a fugitive from law and justice. Abscondence immediately after the incident, his trial *in absentia* and abscondence till today is a strong incriminating circumstance which can be considered sufficient corroboration of his participation in commission of crime. *State vs Md Saidul Huq* 8 BLC 132.

**Section 8**—It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy three tests : (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the offence was committed by the accused and none else. *Nuruddin and others vs State* 8 BLC 561.

**Section 8**—It appears from the prosecution case that a specific motive has been assigned to the accused persons for committing the instant crime, namely, the informant had a dispute over a dacoity case of one Narendra in which Jalil recognised these assailants and also as a witness to the case and for that dispute and enmity the accused persons murdered the deceased Jalil but the said case ended in acquittal. It is not necessary that in all cases motive for the commission of the crime has to be assigned by the prosecution but if the prosecution assigns a particular motive, then in that case it has to be established by the prosecution failing which the prosecution must suffer on that count and not the defence. *Zahed alias Zahed Ali and ors vs State 8 BLC 538.*

**Section 8**—Relationship per se is not a ground for discarding the evidence of a credible and truthful witness. Relationship guarantees truthfulness of the witnesses to certain extent as relative would not normally shield the guilty and falsely implicate an innocent person. Relationship is often a sure guarantee of truth. In the absence of any special reason of general unreliability relation witnesses should not be disbelieved, though their evidence has to pass the test of close and critical scrutiny. There is no such law that the statement of a particular witness who is a relation of the victim is liable to be flung to the wind. The correct proposition of law is that there is no such bar. *State vs Abdul Karim alias Gonesh and others 8 BLC 264.*

**Section 8**—Where there exists a well-knit and unbroken chain of circumstances leading to the inevitable conclusion that none but the accused committed the alleged offence and no other hypothesis other than the guilt of the accused can be inferred from the given circumstances, a conviction can safely be based on circumstantial evidence alone.

But the evidence as adduced by the prosecution in the present case can at best provide suspicion against the accused but suspicion however high and probable can never take the place of legal evidence. The prosecution has failed to prove its case against the convict-appellants beyond all reasonable doubt and they are entitled to be acquitted. *Majibur Rahman and another vs State 8 BLC 151.*

**Section 8**—In a case which is based on circumstantial evidence motive sometimes plays an important role and absence of motive may go a long way to weaken prosecution case. But it is always to be remembered that absence of motive itself would not be sufficient to record a judgment of acquittal. In the case prosecution could prove motive to the hilt. It emerged from evidence and confessional statements that condemned prisoners Samad and Sharifa had been in love and Sharifa for love affairs had been beaten and ultimately driven out of house by victim Rubina and condition was put forward from condemned prisoner Sharifa to condemned prisoner Samad that in the event of murder of victim



Rubina by latter former would marry him. Consequently, being instigated and persuaded by condemned prisoner Sharifa, condemned prisoner Samad brutally killed Rubina with the active help and co-operation of convict-appellant Arif and convict Emdad. *State vs Md Abdus Samad Azad alias Samad and another* 9 BLC 39.

**Section 8**—It is alleged by the PW1 that the victim and his partymen had a number of criminal cases and counter-cases between the assailants and the victim. This allegation of cases and counter-cases was not even denied by the accused in their statements under section 342 of the Code. Besides, when there is direct evidence of murder available, the question of motive is of secondary importance. *State vs Golam Mostafa and anr* 9 BLC 63.

**Section 8**—The chain of circumstantial evidence and other evidence as against the convict appellants is so complete that it does not leave any reasonable doubt for a conclusion consistent with their innocence and it only points out that within all human probability it is Aleha Khatoon, wife of husband Md Fazlul Huq and her paramour Md Lebu Mia who are the perpetrators of crime and had killed the innocent victim Md Fazlul Huq because of amorous relationship with her paramour fomented the wife to kill her innocent husband. *Aleza Khatoon alias Aleza Begum and anothers vs State* 9 BLC 106.

**Section 8**—Motive—Motive is not a necessary factor, though a relevancy is to be established by the prosecution, but it is neither a "sine qua non" nor is a matter of indispensable importance when prosecution case rests on the ocular evidence. *Betor Dibra Master and others vs State* 9 BLC 426.

**Section 8**—The occurrence took place on the night following 6-3-2000. The wife was found dead in the hut of condemned-prisoner. Charge-sheet was laid on 24-5-2000. Cognizance was taken on 13-6-2000 and condemned-prisoner surrendered before Court on 18-6-2000. So, it cannot be at all suggested that condemned-prisoner, had no guilty mind. Guilty mind of condemned prisoner stands manifested on the ground that plea adopted by him as to the cause of death stood totally falsified by medical evidence. *State vs Ainul Haque* 9 BLC 529.

**Sections 8 and 3**—Admitted enmity between the parties and the absence of corroboration of the evidence of the interested witnesses do not inspire confidence that the prosecution has proved its case beyond any shadow of doubt. *Babu Mollah and ors vs State* 4 BLC 559.

**Sections 8, 3 and 5**—Ordinarily an accused has no obligation to account for the death for which he was placed on trial, but the murder having taken place while the accused was living with his deceased wife in the same house, he was under an obligation to explain how his wife had met with her death. *Abul Kalam Mollah vs State* 51 DLR 544.



**Sections 8 and 9**—Abscondence of an accused person in some circumstances may not be an incriminating circumstance against him in respect of his guilt but long abscondence is an important circumstance against him and furnishes corroboration of the prosecution case. *State vs Saiful Islam and anr* 56 DLR 376.

**Sections 8, 9 and 134**—As the solitary eye-witness PW 3 who is found to be fully trustworthy and reliable and being corroborated by PWs 1-2 and 4-7 and the strong circumstances arising out of the conduct of the condemned-accused for his attempt of running away from his house and the place of occurrence and his long continuous absconsion during trial and even thereafter which has proved the charge of murder beyond all reasonable doubt. *State vs Ranjit Kumar Mallik* 2 BLC 211.

**Sections 8 and 24**—From the evidence of the PWs 4, 6, 12, 21 and 22 it appears that these witnesses corroborated one another that the condemned prisoner admitted in presence of the public that he raped and killed the victim and thereafter he removed her ornaments. In the confessional statement the condemned prisoner stated that Sumi entered into the house when Liton pressed her neck and he caught hold of her legs as a result of which Sumi died instantaneously and then he removed the ear and nose rings and handed over the ornaments to Jahangir. The confessional statement is inculpatory in nature and it not only corroborates the prosecution story but also the oral testimony of Jahangir and it is voluntary and true. Both the extra judicial confession and the judicial confession remained unchallenged as no denial and no suggestion was given against such statements. The dead body of victim Sumi was recovered from the house of the condemned prisoner. Statement given by PW 20 corroborates the statement of the condemned prisoner so far it relates to selling ornaments of the victim. There are sufficient corroboration of the confessional statement of the condemned prisoner in material particulars with other evidence on record. Accordingly, the death reference is accepted. *State vs Sukur Ali* 9 BLC 238.

**Sections 8, 24 and 27**—Relying on the inculpatory confessional statement of the condemned prisoner which is found to be true and voluntary and which finds support from the evidence of the PWs 1, 2 and 6 and also the recovery of the dead bodies of the deceased on the basis of his extra judicial confession can safely be considered and on that basis his conviction can be maintained when the conduct of the condemned prisoner in not taking any information and steps regarding the missing of his full sister and nephew is a relevant fact to show the conduct of the accused in this regard. *State vs Jashimuddin @ Jaju Mia* 5 BLC 210.

**Sections 8, 43 and 145**—The PWs 4 and 5 contradict each other on material particulars when admittedly the appellant and others are close relations of the

victim and other PWs. and admittedly there were litigations and disputes over landed properties when the star accused Kamrul Islam was acquitted by a Bench of the High Court Division disbelieving the prosecution story and there is nothing to disagree with the assessment of evidence and finding reached therein and hence the impugned judgment of conviction and sentence is not sustainable in law. *Liton vs State 5 BLC 126.*

**Sections 8 and 105**—The circumstances are not capable of any other explanation or hypothesis other than the guilt of the husband who is responsible for killing his wife as he failed to explain the reasons for the death of his wife and accordingly, the accused husband is found guilty under section 302 of the Penal Code and convicted thereunder and sentenced to suffer imprisonment for life. *State vs Eunus Khan 5 BLC 353.*

**Sections 8 and 105**—Motive—Circumstantial evidence—When the wife of convict appellant died with marks of injuries where her husband and minor children were present but the husband neither informed the police nor did he give any explanation as to the cause of her death and the facts and circumstances are such that the death could not be caused by any other person except the husband and in such circumstances motive is not necessary. *Farid Ali vs State 4 BLC 27.*

**Sections 8 and 105**—It appears from the oral evidence of PWs and the disclosure of daughter Nazma to the PWs supported by Exts. 2, 4 and 5 that, her father killed her mother by beating with a stick coupled with the admitted fact of long abscondence of the appellant without any explanation whatsoever have definitely proved the case against the convict-appellant beyond all shadow of doubt. The fact and evidence of the case is that the husband of the deceased was not only found absent but absconding and admittedly he did not inform the relations of his deceased wife nor he took any care of her treatment nor he informed the police about the occurrence and hence there is no merit in this appeal and the same is liable to be dismissed. *Osman Gani alias Babul (Md) vs State 6 BLC 611.*

**Sections 8 and 106**—The prosecution having proved the presence of the convict husband at the place of occurrence house on the night of occurrence, husband of the deceased owes an explanation as to how his wife met her death at his house. Neither the husband called in a physician for treatment of his wife nor did he inform his father-in-law nor any other near relations regarding the occurrence nor was he present at the time of burial of the deceased, he remained absconded even after the delivery of judgment without any cogent explanation is a relevant fact under section 8 of the Evidence Act. *Fazer Pk. (Md) alias Fazer Ali vs State 5 BLC 542.*



**Sections 8 and 106**—Death of wife while in the custody of husband—Its effect—When the wife met with her death while she was in the custody of her husband it is the husband who has to explain how his wife met with her death. In the absence of any explanation coming from his side, it seems none other than the husband was responsible for causing the death in question. *Abdul Motleb Howlader vs State 6 BLC (AD) 1.*

**Sections 8 and 106**—Wife killing case—When it is found that the wife at the relevant time of occurrence was at her husband's house and that she is subsequently found dead, an obligation is cast upon the defence to account for the circumstances leading to the death of the wife failing which the husband will be responsible for the death of the wife. Further, it appears that the husband had been absconding for more than five years. If the wife died by consuming poison the appellant-husband could have informed the police accordingly instead of absconding. Although his long period of absconding is not itself conclusive proof of his guilt but it lends weight to the circumstantial evidence against him. The chain of evidence indicates clearly that in all human probability the murder must have been committed by the husband. It is inconsistent with his innocence and incapable of any other hypothesis than that of the appellant-husband's guilt. *Gias Uddin vs State 7 BLC 729.*

**Sections 8 and 106**—When two persons were killed in the house of Jhumur Ali and they were close relation of Jhumur Ali, who ought to have done something positive for such occurrence inasmuch as he had an obligation to explain the cause of death of two persons but Jhumur Ali failed to perform his part of the obligation as he remained inactive and silent over the said matter and did not either send any information to the police station or took any other appropriate steps till arrival of the father of the deceased Kohinoor Begum. Jhumur Ali's conduct such as rude behaviour with the father of the deceased Kohinoor Begum before the occurrence and his inaction after the occurrence clearly indicates that Jhumur Ali was connected with the occurrence and crime. Confessional statement of his wife shows that Jhumur Ali played active role and committed positive overt act in the commission of the murder of both the victims in their house. Such action and inaction of Jhumur Ali before and after the occurrence give rise to circumstances the cumulative effect of which would definitely exclude the reasonable hypothesis of innocence of Jhumur Ali. *Jhumur Ali and others vs State 7 BLC 62.*

**Sections 8 and 106**—In case of death of wife in the house of her husband, a heavy onus lies upon husband to account for the death of wife and husband is duty bound to explain as to how his wife met her death in his house. The circumstances of the present case do form rosary and there is no missing link between one bead and another bead, chain of circumstances against condemned prisoner is so complete that it does not leave any reasonable doubt for a conclusion



consistent with his innocence and, on the other hand, it only points out that within all human probability it is the condemned prisoner who is the perpetrator of crime who killed his wife Hosna Nahar. *State vs Ainul Haque* 9 BLC 529.

**Sections 8 and 106**—In the absence of any other proof of commission of murder of the wife in other way and in the absence of explanation coming from the side of the husband of the wife for the murder of his wife in his custody and it being proved by evidence that the condemned prisoner demanded dowry some days before murder of his wife and the report of post-mortem containing injury on the person of Bilkis Banu proving her death and fact of abscondence from the house on the day of occurrence of murder and the petitioner murdered his wife for dowry as has been rightly found by the High Court Division. *Golan Murtuza (Md) vs State* 9 BLC (AD) 229.

**Sections 8 and 106**—It was not denied by the appellant that victim Shefali was his wife and living with him in the same house just before her alleged missing. If that be so, he is under the obligation to explain what has happened to Shefali who was with him before her missing. *Abdul Majid vs State* 55 DLR 486.

**Sections 8, 45 and 114(g)**—Non-examination of independent and relevant witnesses goes against the prosecution case and it creates adverse presumption under section 114(g) of the Evidence Act. The prosecution tried to prove the motive of killing the deceased but the person to whom the motive for the killing of the deceased centred was not made a party in the proceeding either as an accused or a prosecution witness which makes the prosecution case highly suspicious. No blood was spilled on the children who were sleeping next to the deceased which again casts doubt as to whether the deceased was killed while sleeping in her bed as alleged or somewhere else and her dead body was placed on her bed subsequently and, as such, the prosecution has failed to fulfil its burden of proving its case beyond reasonable doubt and hence the impugned judgment and order of conviction and sentence are set aside. *Khairul @ Abul Kalam and another vs State* 8 BLC 546.

**Sections 8 and 114(g)**—The PWs 1, 5, 10 and 12 were close activists of the deceased while the accused belonged to the rival group. They were, therefore, interested and partisan witnesses. No independent witness, even not a hearsay one, came to support the prosecution case corroborating said 4 witnesses implicating the accused. Out of as many as 29 charge-sheeted witnesses, the prosecution examined only 14 witnesses leaving majority of them unexamined without any plausible explanation which thus introduced a presumption in favour of the defence under section 114(g) of the Evidence Act that they would not have supported the case of the prosecution in case of their examination. *State vs Siraj Mondal @ Siraj* 8 BLC 52.

**Sections 8, 114(g) and 134**—There are sufficient evidence on record to hold that the petitioner committed offence under section 4 of the Dowry Prohibition Act, 1980 and law does not require that independent or other neighbouring witnesses are necessary to prove the allegation against the accused and conviction and sentence can be based on the evidence of even a single trustworthy witness and the circumstantial evidence goes against the petitioner as he did not follow the terms and conditions as stipulated in the compromise petition as has been rightly found by the High Court Division. *Abdul Mannan alias A Mannan vs Nurbanu and anr.* 9 BLC (AD) 233.

**Section 8(j)**—Prosecution for rape—Question of corroboration. It has long been a rule of practice for insisting on corroboration of the statement of the prosecutrix. If the Judge feels that without corroboration in a particular case the conviction can be sustained then he should give indication that he had the rule of caution in his mind and then should proceed to give reasons for considering it unnecessary to require corroboration and for considering that it was safe to convict the accused without corroboration. *Saidur Rahman vs State* 45 DLR (AD) 66.

**Sections 8 and 7**—Conduct—The accused-husband was not a docile person but a very arrogant and assertive person. This part of his character and conduct is relevant to be considered as to who is capable of doing what. *State vs Nurul Hoque* 45 DLR 306.

**Sections 8 and 9**—Nowhere the accused mentioned anything why he avoided trial and remained in abscondence in spite of execution of proclamation and attachment and warrant of arrest for securing his attendance. This conduct of the accused is a relevant fact which should be taken into consideration as a circumstance in determining his guilt. *Rajab Ali Zulfiqar vs State* 45 DLR 705.

9. **Fact 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 anything 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 insofar 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 libelious 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 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 a better offer." This 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 part 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.



### Case Law

**Section 9**—Identification at police 'show up'—Primary evidence of identification —Admissible. *Md. Bashir (1958) 10 DLR (SC) 21.*

**Section 9**—Magistrate not called to identification parade—Evidentiary value of parade is nil. *Md. Bashir (1958) 10 DLR (SC) 21.*

**Section 9**—Track evidence—May be relied on along with other evidence. *Pritam Singh (1957) PLD (SC)(India) 1.*

**Section 9**—Evidence in the TI parade before the police—value of evidence when a witness has given details of the commission of a crime and of the persons engaged in committing it, the act of the police officer in subsequently asking the witness to point out those persons in a TI parade cannot be objected to. *Ibrahim Bhak 7 DLR (FC) 123; PLD 1955 FCS 113.7.*

**Section 9**—Section 9 read with Code of Criminal Procedure (V of 1898) Section 288 [omitted by Ordinance XLIX of 1978]—Two ways of making the previous recognition of the accused admissible in evidence. *Rules stated in AIR 1925 (All) 223* have been relied on by the State (Respondent). *Ratan Khan vs State 40 DLR 186.*

**Section 9**—'Introductory or explanatory facts—A Chittah which describes the various plots is admissible under this section as explanatory of partition papers which, without it, would be difficult to understand. *Sheikh Jaki Mahmood vs Dino Bandhu Bhattacharjee, 2 IC 367.*

**Section 9**—Identification by footprints—Identification of marked footprints is a very weak type of evidence and carries no weight by itself. *Shafi Muhammad vs State, PLD 1971 Kar. 721; Ghulam Mustafa vs State, 1971 P CrLJ 775; Bilimoria alias Muhammad Husain vs State, PLD 1958 SC (Pak.) 313; Quasim vs State, PLD 1967 Kar. 233; and Hamida Bano vs Ashiq Hussain, PLD 1963 SC 109.*

**Section 9**—Track evidence is useful if coming from an expert who has taken precautions to preserve footprints by preparing moulds, etc. *Ramzan vs State, PLD 1960 Lah, 24.*

**Section 9**—Identity of a person as the doer of a particular act—Where persons having only a momentary glimpse of culprits identified them after a month and 17 days, their testimony was disbelieved. *Qabil Shah vs State, PLD 1960 Dar 697.*

**Section 9**—But where there was full moon and a municipal electric light was burning and the assailants were previously known the identification was held to be satisfactory. *Sheru vs State, PLD 1960 Kar. 195.*

**Section 9**—Accused not recognised during commission of dacoity—No TI Parade held—Recognition of the accused in the thana hajjat being shown by the OC is of no value. *Mahidur vs State 1983 BLD (HC) 162(a)(DB).*

**Section 9**—Evidence of identification held at the investigation stage can be used only to corroborate substantive evidence of witnesses in court; Value of identification evidence in a TI Parade depends on the effectiveness of precautions taken against the identifying witness having an opportunity of seeing the persons to be identified before the parade. *Hajrat Ali vs State 1985 BLD 151 (DB).*

**Section 9**—Evidence of identification per se is a weak type of evidence. No doubt conviction can be based on the identification evidence alone if it is established beyond doubt that the witness correctly recognised the accused and that there was sufficient light to facilitate such recognition. *Tafazzal Hoque vs State 1986 BLD (HC) 418*

**Section 9**—Identification of the accused in TI Parade has no value when it was held after the witness saw the accused in the police station and the magistrate holding the same was not examined. *Shahidullah vs State BLD 1987 (AD) 27(a).*

**Section 9**—It was the duty of appellant to follow the position of the case. No duty was cast upon Tribunal to run after a fugitive to post him with day-to-day proceeding against him. *Nizam Hazari vs State 53 DLR 475.*

**Section 9**—Abscondence of accused is a relevant fact under section 9 of the Evidence Act and unless accused explains his conduct abscondence may indicate his guilt. *Nizam Hazari vs State 53 DLR 475.*

**Section 9**—Abscondence of an accused cannot be treated to be corroboration of the confessional statement of another accused person so as to base thereon conviction of the absconding accused. *Nizam Hazari vs State 53 DLR 475.*

**Section 9**—It is the facts and circumstances of the case which decides whether abscondence is due to any guilty knowledge or to any intention to avoid harassment by police. *Nizam Hazari vs State 53 DLR 475.*

**Section 9**—Long abscondence and non-submission to the process of the court speaks a volume against the accused persons and clearly suggest their involvement in the crime. Abscondence of the accused persons furnished corroboration of the prosecution case and evidence. *Al-Amin and 5 others vs State 51 DLR 154.*



**Section 9**—The non-holding of the Test Identification Parade cannot affect the identification of the accused Shamim Hossain by the victims at the time of trial and the statement made by the witnesses are the legal and substantive evidence in the eye of law. *Al-Amin and 5 others vs State* 51 DLR 154.

**Section 9**—As the test identification parade was held after about 3 months of the arrest of the accused person and the police officer was present at the scene which diminish the evidentiary value of the test. *State vs Md Musa alias Mussaiya alias Shafir Bap* 1 BLC 467.

**Section 9**—Test Identification Parade—It appears that the TI Parade was held after about 4 months from the date of occurrence and that too in the circumstances where the identifying witnesses had chances to see the accused when they were taken to and produced before the Court on several occasions. All the accused who were identified during the TI Parade, were known to the identifying witnesses from before as the houses of those accused were situated within a radius of about 100 to 300 yards from the house of the identifying witnesses and hence the complicity in the alleged offence of the accused persons identified during the TI parade held in this case cannot be taken to have been proved by the prosecution beyond all reasonable doubt. *State vs Rafiqullah Khan alias Kazal & another* 7 BLC 480.

**Sections 9 and 8**—Abscondence of an accused person in some circumstances may not be an incriminating circumstance against him in respect of his guilt but long abscondence is an important circumstance against him and furnishes corroboration of the prosecution case. *State vs Saiful Islam and anr* 56 DLR 376.

**Sections 9 and 8**—Nowhere the accused mentioned anything why he avoided trial and remained in abscondence in spite of execution of proclamation and attachment and warrant of arrest for securing his attendance. This conduct of the accused is a relevant fact which should be taken into consideration as a circumstance in determining his guilt. *Rajab Ali Zulfiqar vs State* 45 DLR 705.

**Sections 9, 8 and 134**—As the solitary eye-witness PW 3 who is found to be fully trustworthy and reliable and being corroborated by PWs 1-2 and 4-7 and the strong circumstances arising out of the conduct of the condemned-accused for his attempt of running away from his house and the place of occurrence and his long continuous absconsion during trial and even thereafter which has proved the charge of murder beyond all reasonable doubt. *State vs Ranjit Kumar Mallik* 2 BLC 211.



**Sections 9 and 157**—All the TI parades were held after about one year from the date of occurrence and there was a chance for PW 1 to see the accused persons in court lockup before the identification in the TI parade for which no reliance can be placed on such TI parade and hence the conviction and sentence under section 395 of the Penal Code is not sustainable. *Mirza Abdul Hakim and others vs State 5 BLC (AD) 21.*

~~v.v.f.~~ **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 of showing that any such person was a party to it.

### Illustrations

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against <sup>1</sup>[Bangladesh].

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in <sup>2</sup>[Chittagong] for a like object, D persuaded persons to join the conspiracy in <sup>3</sup>[Khulna], E published writings advocating the object in view at <sup>4</sup>[Pabna], and F transmitted from <sup>5</sup>[Dacca], to G at Kabul the money which C had collected at <sup>2</sup>[Chittagong], and the contents of a letter written by H giving an

1. The word "Bangladesh" was substituted for the word "Pakistan" by Act VIII of 1973, section 3 and 2nd. Schedule (with effect from the 26th March, 1971).

2. Substituted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), section 3 and 2nd Schedule, for "Calcutta" (with effect from the 14th October, 1955).

3. The word "Khulna" was substituted for the word "Karachi" by Act VIII of 1973, 2nd Schedule (with effect from the 26th March, 1971).

4. The word "Pabna" was substituted for the word "Multan", by Act VIII of 1973, 2nd Schedule (with effect from the 26th March, 1971).

5. The word "Dacca" was substituted for the word "Lahore", by Act VIII of 1973, 2nd Schedule (with effect from the 26th March, 1971).

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.

### Case Law

**Section 10**—Pre-existing conspiracy must first be established by *prima facie* evidence in order to attract the provisions of this section—Evidence against co-conspirator admissible. *Moqbool Hussain* 12 DLR (SC) 217; PLD 1960 SC 382.

**Section 10**—Letters written and confession made after the end of conspiracy—Not admissible in evidence. *Qabil* (1960) PLD (Kar) 697.

**Section 10**—Two conspiracies—Evidence of one conspirator in one conspiracy against conspirators in another conspiracy—Not admissible. *Fakku Mia* 10 DLR 26; PLD 1958 Dacca 240.

**Section 10**—Principle—A conspirator is an agent of his associates in carrying out the object of the conspiracy. His acts and declarations are therefore admissible against the other conspirators on the same principle as the acts and declarations of an agent are receivable against his principal. *Vishindas Lachmandas vs E* ILR 1943 Kar. 449; 1944 SI; *E vs Vaishampayan*, 55 ILR (Bom) 839, 134 IC 1238.

**Section 10**—Confession of a co-accused or statement of an approver whether admissible under section 10 as the communication of a conspirator—Where, however, a conspiracy is proved, the confession of one conspiring accused will, apart from section 30 of the Evidence Act, be admissible against the other conspiring accused. *Ram Prasad, etc. vs E*, 2 ILR (Luck) 631; 106 IC 721; 1927 AIR (Ori) 369; 29 CrLJ 129. Section 10 does not cease to apply to "anything said, done or written" by a conspirator simply because that conspirator gives evidence as an approver. *Vishindas Lachmandas vs E* 1944 AIR Sind I; ILR 1943 Kar. 449; 212 IC 56(FB).

**Section 10**—Statements made or acts done by others before the accused joined the conspiracy—So far as their strict relevancy is concerned, it is immaterial whether the acts were done and the declarations made in the absence of the prisoner and without his knowledge, or before he joined or after he left, the conspiracy. See the illustration to section 10. It is not necessary that the

accused should have joined the conspiracy from its inception. *Barindra Kumar Gose vs E.*, 37 ILR (Cal) 467; 7 IC 359; 11 CrLJ 147; *E vs Abani Bhusan Chakrabutty*, 38 ILR (Cal) 169; 8 IC 770; 11 CrLJ 710.

**Section 10**—The fact of possession of seditious literature written before the formation of the conspiracy is admissible, apart from section 10 to ascertain the object of the conspiracy. *Monindra Mohan Sanyal, etc. vs E.*, 46 ILR (Cal) 215; 46 IC 152; 19 CrLJ 696.



**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 <sup>1</sup>[Chittagong] on a certain day.

The fact that, on that day, A was at <sup>2</sup>[Dacca] 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.

### Case Law

Credibility of witnesses—Witnesses not believed in one case—May not be believed in connected case. *Muhammad Khurshid (1960) PLD Lah. 1202.*

1. Substituted by the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance XXI of 1960), section 3 and 2nd Schedule, for "Calcutta" (with effect from the 14 October, 1955).

2. The word "Dacca" was substituted for the word "Lahore", by Act VIII of 1973, 2nd Schedule (with effect from the 26th March, 1971).



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.

### Case Law

Evidence in mitigation or aggravation of damages—Libel—Where the defamatory statement, complained of, is an imputation of bad conduct towards a woman and truth is pleaded in defence, evidence that the woman herself made statements to that effect to a number of persons is relevant under this section in order to assist the Court in assessing the damages to be awarded. *Ma Sein Tin vs Kayaw Maung*, 1936 AIR Rang. 332; 164 IC 385.

13. Facts relevant when right or custom is in question—Where the question is as to the existence of any right of custom, the following facts are relevant:

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence;
- (b) particular instance in which the right or custom was claimed, recognised 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 neighbours, are relevant facts.

### Case Law

A mere description of boundaries in a document between third parties cannot be said to be a statement against the proprietary interest of the person making it and it is not admissible *Serajuddin 10 DLR 268; PLD 1958 Dacca 490*.

**Section 13**—A judgment not inter-parties is admissible in evidence for the purpose of ascertaining the parties to the dispute. *Alauddin Mia 9 DLR 357*.

**Section 13**—Judgments not inter-parties are admissible in evidence for and against everyone. *Alauddin Mia 9 DLR 357*.

**Section 13**—A statement about custom by a person of 22 years of age cannot command much weight. *Muhammed Bagar PLD 1956 (SC)(Ind). 318*.

**Section 13**—Admission into evidence of judgments and orders passed subsequent to the date of the incident as to the matter under investigation—Not admissible. *Dud Raja 8 DLR 667*.

**Section 13**—Statements or findings in a judgment are not admissible. *Dud Raja 8 DLR 667*.

**Section 13**—Suit for declaration and confirmation of possession— Kabala executed in favour of plaintiff by third party—Admissible. *Maharaja Bahadur Singh AIR 1946 Cal. 450*.

**Section 13**—Statements made in a document (in the present case it is solenama) are admissible also under section 13.

A solenama filed in a criminal proceedings is admissible apart from being admission as either a transaction or an instance where a right has been asserted and denied or recognised and if it has been acted upon, it being between the parties to the solenama and its privies, it is then admissible under section 13 of the Evidence Act. The party against whom the particular document is being used of course can show that it is not binding upon him or that the statements made therein are not true or it was not acted upon or it was obtained by fraud, but the onus will be on him to prove any such vitiating factor. *Elamuddin Mondal vs Mafizuddin Ahmed 26 DLR 149*.

**Section 13**—Judgment, not inter parties—admissible in evidence— Limited use of such judgment: Judgements not inter parties are admissible in evidence for and against everyone under section 13 of the Evidence Act. But that admissibility of judgments, not inter parties, cannot extend to the findings or reasons for the findings given in those judgments. *Alauddin Mia vs Abdul Latif 9 DLR 357*.

**Section 13**—A judgment, not inter parties, is admissible because it is the evidence or integration of a litigation or a judicial proceeding, a transaction within the meaning of section 13, Evidence Act, for the purpose of ascertaining the parties to the dispute and the contentions of the parties, the subject of the dispute, and final decision of the court but not for the purpose of proving the

reasons for the court's decision, and for using its findings of fact as evidence of those facts in another case. *Alauddin Mia vs Abdul Latif* 9 DLR 357.

**Section 13**—Boundary description in a document between third parties is not admissible in evidence. [See under section 32(3) also.] *Sirajuddin Kazi vs Rairaman Sen*, 10 DLR 268.

**Section 13**—Document—admissibility of, when the document per se is not inadmissible, but its mode of proof irregular—Proper time to object to its admissibility before it is marked and admitted. *Shah Banu Begum vs Iftikhar Md Khan* 8 DLR (WP) 133.

**Section 13**—When the document is per se inadmissible the objection can be taken at any stage. But where the document is not per se inadmissible, the question of admissibility of evidence should be decided at the moment when the evidence is offered. If the admissibility is questioned not at the right moment but subsequently, at the time of writing the judgment or of hearing the arguments, the party does not get the opportunity which he can otherwise have of adducing further evidence. *Misir Ali vs Abdul Rashid* 5 DLR 490.

**Section 13**—Judgments not inter-parties, admissible in evidence, evidencing transactions. *Sahed Ali vs Prakash Chandra Roy* 20 DLR 328.

**Section 13**—Document not inter-parties, admissibility of—Document is admissible as an instance of assertion of a right even though it is not inter-parties but the recitals in it are not binding on the person who was not a party to it.

Although in the absence of independent evidence weight is given to the recitals in old documents though not inter-parties, but recitals in documents of recent origin per se cannot be accepted as adequate evidence to prove the fact recited. *Azhar Bepari vs Abdul Aziz Gazi*, 22 DLR 36.

**Section 13**—Entries in the batwara papers, though not binding on a party not a party in batwara proceedings, are however relevant under section 13.

It is true that batwara papers cannot be held to be binding against persons who are not parties to the batwara proceedings but still it cannot be denied that they are relevant and admissible under section 13 of the Evidence Act.

Such entries in the batwara papers are admissible as instances in which the right in question was claimed and recognised irrespective of who the parties may have been at the time. They are of course not binding against tenants who were not parties in the batwara proceedings, but that is a different matter. They also carry no presumption of correctness but that again does not touch the question of admissibility. Admissibility of evidence is one thing, and the weight to be



attached to it is quite another. *Rahimuddin vs Abdul Malek Bhuiya*, 20 DLR 689.

**Section 13**—Batwara papers admissibility under section 13—their bearing on title question.

Papers relating to batwara proceedings in their very nature cannot be held to be of binding nature concerning the question of title. *Rahimuddin vs Abdul Malek Bhuiya*, 20 DLR 1144.

**Section 13**—The statement in the kabala that vendor was in khas possession of the plot transferred by it is admissible under section 13 as it is an assertion and not a mere recital. *Abdul Halim vs Hashmatulla* 19 DLR 176.

**Section 13**—The question in the present case that arose as to the parentage of a woman named Bahar Jan, it being the case of the plaintiff that Bahar Jan was a daughter of one Mohar Ali and on that basis the plaintiff claimed a share in Mohar Ali's property through Bahar Jan. The defence was that Bahar Jan was not the daughter of Mohar Ali but was an illegitimate child by Mohar Ali.

The plaintiff produced a kabinnama, Exhibit 2 showing that Bahar Jan, the daughter of Mohar Ali, was married to one Akbar. Exhibit 2 was a very old document with most contents indistinct and it was contended on behalf of the defendant that Exhibit 2 which was registered under the Bengal Mohammadan Marriage and Divorce Registration Act (1 of 1876) could not be relied on in support of the defence assertion and the recitals in it regarding Bahar Jan's relationship with Mohar Ali could not bind the defendants, they not being parties to the same and relied on sections 11 and 13 of the Evidence Act for the purpose. Overruling the defence contention the High Court in appeal.

**Held :** The Kabinnama which relates to the marriage of Bahar Jan with Akbar has no doubt, become indistinct and illegible but it clearly reveals the seal of the Marriage Registrar's office and the relationship of Bahar Jan with Mohar as the daughter of Mohar Ali.

The trial Court rightly admitted the document into evidence and its reliance upon it cannot be assailed. The document, Exhibit 2, is a certificate of marriage granted by a public officer appointed under the statute and, as such, admissible under the provision of section 35 of the Evidence Act. The entry concerned relates to a time when no such controversy as the present one could have been contemplated and the seal of the Marriage Registrar's office which it bears excludes all doubts of its genuineness.

If it is proved that Bahar Jan lived in Mohar's house and was brought up and given in marriage as his daughter this would clearly amount to an assertion that Bahar Jan was the daughter of Mohar. *Imamuddin vs Sukkar Ali* 26 DLR 56.

**Section 13**—A sale certificate is not a title deed but it is only an evidence of title. It is not incumbent upon the auction purchaser or his transferee to prove right to property only by proving the sale certificate—the auction sale can be proved by any other evidence independent of the sale certificate. *Bazlur Rahman vs Sadu Mia* 45 DLR 391.

**Section 13(a)**—Written statement in previous suit filed by a person not a party to the present suit—not a transaction : Here the written statement, (which was filed in a previous suit) is filed as evidence in the present suit neither by the person who filed it in the previous suit nor any of his representatives and was not between the parties of the present suit but by the third-party defendants.

**Held**—The written statement is not a transaction within the meaning of section 13(a) of the Evidence Act. *Baisnab Das Mohanta vs Nani Gopal Das* 14 DLR 364.

**Section 13(a)**—Document to which a person was not a party may be admissible to show assertion of right. *Md Shahadat Hossain vs Kohiladdi Shaikh* 37 DLR 126.

**Section 13(a)**—Existence of right of custom, such as any "Transaction" Creating any right—Relevancy of. *Hazi Waziullah vs Additional Deputy Commissioner* 41 DLR (AD) 97.

**Section 13(a)**—Previous judgment—probative value of—whether reasons given by the High Court Division for deprecating the evidentiary value of the previous judgment are tenable. *Hazi Waziullah vs Additional Deputy Commissioner* 41 DLR (AD) 97.

**Section 13(a)**—When the amicable partition of the same property is the subject matter in both the suits, the previous judgment showing the amicable partition is certainly an evidence in the present suit. *Hazi Waziullah vs Additional Deputy Commissioner* 41 DLR (AD) 97.

**Sections 13 and 35**—Parentage of the daughter being questioned a very old kabinnama registered under the Bengal Mohammedan Marriage and Divorce Registration Act produced to establish the legitimacy of the daughter. Such document can be relied on for the purpose. *Imanuddin vs Sukkar Ali Molla* 26 DLR 56.

**Sections 13, 42 and 43**—The law is now settled that a Judgment whether inter parties or not may be conclusive evidence against all persons of its existence, date and legal effect, as distinguished from the accuracy of the decision rendered. The former judgments and decrees were not themselves a transaction or an instance within the meaning of section 13 of the Evidence Act,


but the suit in which they were made was a transaction or an instance in which the defendant's right of possession was claimed and recognised and that to establish that such transaction or instance took place the previous judgment was the best evidence. *Robert Pinaru vs Moulana Habibur Rahman and others* 8 BLC (AD) 115.

**Sections 13 and 43**—Whether judgment which decreed the suit on a finding that there was an amicable partition is admissible under sections 13 and 43 of the Evidence Act and may be considered as evidence. *Hazi Waziullah vs ADC Revenue* 41 DLR (AD) 97.

**Sections 13 and 43**—Evidentiary value to the previous judgment in Writ Petition Nos. 682 of 1980 as to the status of the petitioner in view of the provisions of section 43 read with section 13 of the Evidence Act not accorded—Effect of.

Previous judgment—Admissibility of—Not binding upon the respondent No.4 and the Government as the new issues raised in a review case had no occasion to be considered in the previous judgment. *Dr Syed Matiur Rab vs Bangladesh* 42 DLR (AD) 126.

**Sections 13 and 43**—Relevance of previous judgment—judgment in a prior suit together with the plaint and other steps is admissible in evidence. *Haji Waziullah vs ADC (Rev.) & others* 7 BSCD 86.

 **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 good-will 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.

<sup>1</sup>[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 reference to the particular matter in question.

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1. Substituted by the Indian Evidence Act, 1872, Amendment Act, 1891(III of 1891), section 1(1), for the original explanation.



*Explanation 2*—But where, upon the trial 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.<sup>1</sup>

### **Illustrations**

(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.

<sup>2</sup>[(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its 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 dog 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 the 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 act 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.

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1. See the Code of Criminal Procedure, 1898 (Act V of 1898). Section 311.

2. Substituted by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), section 1(2), for the original Illustration (b).

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 neighbours 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, and 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 A knew, or had reason to believe, that 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 threatening 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.

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

Statements made by A during his illness as to his symptoms are relevant facts.

(m) The question is, what was the state of A's health at the time an assurance on his life was effected.

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 carriages which he let to hire is irrelevant.

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

The fact that A on other occasions shot at 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.

### *Case Law*

Acts previous or subsequent to the act for which accused is being tried—To be considered only when they are connected with it—Acts not criminal at the time they were done—Not to be considered criminal at a later stage when they are so made by statute. *State (1957) PLD Lah. 142.*

**Section 14**—Principal and abettor—Evidence against principal also admissible and relevant against abettor, *Srinvas Mal, PLD 1947 (PC) 141.*

15. **Facts bearing on question whether act was accidental or intentional**—When there is a question whether an act was accidental or intentional <sup>1</sup>[or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

1. Inserted by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), section 2.



### Illustrations

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

The facts that A lived in several houses successively 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 this 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 <sup>1</sup>[Taka].

The question is, whether the delivery of the <sup>1</sup>[Taka] was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit <sup>1</sup>[Taka] to C, D and E are relevant, as showing that the delivery to B was not accidental.

### Case Law

Evidence of similar criminal acts of the accused in other cases—Evidence admissible only if relevant. *Nur Md I DLR (PC) 121.*

**Section 15**—Evidence showing commission of other crimes—Not inadmissible if it is a relevant issue. *Nur Md I DLR (PC) 121.*

**Section 15**—Evidence of criminal act to lead to the conclusion that the accused is the sort of man likely to commit the offence charged not admissible. *Alvi 5 DLR (FC) 161.*

**Section 15**—Evidence merely to prove that the accused's character is such that he is likely to commit the act with which he is charged is not admissible and cannot be considered. *MFN Rewail 8 DLR 569.*

**Section 15**—An act whether accidental or intentional—Principle as to when provisions underlying section 15 to be applied—expounded.

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1. Substituted by the Bangladesh Laws (Revision and Declaration Act, 1973 (Act VIII of 1973) section 3 and 2nd Schedule with effect from 26-3-71 for "rupee".

In the absence of any evidence of any conspiracy or any design to follow a particular mode of operation it cannot be said that the evidence of other acts performed in more or less similar circumstances becomes relevant to establish a code or pattern of conduct. It has to be remembered that the principle upon which evidence of similar acts may be admitted under section 15 of the Evidence Act is that it is to be admitted merely to prove a person's state of mind but not to prove either the occurrence of the main fact itself or the identity of its author. Thus where the mental state of a person is not relevant, section 15 has no application.

Again, this section cannot be invoked in aid until it has been shown that the person charged had committed all the offences. *State vs Minhun*, 16 DLR (SC) 598.

**Section 15**—The facts and circumstances of the particular offence charged are consistent with innocent intention whereas further evidence which incidentally shows that the accused has committed one or more other offences, may tend to prove that they are consistent only with a guilty intent. In all such cases, the judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial. *Nur Md 1 DLR (PC) 121*.

**Section 15**—Evidence whether previous or subsequent to the frauds charged against the accused is relevant for the purpose of showing whether or not the intention of the accused was honest or fraudulent. *MFN Rewail 8 DLR 569*.

**Section 15**—Evidence merely to prove that the accused's character is such that he is likely to commit the act with which he is charged is not admissible and cannot be considered. *MFN Rewail 8 DLR 569*.



**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 despatched.

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 facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

### Case Law

**Section 16**—Presumption of receipt of letter by addressee not covered by section 16—Section concerned with relevance only. *Mubarik Ali PLD 1958 (SC) (Ind) 115.*

### Admissions

**17. Admission defined**—An admission is a statement, 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.

### Case Law

Admission implied in not denying allegations in plaint—Admissible for that suit only—Not to be proved in subsequent suit. *Mst Diali AIR 1946 Lah. 256.*

**Section 17**—Letter of accused stating that he acted in self-defence—May be used as admission but not confession. *Ghulam Ahmed 10 DLR 55.*

Accused's letters about the occurrence stating that he acted in self-defence—such letters cannot be used as confession. *Ghulam Ahmed 10 DLR (WP) 55*; see also *PLD 1958 (Lah.) 697.*

**Section 17**—'Admission' is no doubt a strong evidence against its maker but it is also open to him to adduce evidence to show that it is not in fact an 'admission' but is the result of bonafide mistake of fact, *Begum Khodeza Akhter vs Hajera Khatun 37 DLR (AD) 212.*

**Section 17**—Admission—Use of—Whether an admission made by a party in plaint, signed and verified by him, may be used as evidence against him in other suits—Whether it is also open to the party to show that the admission is to be regarded as conclusive evidence and also to show that it is untrue. *AK Khan vs Basek Khan 40 DLR (AD) 114.*



**Section 17**—Admission by judgment—Adverse finding in the judgment in an earlier suit dismissed on the ground of maintainability cannot operate as *res judicata*. But the finding therein that the defendant was admitted to be a tenant will operate as admission by judgment. *Haragram Trust Board vs Dr Golam Mortuza Hossain* 47 DLR 160.

**Section 17**—Under the English Law a statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions. In our law of evidence an admission made by a party in a plaint is admissible in evidence against him but such admission cannot be regarded as conclusive proof and it is open to the party to show that it is untrue. *AK Khan vs Basek Khan* 40 DLR (AD) 114.

**Section 17**—Silence of the accused when statement incriminating him made. Two accused remained silent, while the 3rd accused incriminating the other two in the commission of the offence. The silence of the two accused persons is matter admissible under section 8 of the Evidence Act. *Yar Md vs Rahim Din*. 13 DLR (WP) 58.

**Section 17**—An admission made by an accused person in or out of the Court, unless it be vitiated by any such circumstances as are mentioned in the Evidence Act can be considered to be a matter which the Court may take into consideration in coming to its conclusions. *Rahim Bux vs Crown* 4 DLR (FC) 53 (M Munim, J giving a dissenting view in the same case).

**Section 17**—Form of admission; admissions in invalid, unstamped or unregistered documents—The accused stated in the letters written by him after the incident that he had acted in self-defence and suggested indirectly that he had not committed the offence. These letters, it was held, could not be used as confession but could be used as admission regarding his presence at the scene. *Ghulam Ahmed Khan vs State*, PLD 1957 Kar. 824.


A statement in one's own favour cannot be regarded as admission. *Marie Antoinette Palmer vs Oswald Robert Joseph Palmer*, PLD 1958 Lah. 699.

**Section 17**—Stray statement made without the context does not constitute any admission by defendant on extension of the time for performance. *Saroj Kanta Sarker and others vs Seraj-ud-Dowla and others* 56 DLR 39.

**Section 17**—The defendant No. 1 admitted in the written statement filed in a previous suit describing himself as a tenant under the present plaintiff and hence now he cannot say that the plaintiff is not the owner of the suit property and the Government is the owner of the same. *Additional Deputy Commissioner (Rev), Chittagong vs Al-haj Ahmadur Rahman* 4 BLC 349.

**Sections 17 and 21**—Since the plaintiffs claim their title through the defendant No. 11, the decree passed in Title Suit No. 30 of 1960 and the subsequent compromise decree passed in Title Suit No. 212 of 1979 where the defendant No. 11 admitted right, title and possession of the defendant No. 2 are binding upon the present plaintiffs on the strength of the application of section 43 of the Specific Relief Act and the Courts below have rightly found that admission made by the defendant No. 11 is also binding upon the plaintiffs. *Abdul Kader Rari and others vs Kaiser Ahmed Howlader and others* 4 BLC 17.

**Sections 17 and 145**—Admission—Since the relationship of landlord and tenant between the plaintiff and the defendant was never a fact in issue, the application of the defendant dated 12-1-66 (unconnected with the relationship) and his deposition in a different proceeding could not be admitted into evidence as an admission suggesting an inference as to any fact in issue. The alleged admissions were not set out in the plaint. Admission can be explained and the maker of the same must have an opportunity to explain them. *Abdur Rabban vs Aminul Hoque Sowdagar* 43 DLR (AD) 19.

 **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 authorised by him to make them, are admissions.

**by sutitor 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.

### *Case Law*

Admission by a party having joint interest—When several persons have joint and similar interests in the subject-matter of the suit, an admission of any one of these persons is receivable, not only against the maker but also as against others, whether they be all jointly suing or sued, provided only that the admission must relate to the subject-matter in dispute and be made by the declarant in his character as a person jointly interested with the party against whom the evidence is tendered, and what is of fundamental importance is the requirement of the identity in the legal interest between the joint claimants. *Maharaja Bhupendra Ch. Singha vs Sudhindra Ch. Singh*, 5 DLR 251.

Admission—Value—Admissions though not conclusive proof of matters admitted may yet be decisive if they remain unexplained. *Mohammad Abbas vs Sultan Khan*, PLD 1972 Pesh. 122.

Admission contained in a statement can be used against person making it without confronting him with that statement. *Muhammad Yusuf vs Mohammad Ayub*, PLD 1972 Pesh. 175.

Admission by Government servants—Admissions of a Government Officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority, or if he exceeds that authority, when the Government in fact, or in law directly, or by implication, ratifies the excess. *Sujan Singh vs GG in Council*, 1944 Pesh. 34; 46 PLR 266.

**Section 18**—Admission or concession by lawyer when not binding on his client—It does not appear from the judgment of the appellate Court below that the respondent's lawyer placed reasonings appearing in the trial Court judgment before the lower appellate Court. Under such a circumstance Court is not prepared to accept lawyer's concession as an admission of facts of abandonment of an issue. *Safia Khatun vs Amena Khatun* 43 DLR (AD) 206.

**Section 18**—The charge was not admitted by the respondent rather he denied it as baseless in the reply stating the whole truth giving the reason for



victimising him by the complainant which cannot be an admission to the charge, but it was a part of his defence and it was not considered as such by the Enquiry Officer. Even if it is conceded that the statements made by the respondent amounted to admission of misconduct, he could not be removed from service for the alleged admission without holding a formal enquiry in accordance with rules. Admittedly, instead of the Registrar, the Chief Justice himself proposed for major punishment to both the accused and accordingly, second show cause notice was issued but the Chief Justice was not given to consider the replies and the Registrar imposed major punishment on the respondent and, in fact, acquitted the other and such action must be held to be malafide, biased and illegal. *Registrar, Supreme Court of Bangladesh vs Md Shafiuddin and another* 6 BLC (AD) 141.

**Section 18**—Suit for ejectment—Onus to prove the existence of monthly tenancy—Statement made by the tenant—defendant himself as a party in a previous Criminal Proceeding, admitting that he was a tenant in plaintiff's house—This was admission of the factum of the landlord and tenant relationship—This was rightly taken into consideration as an admission of the defendant to support the plaintiff's case—Tenant failed to prove his entry in the suit premise as a freedom-fighter—suit for ejectment, rightly decreed.

The plaintiff appellant filed a suit for ejectment. It was registered as title suit in spite of the appellant's objection. Her case was that she purchased some land by registered sale deed, dated 22-7-67 and got possession therein. Then she constructed 3 CI sheet houses and other structure thereon out of which she let out one such house to the defendant respondent in 1972 at a monthly rent of Taka 60/- which was subsequently raised to Taka 80 per month and which the defendant paid from 1-1-75 to 30-11-75, but thereafter he defaulted. She also required the premises for her own use and occupation. She asked the defendant to vacate the premises after paying up the arrear rents but the defendant having not paid she issued a notice to quit the premises by 1-9-78 which was duly received by the defendant on 5-8-78 but he did not comply with the notice and hence she filed the suit for ejectment. The defendant-respondent contended, *inter alia*, that he was not a tenant of the plaintiff-appellant, neither did he pay rent nor he did receive any notice under section 106 of the TP Act. His case was that he entered into possession of the premises as freedom fighter just after liberation of Bangladesh as the premises was vacant at that time and possessed it since then and that the property being Vested Non-Resident Property, he applied to the SDO concerned for its lease under the Government. The trial Court held that the relationship of landlord and tenant was not proved; notice of determining the tenancy was not duly served and the court was incompetent to decide the case as it was triable under SCC filed and dismissed the suit. Against it, the plaintiff's appeal was allowed on holding that the plaintiff had valid title in the suit

property and that the defendant was a tenant under her and that the tenancy was legally determined and in that view of the matter, the suit was decreed. Against it, the defendant moved the High Court Division in Civil Revision which made the Rule absolute setting aside the lower appellate Court's decision and restoring that of the trial Court dismissing the suit.

On behalf of the plaintiff-appellant it was contended that the plaintiff having proved the counterfoil of rent receipt containing defendant's signature apart from sufficient oral evidence as to the defendant's monthly tenancy under the plaintiff according to English Calendar, the High Court Division committed an error of law in holding that onus was on plaintiff to have the rent receipt further examined by hand-writing expert to establish the tenancy of the "month" of such tenancy. It was also urged that the High Court Division was wrong in not considering the admission of defendant as to the tenancy contained in the application under section 561A CrPC in Criminal Revision No. 606 of 1977 filed by the defendant and marked as an exhibit in the suit which was relied upon by the Court of appeal below in arriving at the material finding of fact that the defendant was a monthly tenant under plaintiff. On behalf of the defendant-respondents it was urged, on the contrary, that High Court Division rightly held that the plaintiff did not discharge his onus by proving the signatures in the counterfoils of the rent receipt by getting the same examined by an expert.

**Held**—Here the defendant admitted that he was a tenant under Jalaluddin Ahmed in the house of his wife in a previous criminal proceeding and this is very relevant as an admission to prove that relationship as the aforesaid statement was made by the defendant himself as a party to the proceeding and, as such, it may rightly be taken into consideration as an admission on the part of the defendant to support the plaintiff's case.

The lower appellate Court has referred to this document showing that by it the defendant admitted that he is a Bharatia in the suit house under the plaintiff. The lower appellate Court has also discussed the evidence of PW 2, a retired school teacher of Madaripur Govt. United Islamia High School and PW 3 Imam Madaripur PW 4, a retired Administrative Officer, BG Press, stating that the defendant was a bharatia in the suit house under plaintiff. Thus, on a discussion of the documentary and oral evidence he came to the conclusion that the defendant is a bharatia of the suit premises under the plaintiff. He further found that the defendant failed to prove by adducing any evidence that he entered into possession of the suit premises as Freedom Fighter with permission of the local Awami League Leaders and that the suit premises is vested and non-resident property and that he applied for lease of the same. The lower appellate Court in the facts and circumstances stated above rightly decreed



the plaintiff's suit for ejection. *Dillwara Begum vs Kazi Md Jainuddin* 5 BSCD 172.


**Sections 18 and 21**—Admissions by a co-defendant when binding against other co-defendants—Such admissions do not amount to estoppel and, if these are proved to be false or the courts have disbelieved them, they are of no value. Admission in a previous suit by a defendant who is jointly interested with his co-defendants does not amount to an estoppel and if such admission is to be admissible at all, it is admissible only under section 21 read with section 18 of the Evidence Act. *Aminar Rahman* PLD 1958 Dacca 356; 10 DLR 148.

Oral admission—Need not be confronted and proved. *Md Mustafa Chowdhury* 8 DLR 381.

Rape—Statement that woman was consenting party—Not a confession but an admission. *Nawab* PLD (1954) Lahore 38.

**Sections 18-20, 145**—Admissions are themselves substantive evidence. Sections 18-20 mention the persons by whom admissions may be made and the circumstances under which they may be made. *Birendra Chandra Saha vs Sashi Mohan Saha*. 27 DLR (AD) 89.

—Use of previous statement under section 145, Evidence Act is for the purpose of contradicting the witness's statement and hence the necessity for drawing the attention of the witness to that statement—Admissions are for the purpose of substantive evidence in which case attention of the witness to his previous statement is not necessary—Section 145 not applicable in case of admissions. *Birendra Chandra Saha vs Sashi Mohan Saha*. 27 DLR (AD) 89.

 **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 them, and if they are made whilst the person making them occupies such position or is subject to such liability.



**Illustrations**

A undertakes to collect rents 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 owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

**Case Law**

**Section 19**—Admission by person whose position must be proved as against party to suit—A qualified statement cannot be used against the maker. *Huque Bros, vs Shamsul Haque* 39 DLR 290.

 **20. Admission by persons expressly referred to by party to Suit**—Statements made by person to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.


**Illustrations**

The question is whether a horse sold by A to B is sound.

A says to B—"Go and ask C; C knows all about it." C's statement is an admission.

**Case Law**

**Section 20**—Admissions by way of statement made in document certified to be true copy by an authorised officer of the Government are admissible in evidence and binds the maker in a subsequent proceedings. *Hajee Abdus Sattar vs Mohiuddin*, 1986 BLD (AD) 224 (b).

 **21. Proof of admissions, 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 cannot 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 may 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 persons under section 32.
- (2) An admission may be proved by or on behalf of the person making it, when it consists of 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 can B prove a statement by himself that the deed is forged.

(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 statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of crime committed by him at <sup>1</sup>[Chittagong].

He produces a letter written by himself and dated at <sup>2</sup>[Dacca] on that day and bearing the <sup>2</sup>[Dacca] post-mark of that day.

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1. Substituted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), section 3 and 2nd Schedule, for "Calcutta" (with effect from the 14th October, 1955).

2. The word "Dacca" was substituted for the word "Lahore", by Act VIII of 1973, 2nd Schedule (with effect from the 26th March 1971).

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 offers 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 skillful person to examine the coin as he doubted whether it was counterfeit or not, and that the person did examine it and told him it was genuine.

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

### *Case Law*

Former deposition by party in a previous suit—Certificated copy of deposition may be placed on record to prove admission under section 21. (1951) *PLD (Pesh) 61*.

**Section 21**—Admission by a party—When may be used against him in subsequent proceedings—Party making statement in witness-box inconsistent with admission—Must be confronted with admission sought to be used against him. *Iqbal Bros PLD 1961 Kar. 203*.

**Section 21**—Admissions made in previous proceedings—When admissible evidence. *Firm Malik Des AIR 1946 Lahore 65(FB)*.

**Section 21**—Document written by complainant on dictation of accused—not inadmissible in evidence, *Abdul Khaliq PLD 1953 Bal. 21*.

**Section 21**—A former deposition made by a person can be used subsequently either in order to contradict him with a view to impeach his credit, or if he has made therein any statement of fact, as an admission under section 21 of the Evidence Act. *Raheem Buksh PLD 1951 Peshawar 61*.

**Section 21**—Hindu joint family—Son not representative-in-interest of his father. *Jogmohan AIR 1946 Nagpur 84*.

Relevancy of a party's previous statement regarding a fact in issue—A party's previous statement regarding a fact in issue is relevant under section 21



of the Evidence Act and can be used against him if he has not appeared in the witness box at all. *Sultan Ahmed vs Md Islam* 36 DLR 81.

Admissibility of party's duly proved previous admission in a subsequent proceeding—Irrespective of whether he appears in the witness box or whether he was confronted while making a contrary statement. *Sultan Ahmed vs Md Islam* 36 DLR 81.

**Section 21**—Clear recorded admissions by an opposite party on an earlier occasion admissible in evidence in a subsequent case, even though those admissions contained in the document not put to the said opposite party while the latter was examined as a witness in the subsequent case. *Elamuddin Mondal vs Mafizuddin Ahmed* 26 DLR 149.

**Sections 21**—Admissions by a co-defendant when binding against other co-defendants—Such admissions do not amount to estoppel and, if these are proved to be false or the Courts have disbelieved them, they are of no value. Admission in a previous suit by a defendant who is jointly interested with his co-defendants does not amount to an estoppel and if such admission is to be admissible at all, it is admissible only under section 21 read with section 18 of the Evidence Act. *Aminar Rahman (PLD)1958 Dacca* 356; 10 DLR 148.

**Section 21**—A party's previous admission regarding a fact in issue is relevant under section 21 and can be used against him if he has not appeared in the witness box at all and whether that party when appearing as a witness was confronted with these statements in case he made statement contrary to those statements. *Sultan Ahmed vs Md Islam* 36 DLR 81.

**Section 21**—Admission is a strong evidence against the maker but it is also open to him to show that it is the result of bonafide mistake of fact. *Begum Khodeza Akhtar vs Hajera Khatun=1986 BLD (AD) 161*.

**Sections 21 and 17**—Since the plaintiffs claim their title through the defendant No. 11, the decree passed in Title Suit No. 30 of 1960 and the subsequent compromise decree passed in Title Suit No. 212 of 1979 where the defendant No. 11 admitted right, title and possession of the defendant No. 2 are binding upon the present plaintiffs on the strength of the application of section 43 of the Specific Relief Act and the Courts below have rightly found that admission made by the defendant No. 11 is also binding upon the plaintiffs. *Abdul Kader Rari and others vs Kaiser Ahmed Howlader and others* 4 BLC 17.

**Sections 21(2), 101 and 137**—The defence has practically admitted the prosecution version that the victim sustained knife injuries in the drawing room

of PW 3 in presence of the condemned prisoner Liaqat. When the defence came with a specific plea, it was required to prove the same either by adducing reliable evidence or, in the alternative, it could have substantiated its plea from the lips of the prosecution witnesses by cross-examining them but it has totally failed to establish its plea. It is improbable to believe that while an intruder was inflicting knife blows to Shahida in presence of Liaqat, the latter would remain as spectator, though he claimed her as his legally married wife. The prosecution has been able to prove that the convict Liaqat Ali Khan inflicted knife blows to Shahida as a result of which she died in the CMH on 15-10-93 resulting from the complications of such injuries. *State vs Liaqat Ali Khan 9 BLC 351.*

**22.** When oral admissions 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 to prove 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.

**23.** Admissions 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.

### Case Law

**Section 23**—The legal position of a letter written by the appellant with the words "without prejudice" is to be understood with reference to section 23 of the Evidence Act which reads as follows :

"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 the circumstances from

which the court can infer that the parties agreed together that evidence of it should not be given." *Haque Brothers (Carbide) Ltd vs Bangladesh Shilpa Rin Sangstha* 37 DLR (AD) 54.

**Section 23**—When a letter is written mentioning the expression "without prejudice"; it means the terms made in it may be accepted by the person written to. If not accepted, the matter ends there. Exception when a letter cannot be referred to for collateral matters. *Haque Brothers (Carbide) Ltd. vs Bangladesh Shilpa Rin Sangstha* 37 DLR (AD) 54.

**Section 23**—The letter written by the appellant with the words, "without prejudice" cannot be used to determine the extent of the liability, but insofar as it shows the relationship between the appellant and the respondent as debtor and creditor and, that they tried to settle the account—can be taken into consideration. *Haque Bros. vs Bangladesh Shilpa Rin Sangstha* 1985 BLD (AD) 102.

**Section 23**—Without prejudice, Meaning of—A Draft Document without execution, whether confers any right or title to anybody.

**Held**—"Without prejudice" means "without detriment to any existing order or claim; specifically in law. A document (Kabuliat) which clearly shows that it was not executed by anybody and was merely a draft approved, without prejudice to any existing right or claim on the parties, cannot confer any right or title to anybody unless followed by a document contemplated by law. *Begum Salma Khatun and others vs Benoyenra Lal Guha Biswas and others* 1 BSCD 175.

**(24) Confession caused 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<sup>1</sup> 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

1. For prohibition of such inducements, etc., see section 343 of the Code of Criminal Procedure, 1898 (Act V of 1898).



for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

### Case Law

**Section 24**—Confession must be accepted as a whole. *Manohar Singh AIR 1946 Allahabad 15.*

**Section 24**—All ingredients under this section must combine to make a confession irrelevant. *Nazra 12 DLR (WP) 34; (1960) PLD (Lah.) 739.*

**Section 24**—A confession is not made inadmissible simply because it is made in presence of a person in authority. In order to attract the operation of section 24 it must in addition be shown that the person in authority held out to the confessor some threat, promise or inducement having reference to the charge against him. *State vs Yunus Ali 13 DLR 665.*

**Section 24**—Extra judicial confession can be acted upon, if true, even if retracted. *State vs Sadek Matbar 13 DLR 591; 13 DLR (WP) 58; (1960) PLD (Kar.) 769.*

→ **Section 24**—"A person in authority"—meaning of—"A person in authority" within the meaning of the section is one who is engaged in the apprehension, detention or prosecution of the accused or one who is empowered to examine him. *State vs Balashri Das 13 DLR 289; 1962 PLD 467.*

**Section 24**—Confession must be voluntary and not induced by threat. *Kuruna 9 DLR 336.*

**Section 24**—Confession of an accused cannot be excluded from evidence merely because it was made before persons in authority unless it is further shown that the confession was the result of inducement. *Rahim Bux 4 DLR (FC) 53.*

**Section 24**—Statements under section 164 CrPC come under section 24 and are, therefore, excluded from evidence. *Mst Fazlan 8 DLR (FC) 1.*

**Section 24**—Confessional statement by approver before tender of pardon, recorded under section 164 CrPC. Section 24 not applicable to such a statement. *Ibrahim Bhak vs Crown 7 DLR (FC) 123.*

→ **Section 24**—Approver's statement admissible under section 339(2) CrPC against him at his own trial after forfeiture of pardon *1955 PLD (Lah.) 375.*

**Section 24**—Police custody before and after the confession—It is not acceptable. *Abdus Shakur 16 DLR (Dac) 148.*

**Section 24**—Retracted confession—The retraction of a confession is wholly immaterial once it is found that it is voluntary as well as true. *Hari Pada 19 DLR 573.*

**Section 24**—Confession made to person in authority but without threat, inducement or promise—Confession not inadmissible. *Rahim Buksh 4 DLR 199; PLD 1952 FC 1.*

**Section 24**—Judicial confession—Allegation of pressure must be proved by the accused—Not proved—Confession admissible. *Ibrahim and others 1960 (1) KLR 418.*

**Section 24**—Mere inability of witness to give the exact words of the confession does not make it inadmissible. *State vs Jatindra Kumar 20 DLR 526.*

**Section 24**—Extra-judicial confession—Can form a basis for conviction if found voluntary and true—This statement was made first of all to Tayeb Ali and Akram Ali before the arrival of the Dafadar and is voluntary and true. *Nausher Ali vs State 39 DLR (AD) 194.*

**Section 24**—Surrounding circumstances are ordinarily the only material from which the inference of confession may be drawn. *Nausher Ali vs State 39 DLR (AD) 194.*

**Section 24**—The statement admittedly made by the appellant while in custody of the customs officials cannot be considered as evidence and it is barred under section 24 of the Evidence Act. *MM Rafiqul Hyder vs State 41 DLR 274.*

Section 24—Voluntariness of confession—It must be considered by the judge when deciding admissibility of confession—Jury has to consider question of voluntariness independently. *Asgar 9 DLR 511 (DB); PLD 1985 Dacca 75.*

**Section 24**—Approver's statement—section 24 has no application. *Iftikhar- ud-Din PLD 1955 Lah. 375.*

Section 24—Trial of approver for not making a full disclosure of facts—Statement made by witness in the main trial—Admissible. *Iftikhar-ud-Din PLD 1955 Lah. 375*

**Section 24**—Confession made after being in custody for a long time—Presumption is not being voluntary. *Muhammad Hussain 1960 KLR 591 (DB)*.

**Section 24**—A confession is a statement which either admits in terms the offence or at any rate substantially all the facts which constitute the offence. *Dhanapati AIR 1946 Calcutta 156*.

**Section 24**—Recording of confession—Procedure to be followed by Court. *Abdur Rahman vs Crown PLD 1956 Kar 389; PLR 1952 Kar. (DB)*.

**Section 24**—Confession relating to offences under sections 364, 386 and 302 PPC—Confession not relied upon on charge under section 302—Reliability regarding other charges. *Ram Chandra vs State of Uttar Pradesh PLD 1957 SC (Ind.) 331*.

**Section 24**—Confessional statement not legally proved not admissible in evidence. Truth and voluntariness of the confessional statement must be verified. *Mahidur vs State 1983 BLD 162(b)*.

**Section 24**—Oral confession which does not show when, where and in what manner murder was committed and not supported by independent witness cannot be believed. *Sudhir vs State 1983 BLD 293(b)*

**Section 24**—Conviction of an accused solely based on confession is valid if true and voluntary, conviction of an accused solely based on the confession of his co-accused not valid. *Abdur Rashid vs State 1983 BLD 206 (a)*

**Section 24**—On consideration of evidence on record, if it is found that a confession is voluntary and true, conviction of the maker himself can solely be based on the same; no matter whether it is retracted or not. *Abdur Rouf vs State, 1986 BLD 436*.

**Section 24**—Confessional statement—There being no corroboration on any material particular of the confessional statement, it is unsafe to maintain conviction of the respondents under sections 302/34. Penal Code thereon, though respondent Abid Ali implicated himself in the statement to be an offender. *State vs Shafique 43 DLR (AD) 203*.

**Section 24**—Retracted confession—It is a rule of prudence that a retracted confession needs corroboration inasmuch as it is always open to



suspicion and cannot be acted upon unless corroborated by independent and credible evidence. *State vs Ali Kibria* 43 DLR 512.

**Section 24**—It is only when the statement of the accused can be read as a plenary admission of guilt in clear terms that it can be taken as a confession of the crime. *State vs MM Rafiqul Hyder* 45 DLR (AD) 13.

**Section 24**—Confession should not only be voluntary but it also must be true—For the purpose of establishing its truth examination of the confession and its comparison with remaining evidence of the prosecution and probability of the case would be relevant. *State vs Ali Kibria* 43 DLR 512.

**Section 24**—Since the confessing prisoner neither filed any petition from jail nor directly filed any petition in Court nor made any oral allegation retracting from the confession, his last moment retraction cannot be entertained. *State vs Kamal Ahmed* 49 DLR 381.

**Section 24**—Confession not sufficient basis for conviction of co-accused. *Manohar Singh AIR (33) 1946 Allahabad 15 (BD)*.

~~Section 24~~—A conviction can also be rested on extra-judicial confession subject of course to the fact that such statements are corroborated by other materials on record. *State vs Moslem* 55 DLR 116.

~~Section 24~~—Extra-judicial confession—such confession made before a person in authority cannot be relied upon as evidence without any independent corroboration. *Mobarak Ali Gazi (Md) vs State* 55 DLR 325.

~~Section 24~~—Extra-judicial confessions are not usually considered with favour but it does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support his statement should not be believed. *Syed Ahmed vs Abdul Khaleque and others* 51 DLR 43

**Section 24**—Confessional statement of condemned prisoner was recorded on 27-4-89 and he did not retract it from judicial custody but he retracted his judicial confession on 17-5-89 by filing a typed written petition wherein he failed to state that who had murdered his wife and under what circumstances it had happened, even it did not disclose the story of alleged abduction of his wife by miscreants and her eventual murder by them as alleged in the written statement and such retracted confession can solely form the basis of conviction if it is found voluntary and true. *State vs Munir and another* 1 BLC 345.

**Section 24**—Inculpatory part of the confession is separable from its exculpatory part—The inculpatory part of the confession should be placed together with the other evidence to come to the conclusion in respect of the confessing accused person rejecting the exculpatory part of the confession which is inconsistent with the evidence accepting that part of confession which is consistent with the evidence on record. *State vs Hemayet Khan and others* 3 BLC 56.

**Section 24**—Although the appellant Hemayet admits in his confessional statement to have kidnaped Bellal from his father's house but he was arrested on 12-9-93 and his confessional statement was recorded on 23-9-93 for which no reliance can be placed on such confessional statement. *State vs Hemayet Khan & others* 3 BLC 56.

**Section 24**—Both the appellants were not assured by the recording Magistrate that whether they made any confessional statements or not they would not be sent back to the police custody but instead they would be sent to the judicial custody and ultimately they were sent to the police custody when the evidence of PWs. 5 and 6 shows that the confessing accused persons were assaulted by the police which comprehensively prove that the confessional statements were the products of torture, intimidation and fear having no evidentiary value. *Nil Ratan Biswas and others vs State* 3 BLC 35.

**Section 24**—Retracted confession—When confessional statement was recorded taking the condemned prisoner into prolonged police custody such confessional statement was neither voluntary nor true and the belated retraction of such confession will not presume her guilt as no legal assistance was available to the condemned prisoner till the appointment of an Advocate by the State. *Bilkis Ara Begum vs State* 4 BLC 386.

**Section 24**—Extra-judicial confession—The PWs 7, 9 and 11 having failed to state the exact words of extra judicial confession as alleged to have been made by condemned prisoner cannot be relied upon in the absence of exact words used by the accused person getting aid of corroborative circumstantial evidence. *State vs Hasen Ali* 4 BLC 582.

**Section 24**—Absence of printed form—Confession is admissible—Mere absence of printed form in recording the confessional statement made by the accused cannot make it inadmissible in evidence when in recording such confessional statement on a plain piece of paper the Magistrate observed all the formalities as required under section 164(3) of the Code of Criminal Procedure. *Abul Kalam Mollah vs State* 4 BLC 470.



**Section 24**—When the confession becomes doubtful the conviction and sentence based solely on such confession cannot be sustained in law. *Masum Howlader alias Masum vs State 2 BLC 173*.

**Section 24**—Confessional statements—Corroboration of—Exculpatory and Inculpatory—Besides the ocular evidence the belated-retracted confessional statement of convict Monsur Ali Khan supports the prosecution case which was also supported by the evidence of the doctor and his confessional statement is true and voluntary and was not obtained by torture, coercion or inducement for which his conviction is sustainable but the confessional statements of other two convicts are exculpatory in nature and in the absence of any evidence against them their conviction is not sustainable. *Aktar Hossain alias Aktar vs State 2 BLC 273*.

**Section 24**—The police having violated the provision of section 167, CrPC in not producing the appellants before any competent Magistrate within 24 hours of their arrest and kept them in police custody for about 2 (two) days without any legal authority, that is without a necessary permission from the Magistrate under section 167, CrPC and such custody of the appellants is illegal resulting thereby the confessional statements are not voluntary and true. *State vs Sarowaruddin 5 BLC 451*.

**Section 24**—Confessional statements made by condemned prisoner Monu Meah and another accused Anowara appear to be exculpatory in nature and the trial Court has committed gross error of law causing miscarriage of justice in relying on such exculpatory confessional statements. *State vs Monu Meah and others 6 BLC 402*.

**Section 24**—Confessional statement cannot be admitted as a substantive evidence against accused persons. It is unsafe to base a conviction for murder on the retracted confession unless corroborated by credible independent evidence. In the instant case, there is no corroboration of the retracted confessional statement and no circumstantial evidence leading to prove the guilt of the convict-appellant, who was kept 2 days in police custody preceding his production before the Magistrate for recording confessional statement and such a confession must be taken with a grain of salt. *Abdul Qaiyum vs State 6 BLC 415*.

**Section 24**—Both the convict-appellants were arrested on 4-4-89 and then the confessional statements of Rashid and Ameer Howlader were recorded long after on 29-4-89 and 27-4-89 respectively which were retracted subsequently when the confessional statement of Rashid appears



to be exculpatory in nature and Ameer Howlader in his confessional statement although involved himself but he did not take the responsibility of any overt act and there is no consistency between the confessional statements or with the evidence of any of the witnesses and hence the confessional statements were neither true nor voluntary and, as such, the impugned judgment of conviction and sentence solely relying on such uncorroborated retracted confessional statements is not sustainable in law. *Abdur Rashid and another vs State 6 BLC 225.*

**Section 24**—It is well established that confessional statement if found inculpatory in nature and also true and voluntary it can be used against its maker and conviction can solely be based on it without any further corroborative evidence. In the instant case, the confessional statement made by Amina Khatun was not only inculpatory in nature but also true and voluntary and, as such, learned trial Court very rightly based solely on the confessional statement and correctly convicted and sentenced Amina Khatun by the impugned Judgment and order having duly found her guilty for the offence committed under sections 302/34 of the Penal Code. *Jhumur Ali and others vs State 7 BLC 62.*

**Section 24**—The condemned prisoner had been in police custody for 4 days till he was produced and his inculpatory confessional statement was recorded by the Magistrate on 7-8-1987 violating section 167, CrPC without any order of remand by the Court and as such police custody turned to be an illegal detention. The confessional statement of the condemned prisoner was extracted under coercion and as such the same was not voluntary and such an involuntary confession cannot be relied on in convicting an accused when the same was the only incriminating material against him. *State vs Shahjahan 7 BLC 503.*

**Section 24**—The appellants Yakub and Mansur have been convicted on a retrial on the basis of their solitary retracted confessional statements and the same was brought to their notice during their examination under section 342, CrPC. It appears from their confessional statements that they did not themselves commit any overt act causing the death of the chairman Haru Mia or his mother and they did not even enter the place of occurrence house and they merely stood outside the place of occurrence house. A number of prosecution witnesses have stated in their evidence that Sheikh Mansur Ali was the trusted man of the informant party and his confessional statement was extracted by physical torture by the police at the instance of his enemies. Moreso, their confessional statements although appear to be

voluntary but do not appear to be true and hence it is unsafe to sustain their conviction and sentence. *State vs Shahjahan* 7 BLC 503.

**Section 24**—The argument as advanced on behalf of the appellants Abdul Hakim alias Henju and Md Ismail about discrepancy as to manner of the occurrence between the two confessional statements cannot be sustainable as both of them corroborated each other as to the minute details of the manner of occurrence. *Abdul Hakim & ors vs State* 8 BLC 362.

**Section 24**—Extra-judicial confession of condemned prisoner Samad appeared to be free, true and voluntary—Extra-judicial confessional statement of condemned prisoner Samad which was proved by unimpeachable and credible evidence of PWs 2, 10, 11, 14, 15 and 16 can be foundation of conviction and consequential sentence upon him. *State vs Md Abdus Samad Azad alias Samad and another* 9 BLC 39.

**Section 24**—Extra-judicial confession—An extra-judicial confession is a very weak piece of evidence. It can never form the basis of the conviction of the accused unless the actual words of the accused person making the confession is brought on record and such a confession finds reliable corroboration. Courts have always treated extra-judicial confession as suspicious evidence and cautioned against its acting in the absence of corroborative evidence. In the instant case the PWs 1, 2 and 3 adduced evidence regarding extra judicial confession but their evidence is contradictory. *State vs Mozam @ Mozammel and others* 9 BLC 163.

**Section 24**—The testimonies of PWs 1 and 2 characterising condemned prisoner Mofizuddin as the author of injuries upon Momtaz Begum and Khaleda, Medico legal certificate, confessional statement of condemned prisoners and other circumstantial evidence are clinching evidences in proof of the culpability of the condemned prisoner and all the factors counted above are wholly inconsistent with his innocence and no other hypothesis other than the guilt can be drawn. No exception can be taken to decision rendered, reasons counted and conclusion reached by learned Additional Sessions Judge in awarding conviction under section 302 of the Penal Code. *State vs Md Mofizuddin Khan* 9 BLC 373.

**Sections 24, 3, 30 and 45**—Considering the medical evidence along with Modi's Medical Jurisprudence and Toxicology, there is no doubt that the victim has not been raped by the accused persons before her death. The confessional statements of two accused persons were procured by torture which were neither true nor voluntary and no conviction can be based on



such confessional statements, Moreso, both the confessional statements are exculpatory in nature. There is no other evidence on record regarding rape corroborating the confessional statements. A confession of a co-accused is very weak evidence. It does not come within the definition of evidence as defined in section 3 of the Evidence Act. Thus the confession of a co-accused implicating other co-accused is not legally admissible for the conviction of other co-accused. The Bishesh Adalat convicted accused Monsur, Mozam, Faruque and Montaz relying on the confessional statements made by Mohammad Ali and Rojab Ali which is not sustainable in law. *State vs Mozam @ Mozammel and others* 9 BLC 163.

**Sections 24 and 5**—In view of the confessional statement coupled with circumstantial evidence and the evidence of the PWs the prosecution has proved the case of committing double murder by the condemned prisoner which she did intentionally and such intention is apparent from the nature of the injuries proved by PWs 9 and 10 and hence the accused has rightly been convicted under section 302 of the Penal Code by the trial Court. *State vs Romana Begum @ Nomi* 5 BLC 332.

**Sections 24 and 5**—Unretracted inculpatory confessional statement giving a true account of the prosecution case, excepting the allegation of attempt to commit rape on the minor girl but admitting removing the salwar of the minor girl and killing her by throttling, and rape was committed on the victim girl before she was strangulated as testified by the doctor who held post-mortem examination coupled with extra-judicial confession made in presence of the witnesses on the night of occurrence before arrival of the police is relevant and admissible in evidence when both confessional statement and extra-judicial confession are voluntary and true supporting the prosecution case can form the basis of conviction. *State vs Azad Miah @ Md Azad* 5 BLC 304.

**Sections 24-26**—Confession—admissible when it complies with the provisions of sections 24-26.

In order to make a confession admissible, the Judge had to decide whether there exists or does not exist any of the circumstances mentioned in sections 24 to 26 of the Evidence Act. *Asgar vs State* 9 DLR 511.

Confession must be taken as a whole, though they need not be believed or disbelieved as a whole where there is other evidence—The view of Dacca High Court is that confessions and admissions must either be accepted as a whole or rejected as a whole and that it is not competent for a court to accept only the inculpatory part while rejecting the exculpatory



part as inherently incredible. *Madan Lal Agarwala vs State PLD 1960 Dacca 813.*

In order to determine whether a confession was voluntary or not the attending circumstances must be subjected to very close, minute, and rigid scrutiny and in a case where a police officer was murdered special diligence in examining a confession is essential. *Fazlur Rehman vs State PLD 1960 Pesh 74.*

**Sections 24 and 26**—Confession—admissible when it complies with the provision of sections 24-26. *Asgar 9 DLR 511; 1960(1) KLR 418.*

✓ Extra judicial confession—Must be proved by most unimpeachable evidence. *Muhammad Hussain 1960 (1) KLR 591 (DB).*

✓ Reliability—Confession must not only be voluntary but also true. *Sarwan Singh PLD 1957 (SC) (Ind.) 555.*

Confession made on promise of being made an approver—Inadmissible. *Muhammad Ramzan PLD 1961 (WP) Lahore 167 (DB).*

✓ Improper inducement proved—prosecution must prove the removal of the inducement at the time when confession was made. *Muhammad Ramzan PLD 1961 Lahore 157; PLD 1960 Lahore 189 (DB).*

✓ Inducement leading to confession—Confession is admissible only if inducement is by person in authority. *Ratan Chand PLD 1959 SC (Ind.) 37 Rel.; AIR 1934 Lah. 417.*

✓ Inducement not sufficient to make the accused confess—Confession admissible. *Nazar PLD 1960 (WP) Lah. 739; 12 DLR (WP) Lah. 34 (DB).*

✓ Inducement given by Sarbrah Lambardar—Confession inadmissible. *Muhammad Alam PLD 1960 (WP) Lah 71 (DB).*

✓ Lambardar—Is a person in authority. *Muhammad Alam PLD 1960 (WP) Lah. 71 (DB).*

✓ Person in authority—Test of: *Muhammad Alam PLD 1960 (WP) Lah. 71 (DB).*

Private persons armed with guns sent by police officer to find accused—Persons arresting accused by show of force—Persons in authority—Confession before them—Not admissible. *Qutba PLD 1957 FC 197; 6 DLR (FC) 126.*

Sarbarh Lambardar—Person in authority. *Nazra PLD 1960 (WP) Lah. 79; 12 DLR (WP) Lah 34.*

Corroboration necessary when confession is retracted. *Pangumbam Kalanjay Singh PLD 1956 (SC) (Ind.) 205; Sarwan Singh Ratan Singh 1957 SC (Ind.) 555.*

Confession made by person who is not an accused but becomes one later on—Confession caused by inducement—Not admissible under the section. *Nazra PLD 1960 Lah; 12 DLR (WP) Lah. 34.*

Confession after prolonged police custody—Prosecution must prove that confession was voluntary. *Nathu PLD 1956 SC (Ind.) 186.*

Confession, admissibility of—Voluntariness—Onus of proving inducement, threat or promise is on the prisoner—Nature of proof—Duty of Court. *Muhammad Ramzan PLD 1961 Lah. 167; Aziz Ahmed PLD (1960) Kar. 272.*

First information report given by the accused with confession—he may rely on first information report to prove that he acted on impulse. *Aziz Ahmed PLD (1960) Kar. 272.*

Confession is a species of admission—Confession—As to the meaning of confession was noted by Privy Council—Confession—Evaluation of confession—The Court may take the confession into consideration which can be put into the scale and weighed. *State vs Lalu Mia 39 DLR (AD) 117.*

—Retracted confession may be the sole basis of conviction of its maker but its evidentiary value is nil against a co-accused in the absence of independent corroboration. *Amir Hussain Howladar vs State 1984 BLD (AD) 193 (b).*

—Court can consider the inculpatory part of the confessional statement which is partly inculpatory and partly exculpatory. *State vs Masudur Rahman 1984 BLD 228(a)*

—Retracted confession if found true and voluntary can form the basis of conviction. *State vs Masudur Rahman 1984 BLD (HC) 228 (b) State vs Abu Bakkar 1983 BLD 240 (c).*

—Confession must admit in terms of the offence or substantially all facts constituting the offence, Exculpatory statement is not confession. *Abdul Jalil vs State 1985 BLD 137(a)*

**Sections 24 and 27**—The appellant Nuruddin in his confessional statement implicated himself in joining prior concert to kill Ahmed Hossain, his presence in the spot of killing of such man with a common intention, carrying the dead body and participating in burial for its disappearance obviously constitute offences under charge. Thus the confessional statement coupled with the circumstance as to pointing out of the corpse of Ahmed Hossain by accused Nuruddin is an obvious tendency unerringly pointing towards the guilt of accused Nuruddin in committing murder of Ahmed Hossain and causing disappearance of his corpse. *Nuruddin and others vs State 8 BLC 561.*

**Sections 24 and 30**—It has been established by the evidence on record that appellant Syed Ahmed was in police custody before and after recording his confession. A confession recorded in between the period of police custody is always open to grave suspicion about its voluntary nature. The possibility to coerce and/or induce to make the confession cannot be brushed aside. The confession in question may partly be true version of the occurrence but a doubt is created on its voluntary nature. The doubt on the voluntary character of the confession should go in favour of its maker. Moreso, there is no material in the evidence to show that the police attempted to find out the corpse of the deceased to justify their custody even after the recording of confession. In such a situation the confession in question should not be taken into consideration as legal evidence against the maker and as a result of which the appellant Syed Ahmed cannot be held guilty for the offence under charge. A conviction on the sole basis of confession of the co-accused cannot be sustained. Except implication in the confessional statements no material is found and taken into consideration against these accused-appellants Nurul Alam, Samiuddin, Fazal Karim, Abul Kalam alias Kalu, Thanda Mia and Altaf Mia and, as such, there is no evidence to maintain their conviction. *Nuruddin and others vs State 8 BLC 561.*

**Sections 24 and 30**—Considering the confessional statement together with the evidence of its recording Magistrate it appears that the confessing accused did not take part in the occurrence and that there is nothing on record to show that anybody had recognised him during the occurrence or that any booty was recovered from his control and possession and hence the confessional statement is an exculpatory one and it cannot be used against others in the absence of independent corroborative evidence. *Halim and others vs State 8 BLC 19.*



**Sections 24 and 30**—Confessional statement is a piece of corroborative evidence lending assurance to the substantive evidence of PWs 17, 19 and 20 and under section 30 of the Evidence Act, confessional statement is an admissible evidence. Judicial confession of a co-accused, although, cannot be treated as substantive evidence against another accused person and cannot be sole basis for conviction of another accused but along with other direct or circumstantial evidence judicial confession may be taken into account and can be used to lend assurance to other evidence. *State vs Ershad Ali Sikder and another* 8 BLC 107.

**Sections 24 and 30**—Before recording the confessional statements of convict Jamila Khatun and condemned prisoner Ali Hossain by the Magistrate, they were detained by the police for two days and seven days respectively when it becomes the bounden duty of the recording Magistrate to try to ascertain whether there was any manner of police torture and to assure them that they would not be sent back to police custody whether they made any confession or not which having not been done by the recording Magistrate the confessional statements cannot be treated as voluntary and true and it cannot be used against them nor against other co-accused. *State vs Ali Hossain and others* 4 BLC 43.

**25** Confession to police-officer not to be proved—No confession made to a police-officer<sup>1</sup> shall be proved as against a person accused of any offence.

### Case Law

Confession made voluntarily to a police officer—not admissible. *Muhammad Badsha* 9 DLR (SC) 11.

**Section 25**—Accused in the first information report making a confession—such a confession not admissible. *State vs Ghandal* 13 DLR (WP) 62.

**Section 25**—Confession to person in the presence of a police officer, admissible if no influence was exercised. *Tabibor Rahman* 9 DLR 165.

**Section 25**—The record of one proceeding is not to be treated as a part of the record of another proceeding and the record of each proceeding should be

1. As to statements made to a police-officer investigating a case, section 162 of the Code of Criminal Procedure, 1898 (Act V of 1898).

self-contained and complete. *State vs Ershad Ali Sikder and others* 56 DLR 185.

**Sections 25 and 26**—This extra-judicial confession does not come under the scope of sections 25 and 26 as it was made before the arrival of the Dafadar. *Nausher Ali vs State* 39 DLR (AD) 194.

**Sections 25 and 26**—Part of the confessional statement recorded in presence of the Dafadar will not invalidate the other part recorded in his absence. *Nousher Ali Sardar vs State = BLD 1987 (AD). 324 (a)*.

**Sections 25, 26 and 27**—Statement made to police officer by the accused is not admissible in evidence except that part of the statement which leads to discovery of any incriminating material. *Muhammad Siddiqur Rahman vs State BLD 1987 (AD) 93*.

**Sections 25 and 27**—An information even by way of confession made in police custody which relates to the fact discovered is admissible in evidence against the accused. *Bashir Ali vs State* 45 DLR 63.

Confession contained in first information report—The First Information Report in the nature of a confessional statement by the accused cannot be used against him. Exculpatory portion in such statement, however, can be used in favour of accused. *State vs Ghandal, PLD 1960 Pesh. 137*.

*Mummad Bakhsh Vs. State (9 DLR 3011)*

**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, shall be proved as against such person.

<sup>1</sup>[Explanation—In this section "Magistrate" does not include the head of a village discharging magisterial functions <sup>2</sup> \* \* \* unless

1. Inserted by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), section 3.

2. The words "in the Presidency of Fort St. George or elsewhere" omitted by Administrative Order 1949, Schedule.

such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure<sup>1</sup>, 1898]

### Case Law

Accused during the period between his arrest and his confession remaining in police custody for a fortnight—confession inadmissible. *Haji Yar Muhammad* 13 DLR (WP) 58; (1960) PLD (Kar) 769.

**Section 26**—A confession in the presence of a chowkidar is not admissible in law. *Crown vs Rostom Ali* 7 DLR 209.

**Section 26**—Confession of the accused was made in the court room at a time when the police officers were present near the prisoner. Held : Such confession is admissible. *Abul Kashem* 22 DLR 279.

**Section 26**—Confession recorded in the presence of police officer—To what extent inadmissible. Retracted confession, if true and voluntary, is admissible. The mere fact that Court constable was allowed to remain present while the accused were making their confession does not involve the total exclusion of the confession from evidence.

It may be said that when police officers are present or are within sight and hearing of the place where the accused is kept during the time allowed for reflection or at the time of recording of the confession the possibility of the accused being influenced by threat or gesture from the police cannot altogether be eliminated. The confession recorded under such circumstances cannot but be viewed with some amount of suspicion that the accused might have been influenced by the police to make the confession.

If it is considered by the Court to have a voluntary confession and substantially true it can be admitted and used against its maker. *Jafar Alam Chowdhury* 20 DLR 666.

**Section 26**—Chowkidar—Confession made in the custody of—Not admissible. *Islam Master* 7 DLR 205 (DB).

**Section 26**—Confession made in custody of military police—The object of protecting persons against making confessions while in police

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1. The figures "1998" were substituted for the figures "1882" by Act VIII of 1973, section 6 and 2nd Schedule, (with effect from 26th March, 1971).



custody cannot apply to a case in which a member of Armed Forces is in temporary military police custody. *Khurshid Hussain PLD 1951 Bal. 7.*

**27.** How much of information received from accused may be proved—Provided that, when any fact is discovered 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.

### Case Law

Statement of accused in presence of co-accused leading to recovery of weapon of offence—Statement may be used against accused only. *Babulal Neharilal AIR (33) Nagpur 120 (DB).*

**Section 27**—Only covers so much of the statement in consequence of which a discovery is made. *Jiando 14 DLR (WP) 43; (1962) PLD (Kar) 882.*

**Section 27**—The accused having been seen in the same field with the deceased, a duty was cast on him to explain as to how did the deceased meet the unnatural death. By itself this circumstance may not be considered enough to connect the accused with the murder but taking it in conjunction with the other circumstances in the present case it assumes an importance of the greatest magnitude. *Nazra 12 DLR (WP) 34; (1960) PLD (Lah.) 739.*

**Section 27**—How much information received from accused may be proved—So much of the information as relates distinctly to the fact thereby discovered. *Bhubani Shahu 2 DLR 39.*

**Section 27**—On the arrest of three accused persons, two of them made certain statements while in custody of the police and thereafter led the police to a ditch and there one of them recovered from inside a bush certain stolen articles. Evidence of joint statement made by the two accuseds is inadmissible in view of nothing in the record to indicate which of the two accuseds made first discovery, the said evidence is not legally available or useable against any of the accused persons. *Rekatullah 13 DLR 750; (1962) PLD (Dac.) 261.*

**Section 27**—Evidence of pointing out by approver of places visited by the accused before the crime—section not applicable. *Ibrahim Bhak 7 DLR (FC) 123.*

**Section 27**—Statement in police custody coupled with pointing out the stolen property, admissible. *Khan 9 DLR (WP) 5.*

**Section 27**—Statement of an accused person leading to a discovery cannot be received in proof of the criminality of another from whom any fact is discovered. *Muhammad Akbar 17 DLR (WP) 9.*

**Section 27**—Statement of a prosecution witness admitted under section 288 CrPC containing confession said to have been made while in police custody by an accused is not saved by section 27, Evidence Act. *State 10 DLR 222.*

**Section 27**—If a confession to a police officer leads to a recovery, evidence about the confession is admissible. *Crown 5 DLR (WP) 98.*

**Section 27**—What a court has to see in such cases is whether the knowledge of an accused person of the place where an incriminating article lay would prove that he had placed the article there. *Crown 5 DLR (WP) 98.*

**Section 27**—The statement of the accused that he had buried the stolen property is admissible under section 27. *Crown 5 DLR (WP) 98.*

**Section 27**—Statement about whereabouts of co-accused— Admissible. *Ismail AIR 1946 (33) Sind 43 (DB).*

**Section 27**—Accused pointing out dead body in the field—Last seen with him before death—Accused must explain her death—Effect. *Nazra PLD 1960 Lah. 739; 12 DLR (WP) Lah. 34 (DB).*

**Section 27**—Dead body found at some distance from place pointed out by accused—Not said to be found on his pointing out. *Muhammad Alam PLD 1960 Lah. 71 (DB).*

**Section 27**—Joint statement of several persons about discovery of dead body—Not admissible till person who first discovered the place is found. *Naurang PLD. 1950 Baghdad-ul-Jadid 79 Rel. 1929 Lah. 665.*

**Section 27**—Joint statement of accused leading to discovery of facts—When admissible. *Abdul Kader AIR 1946 Calcutta 452. (DB).*

**Section 27**—Recovery of dead body at instance of accused—presumption of guilt. *Farid Muhammad PLD 1959 Pesh. 12(DB)*.

**Section 27**—In the absence of any incriminating statement by the accused leading to the discovery of the property, its production alone from a place which was accessible to the public would not be sufficient to establish his possession. *Jumana 16 DLR (WP) 8*.

**Section 27**—Statement after discovery—Inadmissible, *Ramzan PLD 1556 Kar. 350 (DB)*.

**Section 27**—Witness discovered on pointing out of accused—Not a discovery for the purposes of the section. *Muhammad Ramzan PLD 1957 Lah. 956 (DB)*.

**Section 27**—Discovery made at the instance of a person other than the one against whom it is sought to be used—No evidentiary value. *G Qabil Shah PLD 1960 (1) Karachi 697; (1960) KLR 551 (DB)*.

**Section 27**—Statement by an accused in custody of the police leading to the discovery of the dead body of the murdered man inadmissible under section 27 of the Evidence Act, though otherwise it will be met by section 26. *Bachhu vs State 35 DLR 170*.

**Section 27**—Accused brought out robbed goods from a place known only to him—is a strong circumstance to establish that he was himself involved in the commission of the offence (of murder).

The fact is that shortly after the murder accompanied by robbery the condemned prisoner was found in possession of goods robbed which he himself brought from a place of which he alone had the exclusive knowledge. This fact is a very strong circumstance to establish that the condemned prisoner was the person who received these things following the murder and the natural inference is that he was directly concerned in the murder. *Salauddin vs State 32 DLR 227*.

**Section 27**—Place where stolen goods are hidden pointed out by the accused—Place in possession of other person—Evidentiary value of pointing out. *Pathan vs Crown PLD 1951 Bal. 30*.

**Section 27**—Pointing out of place where shoes and turban of deceased were lying—Not of much evidentiary value. *Allah Ditta PLD 1958 Pesh. 1(DB)*.

**Section 27**—Pointing out of dead body by accused in accused's field—Not of much evidentiary value when no other evidence of guilt available. *Ashiq Hussain PLD (1958) Peshawar 10*.



**Section 27**—Accused pointing out stolen property and making confessional statements—Confessional part inadmissible. *Pathan PLD 1951 Baluchistan 30.*

**Section 27**—Confession made while pointing out dead body—Confessional part not admissible. *Abdul Kader AIR 1946 Calcutta 452.*

**Section 27**—Information relating to fact discovered—only admissible. *Abdul Kader vs Emperor AIR (33) 1946 Calcutta 452.*

**Section 27**—Statement made while pointing out place of occurrence and dead body—Not admissible when amounting to confession. *AIR 1946 Patna 210.*

**Section 27**—Confession—Statement in mashirnama that accused had confessed—Not admissible. *Khan 9 DLR (WP) Sind 5; PLD 1955 Sind 65.*

**Section 27**—Where a dead body had been pointed out by the accused and stained shirt on which the chemical examiner did not find any human blood had been discovered after the first information report recorded.

**Held**—The evidence was inadmissible. *PLD (1956) Kar. 350.*

**Section 27**—Recoveries of articles and dead body—made on joint pointing out by several accused—Evidence as to recovery inadmissible. *(1950) PLD 79.*

**Section 27**—Stolen property found in a public place on the pointing out by the accused—unsafe to convict solely on such pointing out. *2 PLD (Bal.) 30.*

**Section 27**—Having regard to the fact that the remains of the dead body were found from a very lonely place where no person would ordinarily go to search for clues to the child missing from the town four miles away, a reason has to be found why the police went to that place at all and no other reason is offered than that the accused himself led them to that place. *Abdus Samad 16 DLR (SC) 261.*

**Section 27**—Confession inadmissible under sections 24, 25 and 26 are admissible when they contain information leading to the discovery of a fact. *Kitab Ali 22 DLR 472.*

**Section 27**—Where the prosecution has established its case by other evidence and the circumstances proved in the case are incompatible with the innocence of the accused, the mere fact that some witnesses for the prosecution mentioned in the first information report were not examined by the prosecution is no ground to hold the prosecution case otherwise. *Kitab Ali 22 DLR 472.*

**Section 27**—Joint statement made by the accused—Admissible in evidence. *Kitab Ali 21 DLR 377.*

**Section 27**—Confessional statements accompanying pointing out of property—Inadmissible.

The convict petitioners not only indicated where the property could be found but also stated that either this was their share of stolen property or indicated the circumstances under which they themselves hid the property. This part of the evidence cannot, therefore, be used against them. *2 PLD (Lah) 352.*

**Section 27**—How much information received from accused may be proved.

The mere fact that one of them actually brought out the thing from the place where the same had been concealed also cannot warrant an inference that he must have been responsible for concealing those articles there. *Rekatullah vs State 13 DLR 750; (1962) PLD (Dac) 261.*

**Section 27**—Discovery of the dead bodies in pursuance of the confessional statement—Effect of.

Statement of condemned prisoner leading to the discovery of dead bodies—Effect of. *Hazrat Ali vs State 42 DLR 177.*

**Section 27**—Joint discoveries—Like information given by more than one accused—Where the joint statement of two accused in police custody led to recovery but the record did not indicate who made first discovery the evidence was held to be not usable against either. *Rekatulla vs State, PLD 1962 Dacca 261.*

**Section 27**—If an incriminating object is actually recovered in consequence of information given by the accused, it can be allowed to be given in evidence. *Khasru vs State; 1983 PLD 318 Para 14(b).*

**Section 27**—Information received from accused—Its language—It may not be incumbent on the part of the police officer to record the statement of the accused in custody giving information leading to discovery of certain fact but if such information is recorded it must be done in the language of accused. *Farid Karim vs State 45 DLR 171.*

**Section 27**— It is not the distance by which the place of occurrence is shifted is material but it is the prosecution case which has been different because of shifting of the place of occurrence and this has cast a suspicion on the prosecution case. *Abul Kashem and others vs State 56 DLR 132.*



**Section 27**—If after an examination of the whole evidence, the Court is of opinion that there is a reasonable possibility that the defence put forward by the accused might be true, such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to benefit of doubt, not as a matter of grace, but as of right. *Abul Kashem and others vs State* 56 DLR 132.

**Section 27**—Statement of accused in police custody leading to the discovery of heroin from the two rooms of two hotels is admissible in evidence under section 27 of the Evidence Act. *State vs Raja Abdul Majib and others* 1 BLC 144

**Section 27**—While the accused person was in police custody he led the police and pointed out the place where he threw the trouser and underwear which is admissible under section 27 of the Evidence Act as that led to the discovery of accused person's blood and mud-stained trouser and underwear which unerringly indicated that the accused had committed the murder of his wife. *State vs Munir and another* 1 BLC 345.

**Section 27**—The recovery of other wearing apparels and toiletries of the deceased at the showing of the condemned-prisoner while in police custody leads to the irresistible conclusion that the condemned-prisoner had the most intimate relationship with the deceased and that wearing apparels and toiletries of the deceased must have been either in the possession of the condemned-prisoner or within his knowledge as to where those articles were. These recoveries are admissible in evidence under section 27 of the Evidence Act. *Khalil Mia vs State* 4 BLC (AD) 223 .

**Section 27**—If the alleged statements or confessions of the appellant made to the police leading to the recovery of the pipegun in question is accepted as admissible under section 27 of the Evidence Act, it is to be determined whether the fact of recovery of the said pipe gun by the police stands proved by the evidence of the police personnel (PWs 2 and 3) alone without being corroborated by any public witness. It is a rule of prudence that when a case, like the present one, hinges on the testimony of police officials alone, it should not be ordinarily accepted without utmost scrutiny. In a proper case independent corroboration should be demanded and if the circumstances are such that such corroboration would be forthcoming, the bare testimony of the police officials should not be accepted as true. *Zillur Rahman @ Zillur vs State* 6 BLC 254 .

**Section 27**—As the arms and ammunition were not only pointed out by the convict-Joynal but it was also unearthed by him from the place of occurrence and, as such, it can be said that accused Joynal had full control and possession over such arms and ammunition attracting section 19(a) and 19(f) of the Arms



Act but so far as convict-appellants Jinnah Karim and Abdul Halim Shah are concerned who had no exclusive possession and control over such arms and ammunition and thus, their conviction under the said sections of the Arms Act cannot be sustained. *Joynal Abedin and ors vs State, represented by the DC, Khulna 9 BLC 311.*

**Sections 27 and 5**—As it appears from the evidence on record that on the very showing of the accused appellant one pipe gun and cartridge were recovered from his house that is, from his exclusive possession and actual and effective control of accused-appellant Nizam, who was rightly found guilty under section 19A(f) of the Arms Act by the Special Tribunal. *Abu Mia and others vs State 7 BLC 390.*

**Sections 27 and 24**—The appellant Nuruddin in his confessional statement implicated himself in joining prior concert to kill Ahmed Hossain, his presence in the spot of killing of such man with a common intention, carrying the dead body and participating in burial for its disappearance obviously constitute offences under charge. Thus the confessional statement coupled with the circumstance as to pointing out of the corpse of Ahmed Hossain by accused Nuruddin is an obvious tendency unerringly pointing towards the guilt of accused Nuruddin in committing murder of Ahmed Hossain and causing disappearance of his corpse. *Nuruddin and others vs State 8 BLC 561.*

**Sections 27 and 25**—An information even by way of confession made in police custody which relates to the fact discovered is admissible in evidence against the accused. *Bashir Ali vs State 45 DLR 63.*

**(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 such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

### Case Law

**Section 28**—Confession made under inducement held out by lambardar—Another confession before another person two hours later—Not admissible. *Nazir PLD 1960 Lahore 189.*

**Section 28**—Admissibility of evidence is the only relevant question—Question as to how the evidence was procured immaterial. Principle equally applicable both to civil and criminal cases. *Kuruma 9 DLR (PC) 339*.

Confession—The term "confession" is not defined in the Evidence Act. The Courts, however, have regarded a confession to be an admission of an accused person of his crime or a statement which would suggest an inference to his guilt. But the person who makes an exculpatory statement or who takes care at every stage to show that he did not take any part in the crime, cannot be said to have made the confession. *Sattar Khan vs State PLD 1970 Pesh. 185*.

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

#### Case Law

**Section 29**—Admissibility of evidence is the only relevant question—Question as to how the evidence was procured immaterial. Principle equally applicable both of civil and criminal cases. *Kumar vs State 9 DLR (PC) 339*.

**30. Consideration of proved confession affecting person making it and others jointly under trial 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 of such persons as well as against the person who makes such confession.

<sup>1</sup>[*Explanation*—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence<sup>2</sup>.]

### **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 trial of 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".

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

### **Case Law**

Co-accused making implied confession—Statement not admissible against co-accused. *Fateh Sher 1956 Lahore 157; PLR 1956 Lahore 58 (DB)*.

**Section 30**—Co-accused—Confession made by one co-accused against another—Admissible even when confessor ascribes part of crime to himself. *Dhanapati De AIR 1946 Calcutta 156 (DB)*.

**Section 30**—Admission by accused—Witness making general statement that some accused made admission of having committed the crime—Statement has no value. *Manzoor PLD 1957 Lahore 1023; 1958(1) WP 1189 (DB)*.

**Section 30**—Co-accused—Confession by one accused—How far sufficient to prove case against co-accused. *Moqbool Hussain PLD 1960 Supreme Court 382; PLD 1960 (2) WP (SC) 958; 12 DLR (SC) 217*.

**Section 30**—Co-accused—confession of accused may be used against co-accused—Evidence valuable only when corroborated. *Bhuboni Sahu PLD 1949 Privy Council vs The King 2 DLR 39*.

1. Inserted by the Indian Evidence Act, 1872 (Amendment) Act, 1891 (III of 1891), section 4.

2. Cf. Explanation 4 to section 108 of the Pakistan Penal Code (Act XV of 1860).



**Section 30**—Evidence of accomplice—value of—It is an accepted rule that one accomplice cannot corroborate another accomplice. The words "take into consideration" in section 30 do not mean that the confession is to have the force of sworn testimony. But such a confession is evidence in the sense that it is a matter which the Court, before which it is made, may take into consideration in order to determine whether the issue of guilt is proved or not. *MK Thiagaraja Bhagavathar AIR 1946 Madras 271.*

**Section 30**—Confession by one co-accused in a case under section 302 IPC confessing to an offence under section 201 PPC not admissible against others. *Gangavva and others AIR 1946 Madras 124 (DB).*

**Section 30**—Conviction—Should not be based on uncorroborated retracted confession. *Asgar PLD 1958 Dacca 75; 9 DLR 511.*

**Section 30**—A confession is a statement of an accused person which has not been made on oath and has not been tested by cross-examination, and it is for this reason that Courts have often exercised caution in basing a conviction upon such evidence and have insisted sometimes that a retracted confession should not be made the sole basis of a conviction, if it has not been corroborated in some material particulars by other independent evidence. *State PLD 1959 Dacca 226; 10 DLR 580.*

**Section 30**—Retracted confession of two accused—Admissible against each other—Corroboration necessary—Confession of each may corroborate that of the other. *Ram Prakash PLD 1959 SC (Ind.) 19.*

**Section 30**—The confession of an accused can, according to the provisions of section 30 of the Evidence Act, be taken into consideration even against other person being jointly tried with that person and, in such circumstance, the confession is in the same position as the evidence of an accomplice with this difference that it is not on oath and not tested by cross-examination. *Badsha Khan PLD 1959 Dacca 226; 10 DLR 580 (DB).*

**Section 30**—The language of the section is very guarded and lends no warrant to the inference that an incriminating statement made by a co-accused could be treated as substantive evidence against the other person, sufficient to sustain his conviction. It is well settled that there ought to be other evidence, whether direct or circumstantial, linking such a person with the crime, before a confession made by a co-accused could be adverted to, in adjudging the guilt of that person.

The persuasive efficacy of such confessional statements would be further weakened by the circumstance that their makers have themselves resiled from

them. *Maqbool Hussain PLD 1960 SC (Pak) 382; PLR 1960(2) WP (SC) 958; 12 DLR (SC) 217.*

**Section 30**—There is a clear difference between the weight that may be given to a retracted confession against the accused person who makes it and the weight to be given to a retracted confession against co-accused. In the case of a co-accused section 30 comes into operation; when a confession is to be used against the accused who made it section 30 does not apply. A retracted confession of a co-accused should not be taken into consideration against another accused unless it is corroborated in the full sense of the word and then it can be taken in consideration against, and may be said to corroborate the confession of another accused, but not otherwise. But even then under section 30 it is not the basis of a conviction; it stands on the same footing as the evidence of an accomplice and can be considered against the co-accused, and relied on corroboration. An accused can in law and prudence undoubtedly be convicted on his own retracted confession. When an accused person is being convicted upon his own confession, section 30, Evidence Act, does not come into operation and the meaning of the words "may be taken into consideration" used in that section does not affect the case at all. *Ismail AIR (1946), Sind 43 (DB).*

**Section 30**—Where the question purely is as to whether the judicial confession of each of the accused should have been acted upon or not or accepted as voluntary and true or not, it is a question purely of fact and if the jury have taken one view of the matter their view should prevail and reference should not be made purely on such question of fact. *State vs Makhtar Ali 10 DLR (DB) 155.*

**Section 30**—Admission regarding co-accused—Not relevant. *Surujpaul vs Queen PLD 1956 PC 28.*

**Section 30**—Applies only to confessions and not statement only—The section applies to confessions, and not to statements which do not admit the guilt of the confessing party. *Bhuboni Sahu PLD 1949 PC 90; 2 DLR 39.*

**Section 30**—Applicability—Necessary conditions—Interpretation.

The section will apply in a case if the following conditions are fulfilled :

- (a) that more persons than one are being tried jointly,
- (b) that the joint trial is permissible by the law, and
- (c) that the joint trial is for the same offence, or for its abetment or attempt.

*Hakim Ali PLD 1960 (WP) Lahore; PLR 1960 (1) WP 1229.*



**Section 30**—Co-accused—confession made by one accused putting equal criminal liability on other accused—Admissible against both. *Akhtar Ali PLD 1954 Lah. 210; PLR 1954 Lahore 250.*

**Section 30**—Confessional statement made while being interrogated under section 342 CrPC—Not to be used against co-accused. *Akhtar Gul PLD 1960 (WP) Peshawar 170.*

**Section 30**—The section merely provides that the Court "may take into consideration" such confessions as against the appellant, as well as against their makers.

There ought to be other evidence whether direct or circumstantial linking such a person with the crime, before a confession made by a co-accused could be adverted to, in adjudging the guilt of the person. *Maqbool Hossain 12 DLR (SC) 217.*

**Section 30**—Co-accused's confession is very weak—not evidence—does not amount to proof. *Bhuban Shahu 2 DLR (PC) 39; Muktar Ali 10 DLR 155.*

**Section 30**—Corroboration—Confession of a co-accused cannot corroborate the confession of another accused. *Muktar Ali 10 DLR 155.*

**Section 30**—Section provides that the court may take the confession and thereby, no doubt, make it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. *Bhubani vs King 2 DLR (PC) 39.*

**Section 30**—Confession of an accused may be taken into consideration—but is not strictly evidence against a co-accused. *State vs Mukter Ali 10 DLR 155.*

**Section 30**—Precaution to be observed in examining co-accused's evidence. *Wali Md 3 DLR (PC) 372.*

**Section 30**—The difficulty in all cases where more than one person are accused of a crime and when the evidence against one is inadmissible against another is that, however carefully assessors or a jury are directed and however firmly a judge may steel his mind against one by the evidence admissible only against another, nevertheless the mind may inadvertently be affected by the disclosures made by one of the accused to the detriment of another. *Wali Md vs King 3 DLR (PC) 372.*

**Section 30**—Confession affecting co-accused but affecting the maker only impliedly—inadmissible against co-accused. *1956 PLD Lahore 157.*



**Section 30**—Confession tarring co-accused with same brush as the confessing accused may be considered against both. (1954) PLD (Lah.) 210.

**Section 30**—Confession retracted can be used against the maker but is very weak evidence against co-accused. (1950) PLD (Lah) 507.

**Section 30**—Retracted confessions of two co-accused—Admissible against each other—Corroboration in material respect required as a rule of prudence, (1957) PLD (Lah). 956.

**Section 30**—Confession of co-accused implicating another accused can be taken into consideration even though retracted before the committing Magistrate but was again accepted in the Sessions Court. *Sarwar and others vs State 21 DLR (SC) 61.*

**Section 30**—Consideration of confession—Confession affecting person making it and others—When confessional statement of an accused is found to be voluntary and partly exculpatory and partly inculpatory, the exculpatory part being improbable, contrary to reason and ordinary human conduct is liable to be rejected and the inculpatory part can be relied on even if the confession is subsequently retracted. Inculpatory part of the confession can also be sued against the other accused. *Abul Kashem vs State 42 DLR 378.*

**Section 30**—The confession is sufficient to find accused Rina guilty of the charge under section 302/34 Penal Code inasmuch as she participated in the murder starting from hatching of conspiracy for killing her husband in order to marry accused Manik to allowing the latter to bring . . . in poison and mix it with the drinking water of her husband's jug and then to see the husband drinking that water; then after his death to hang the body and raising a feigned cry. Besides, the circumstances showed there was no scope for anyone to enter the room to kill her husband without her cooperation. *Shahjahan Manik vs State 42 DLR 465.*

**Section 30**—Confession by co-accused—Its worth in the absence of corroboration—A confession made by a co-accused in a joint trial for the same offence affecting himself and others may be taken into consideration. The confession of such an accused may lend assurance to the other evidence on record. *Babor Ali Molla & others vs State 44 DLR (AD) 10.*

**Section 30**—Confession—Joint trial—Where more persons than one are being tried jointly for the same offence, a confession made by any one of them affecting himself and anyone of his co-accused can be taken into consideration by the Court not only against the maker of the confession but also against the co-accused. It may not be an evidence within the strict meaning of the term, but it lends assurance to other evidence on record. *State vs Abul Khair 44 DLR 284.*

**Section 30**—Confession—retraction of an order of conviction can be passed solely on the basis of a confession, whether retracted or not, if it is considered and found to be true and voluntary. Though there is no compulsion that a confession need be materially corroborated yet it is prudent that a court should look for it.

We are to examine the confessional statement in the light of the circumstances under which it is made and the other evidences on record corroborating the chain of circumstances as narrated by the accused before the Magistrate in his confessional statement and this corroborating need not always be in material particular as even a general corroboration or corroboration by medical evidence would be considered to be enough. *Abdur Rahman Syed vs State 44 DLR 556*.

**Section 30**—When the confessional statement did not say that the confessing accused had committed the offence along with other accused, conviction of the latter can not be based only on such confession without any corroboration from other sources. *Mofazzal Hossain Mollah & others vs State 45 DLR (AD) 175*.

**Section 30**—The extra-judicial confession made in police station in presence of constables who had arrested the confessing accused and the police officer who had investigated the case is inadmissible in evidence. *Mofazzal Hossain Mollah & others vs State 45 DLR (AD) 175*.

**Section 30**—Confession—When not voluntary and true—The condemned prisoner was in police custody for 2 days with no explanation. This coupled with allegation of police torture shows the confession to be not voluntary. Confession containing exculpatory materials outweigh the inculpatory materials and then the statements having not been corroborated, the confession cannot be said to be true as well. *Farid Karim vs State 45 DLR 171*.

**Section 30**—Confession of a co-accused cannot be the sole basis for conviction. *State vs Nurul Hoque 45 DLR 306*.

**Section 30**—It is true confession of an accused may be used as against other co-accused in the same trial. But it is for a limited purpose. Confession of a co-accused itself is not evidence but it may be used as such if it is found to be true and voluntary as against other co-accused not as a solitary basis but for the purpose of lending assurance to any other evidence found against him. *Abdul Hossain and others vs State 46 DLR 77*.

**Section 30**—Confession of co-accused—The confession of an accused is no evidence against the co-accused. Such confession cannot be taken into



consideration against his co-accused and it can only be used to lend assurance to other legal evidence. But in the absence of any substantive evidence the confession of a co-accused is of no consequence against other accused persons. *State vs Tajullslam* 48 DLR 305.

**Section 30**—The confession of a co-accused may be used only to lend assurance to other evidence on record in support of the guilt of the accused but the same cannot be used as a substantive evidence. *Moslemuddin and another vs State* 48 DLR 588.

**Section 30**—There being no independent evidence except the confessional statement of appellant Farook Mahajan against the other accused appellants. The trial Court was wrong in finding all the appellants guilty. *Faruque Mohajan and 4 (four) others vs State* 49 DLR 47.

**Section 30**—Confessional statement of one accused cannot be used as evidence against another co-accused unless there is any independent corroboration. *Sahel Monir, son of MA .Monir of Dhaka vs State* 49 DLR 407.

**Section 30**—The evidentiary value of a retracted confession is practically nil in the absence of strong independent evidence. *Sohel Monir, son of MA Monir of Dhaka vs State* 49 DLR 407.

**Section 30**—Confession by one accused is not a substantive evidence as against another non-confessing accused and cannot be used for conviction of the non-confessing accused. *Abdul Malik vs State* 36 DLR 275.

**Section 30**—Confession is species of admission—Confession—As to the meaning of confession was noted by Privy Council— Confession, Evaluation of confession—The Court may take the confession into consideration which can be put into the scale and weighed. *State vs Lalu Mia* 39 DLR (AD) 117.

**Section 30**—Evidence adduced by prosecution—For appreciation of its quality and worth—Broad facts of the case recounted. Appreciation of oral evidence—So-called confession by a co-accused (appellant Daud) relied upon by the Trial Court—that confession is no confession in the eye of law as it was a testimony against the other accused without the maker having involved himself. *Ibrahim Mollah vs State* 40 DLR 216.

**Section 30**—If the principal evidence in the case namely, direct oral evidence, does not qualify to be trustworthy the alleged confession is of no avail to the prosecution for sustaining the order of conviction. *Ibrahim Mollah vs State* 40 DLR (AD) 216.



**Section 30**—Examination and analysis of oral evidence—High Court Division failed to give due and proper consideration to the well-established principles governing appreciation of evidence in a case where there is possibility of false implication because of existing dispute and enmity between the parties—Where the witnesses are related and partisan and have a strong motive to depose falsely, their evidence must be put to the strictest scrutiny having regard to the attendant circumstances. *Ibrahim Mollah vs State 40 DLR (AD) 216.*

**Section 30**—Neither the trial Court nor the High Court Division scanned the evidence in an analytical manner. After all these infirmities on the side of the prosecution the trial Court and the High Court Division should have entertained reasonable doubts as to the alleged participation of the appellant in the throwing of bombs. *Ibrahim Mollah vs State 40 DLR (AD) 216.*

**Section 30**—In a joint trial of several persons Court may take into consideration confessional statement of an accused against himself and other accused. *Md. Azad Shaikh vs State 41 DLR 62.*

**Section 30**—Extra-judicial confession—If at all made appears to be wholly untrue—No reliable evidence of corroboration of the alleged extra-judicial confession and it is not at all safe to rely and act upon such extra-judicial confession.

**Section 30**—The alleged extra-judicial confession if at all made by the said accused also appears to be wholly untrue. So, in the whole analysis of the facts and circumstance of the case and the evidence on record and the alleged extra-judicial confession of the condemned-prisoner, we find that there is no reliable evidence of corroboration of the so-called alleged extra-judicial confession and it is not at all safe to rely and act upon such extra-judicial confession and convict the accused on that basis. Hence the conviction of the condemned prisoner Badsha Mollah on the basis of alleged extra-judicial confession cannot be sustained in law. *State vs Badshah Mollah 41 DLR 11.*

**Section 30**—Mere absconding cannot always be a circumstance to lead to an inference of guilt of the accused.

Mere abscondance cannot always be a circumstance which should lead to an inference of guilt of the accused. Sometimes out of fear and self-respect and to avoid unnecessary harassment even an innocent person remains absconding for some time.

Abscondence was not with any guilty mind. Existence of enmity is not disputed. Accused has been falsely implicated in this case out of grudge and enmity.

In this case, the condemned-prisoner Badsha remained absent or absconding for some time but subsequently he surrendered himself in court before the commencement of the trial. It appears this abscondence was not with any guilty mind. So, this circumstance cannot be treated as an incriminating one. *State vs Badshah Mollah 41 DLR 11.*

**Section 30**—The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true. *Joygun Bibi vs State 12 DLR (SC) 156; (1960) PLD (SC) 323.*

**Section 30**—Confession of a co-accused is not substantive evidence within the meaning of section 3, Evidence Act. But can be considered by the court along with other evidence. It can only be used to lend assurance to other evidence on record. *73 CWN 468 (480); AIR 1964 SC 1184. Mobarak Hossain vs State; 1981 BLD 286(b); Abdul Malek vs State; 1985 BLD 67(b). Mahmud Ali vs State; 1985 BLD 218(a).*

**Section 30**—Not a substantive evidence as against another non-confessing accused and cannot be used for conviction of the latter. *Amir Hossain Howladar vs State; 1984 BLD (AD) 193 (a); Erman Ali vs State; 1985 BLD 96(b).*

**Section 30**—Corroboration—Confession of one accused cannot be used to corroborate the confession of another accused for the purpose of convicting a non-confessing accused. *Abdul Malek & others vs State 1985 BLD 67(c); Abdul Jalil & others vs State; 1985 BLD 137(a).*

**Section 30**—Confessional statement of the co-accused can be used only in support of other evidence for corroboration but it cannot be made foundation for conviction if there is no other reliable evidence. *State vs Lahu Mia & others; BLD 1987 (AD) 212.*

**Section 30**—Retracted confession—It is well settled that a person can be convicted on retracted confession alone, if it is found voluntary and true though as a matter of prudence some corroboration may be asked for. *Abdul Jalil & others vs State; 1985 BLD 137.*

**Section 30**—When the confession is partly inculpatory and partly exculpatory corroboration of the inculpatory part is necessary to rely upon the same. *Ali Asgar & others vs State; 1986 BLD 436(a)*

**Section 30**—Retracted confession of an accused implicating a co-accused cannot be relied upon without corroboration in material particulars by independent evidence. *Ali Asgar vs State=1986 BLD 436(c); PLD 1959 (D) 226.*



**Section 30**—Extra Judicial Confession of a co-accused may be taken into consideration along with other evidence. *Mubarak Husain vs State 1983 BLD (AD) 329.*

**Section 30**—Inculpatory & exculpatory—It is not confession but testimony when the maker does not involve himself in any part of the commission of the alleged offence and cannot be used against the co-accused. *Ibrahim Mollah vs State BLD 1987 (AD) 248(a).*

**Section 30**—It is very risky to rely on the statements of the two confessing accused so as to convict accused Mohammad Ali as there is absence of any corroborative evidence to identify Mohammad as Mohammad Ali. *Mohammad Ali vs State 52 DLR 245.*

**Section 30**—The confessional statement of an accused can very well be the basis of conviction provided the same is true and voluntary. *Hasmat Ali vs State 53 DLR 169.*

**Section 30**—Prolonged police custody immediately before recording of the confessional statement is sufficient, if not otherwise properly explained, to render it as involuntary. *Hasmat Ali vs State 53 DLR 169.*

**Section 30**—Retraction is immaterial, if the confession of the accused is found to be voluntary and true. *Meghna Petroleum Marketing Co Ltd and others vs M F Limited and others 53 DLR 368.*

**Section 30**—Conviction can be based solely on confession if found true and voluntary, though retracted subsequently. *Meghna Petroleum Marketing Co Ltd and others vs M F Limited and others 53 DLR 368.*

**Section 30**—If the disputed confession is partly exculpatory and partly inculpatory, it is a confession in the eye of law. *Meghna Petroleum Marketing Co Ltd and others vs M F Limited and others 53 DLR 368.*

**Section 30**—The conviction cannot be based solely on the basis of confessional statement of a co-accused unless it is corroborated by some other independent evidence. *State vs Lieutenant Colonel Syed Farook Rahman 53 DLR 287.*

**Section 30**—The alleged solitary confinement was after the recording of the confessional statement and does not affect the confession as involuntary. *State vs Lieutenant Colonel Syed Farook Rahman 53 DLR 287.*

**Section 30**—Confession of a co-accused cannot by itself be the basis of conviction of another co-accused nor even against himself if the same is not



substantiated by satisfactory evidence proving the guilt of its maker. *Zahid Hossain @ Paltu and others vs State 55 DLR 160.*

**Section 30**—Conviction can be based on judicial confession if it is established that it is true and voluntary and is substantiated by other evidences, whether direct or circumstantial and materials on record. *State vs Moslem 55 DLR 116.*

**Section 30**—Conviction can be based on the sole confession of the accused although retracted subsequently if it is found to be true and voluntary. *Zakir Hossain and another vs State 55 DLR 137.*

**Section 30**—Conviction of the confessing accused based on a retracted confession even if uncorroborated cannot be said to be illegal if the court believes that it is true and voluntary. *State vs Rafiqul Islam 55 DLR 61.*

**Section 30**—The trial Court first has to find the confessional statement to be true and voluntary and then only may place reliance on it. *State vs Rafiqul Islam 55 DLR 61.*

**Section 30**—The confession of one co-accused cannot be used for corroborating the confession of another co-accused as both are tainted evidence, much more so when they are retracted, for then the maker himself repudiates the correctness of his earlier statements—the confession of a co-accused could not be sustained and further the confession of one co-accused could not be said to be corroborated by the confession of another co-accused. *Rezaul Karim (Md) alias Rezaul Alam Rickshawa vs State 55 DLR 382.*

**Section 30**—Confession of an accused is not a substantive piece of evidence against the co-accused, so such evidence alone without substantive corroborative evidence cannot form the basis of conviction of a co-accused. *Rezaul Karim (Md) alias Rezaul Alam Rickshawa vs State 55 DLR 382.*

**Section 30**—Confession of a co-accused can be taken into consideration and on the strength of that confession another co-accused can be convicted provided the said confession is corroborated by any other evidence, either direct and circumstantial. *State vs Mir Hossain alias Mira and others 56 DLR 124.*

**Section 30**—No statement that contains self-exculpatory matter can amount to confessional statement if the exculpatory statement is of some fact which if proved would negative the offence confessed. *State vs Md Bachchu Miah @ Abdul Mannan and 5 others 51 DLR 355.*

**Section 30**—If confession falls short of plenary acknowledgment of guilt it would not be a confession even though the statement contained some incriminating fact. *Jabed Ali (Md) alias Jabed Ali and others vs State 51 DLR 397.*

**Section 30**—Considering the two confessional statements of co-accused implicating the appellant who caused several injuries on the person of the victim three of them from the back side with double-edged sharp cutting weapon which was recovered from the house of the appellant on the following day of occurrence when almost all the prosecution witnesses supported the prosecution case, the trial Court came to a correct finding that the appellant inflicted three severe injuries and the victim Mozaffar Ali died because of such injuries and hence the conviction and sentence passed by the trial Court against the appellant is affirmed. *Abul Kalam Azad (Md) vs State 5 BLC 162.*

**Section 30**—The husband, Saiful Islam, might not have actively participated in the commission of gang rape crime but it was within his prior knowledge and only his resistance or even protest or at least timely intimation to others could have saved her honour and life. Since there was no definite evidence that he instigated the murder of his wife, the offence of the condemned prisoner, the husband, does not come within section 6(4) read with section 14 of the Act but comes within section 6(3) read with section 14 of the Act, after considering his confessional statement and the attendant circumstances. *State vs Md Joynal Abedin and others 5 BLC 672.*

**Section 30**—Confession of an accused is not a substantive piece of evidence against the co-accused and such evidence alone without substantive corroborative evidence cannot form the basis of conviction of a co-accused. The High Court Division acted wrongly in treating the confessional statement of co-accused as substantive evidence and treating the evidence of PWs 4 and 7 as corroboration thereof. *Ustar Ali vs State 3 BLC (AD) 53.*

**Section 30**—The victim was kidnapped by the accused Hemayet and done to death in a beel by the said accused with the help of the petitioners and others and his body was recovered from the said beel on the showing of one of the accused and only eye-witness of the occurrence is PW 25 who has no enmity with the accused persons including the petitioners. Only because the hurricane lamp was not seized by the Investigation Officer his evidence cannot be doubted and High Court Division committed no illegality in relying upon his evidence and also on the confessional statement of the co-accused persons to uphold the conviction of the petitioners. *Chowdhury Nuruzzaman & another vs State 6 BLC (AD) 58.*



**Section 30**—Excepting the three confessional statements of the co-accused persons and the evidence of PW 20 stating that a gun bearing No. 10063 was recovered from the possession of convict-appellant Abbas there is no other evidence connecting him with the offence charged against him. The effect of confession of an accused implicating the co-accused is much weaker than the evidence of an approver. It is an established rule of evidence as well as a rule of prudence that a confessional statement of a co-accused cannot be used as a sole basis of conviction in the absence of independent corroborative evidence. It appears from the evidence of PW 25 that he failed to recover the looted gun and the licence of the deceased Chairman Haru but the learned trial Court made the licence of the gun as material Exhibit 11 without having been proved by any witness and the number of the alleged recovered gun was also different and hence complicity of Abbas Ali in the commission of the alleged offence has not been proved by the prosecution and the conviction and sentence against him is not sustainable in law being contrary to the evidence on record. *State vs Shahjahan 7 BLC 503.*

**Section 30**—Confession of a co-accused being not substantive piece of evidence against other co-accused cannot be the basis of conviction of other co-accused without independent corroboration. *Abdul Hakim @ Henju and others vs State 8 BLC 362.*

**Section 30**—The confession of a person who is dead and has never been brought before the Court for trial is not admissible under section 30 of the Evidence Act. The Bishesh Adalat illegally took into consideration of the confessional statement of Mokbul and on a misconception of the procedural law drew an adverse inference against the defence. The statement has not been proved by any witness. Assuming that it is a statement recorded under section 164, CrPC it can never be used as substantive evidence of the facts stated therein but it can be used to support or challenge the evidence given in court by the person who makes the statement and not otherwise. This statement having not been recorded in presence of accused Monsur and other accused persons, it cannot be used against them. *State vs Mozam @ Mozammel and others 9 BLC 163.*

**Section 30**—Corroborative Circumstances—This section by itself does not need any corroboration but by using the rule of prudence it is now an accepted principle that there should be corroborative circumstances. *Sheikh Ahmed vs State 2 BSCD 87.*

**Section 30**—Each of the petitioners confessed separately before the Sub-Divisional Magistrate that he had committed the offence of dacoity—The trial



Court as well as the appellate Court found the confession to be true and voluntary one—Thus section 30 of the Act not attracted in the case. *Hossain Ali and others vs State 6 BSCD 183*.

**Sections 30 and 3**—Since the confessional statement is not required to be taken on oath and taken in presence of a co-accused and not tested by cross-examination it cannot be considered as substantive evidence against the co-accused. *Mojibar vs State 51 DLR 507*.

**Sections 30 and 3**—Confessional statement cannot be used against a co-accused without independent corroborative evidence. *Abu Sayed vs State 53 DLR 559*.

**Section 30 and 3**—Confession—Question of credibility when part of the occurrence is omitted or suppressed—It cannot be found nor it could be suggested by either the prosecution or the defence why throttling part of the occurrence was omitted or suppressed. Even if it be taken that accused Rina had deliberately suppressed the throttling part of the occurrence in her judicial confession that cannot mean that the confession was not true. *Shahjahan Manik vs State 42 DLR 465*.

**Section 30 read with section 3**—Confessional statement of co-accused implicating other co-accused not admissible for latter's conviction. *Amir Hossain Howlader vs State 37 DLR (AD) 139*.

Explanation—"offence"—Confession of a co-accused not evidence as defined in section 3 of the Evidence Act.

The explanation given under the section includes within the term "offence" used in the section the abetment of or attempt to commit the offence.

The language of the section does not render the confession of a co-accused as evidence within the definition of section 3 of the Evidence Act. It simply says that the Court may "take into consideration such confession." *Lutfun Nahar Begum vs State 27 DLR (AD) 29*.

—Such confession can only lend assurance to other evidence.

Confession of an accused cannot be treated as substantive evidence against another accused but that it can only be used "to lend assurance to other evidence" *Lutfun Nahar Begum vs State 27 DLR (AD) 29*.

**Sections 30 and 24**—It has been established by the evidence on record that appellant Syed Ahmed was in police custody before and after recording his confession. A confession recorded in between the period of police custody is

always open to grave suspicion about its voluntary nature. The possibility to coerce and/or induce to make the confession cannot be brushed aside. The confession in question may partly be true version of the occurrence but a doubt is created on its voluntary nature. The doubt on the voluntary character of the confession should go in favour of its maker. Moreso, there is no material in the evidence to show that the police attempted to find out the corpse of the deceased to justify their custody even after the recording of confession. In such a situation the confession in question should not be taken into consideration as legal evidence against the maker and as a result of which the appellant Syed Ahmed cannot be held guilty for the offence under charge. A conviction on the sole basis of confession of the co-accused cannot be sustained. Except implication in the confessional statements no material is found and taken into consideration against these accused-appellants Nurul Alam, Samiuddin, Fazal Karim, Abul Kalam alias Kalu, Thanda Mia and Altaf Mia and, as such, there is no evidence to maintain their conviction. *Nuruddin and others vs State* 8 BLC 561.

**Sections 30 and 24**—Considering the confessional statement together with the evidence of its recording Magistrate it appears that the confessing accused did not take part in the occurrence and that there is nothing on record to show that anybody had recognised him during the occurrence or that any booty was recovered from his control and possession and hence the confessional statement is an exculpatory one and it cannot be used against others in the absence of independent corroborative evidence. *Halim and others vs State* 8 BLC 19.

**Sections 30 and 24**—Confessional statement is a piece of corroborative evidence lending assurance to the substantive evidence of PWs 17, 19 and 20 and under section 30 of the Evidence Act, confessional statement is an admissible evidence. Judicial confession of a co-accused, although, cannot be treated as substantive evidence against another accused person and cannot be sole basis for conviction of another accused but along with other direct or circumstantial evidence judicial confession may be taken into account and can be used to lend assurance to other evidence. *State vs Ershad Ali Sikder and another* 8 BLC 107.

**Sections 24 and 30**—Before recording the confessional statements of convict Jamila Khatun and condemned prisoner Ali Hossain by the Magistrate, they were detained by the police for two days and seven days respectively when it becomes the bounden duty of the recording Magistrate to try to ascertain whether there was any manner of police torture and to assure them that they would not be sent back to police custody whether they made any confession or not which having not been done by the recording Magistrate the confessional



statements cannot be treated as voluntary and true and it cannot be used against them nor against other co-accused. *State vs Ali Hossain and others* 4 BLC 43.

**Sections 30 and 24**—Confession not sufficient basis for conviction of co-accused. *Manohar Singh, AIR 1946 Allahabad 15 (DB)*.

—Judicial confession, retracted—Accused did not complain of any torture, threat or inducement while making the confession—The confession voluntary and true. *State vs Lutfor Fakir* 24 DLR 217.

—Confessional statement made while being interrogated under section 342 CrPC—Not to be used against co-accused *Akhter Gul PLD 1960 (WP) Peshawar 170*.

—"Offence", as used in this section, includes "the abetment of, or attempt to commit, the offence". *Hakim Ali PLD 1960 (WP) 1229*.

—Offence—Meaning of—"Offence," as used in this section, includes the abetment of or attempt to commit, the offence. *Hakim Ali PLD 1960 (WP) Lahore 31; (1960) PLR (WP) 1229*.

Confession when proved against confessing accused can be taken into consideration against co-accused in same offence. *Nausher Ali vs State* 39 DLR (AD) 194.

—A statement made by a co-accused cannot be treated as substantive evidence against other person sufficient to sustain his conviction. *Mamud Ali vs State* 37 DLR 261.

**Sections 30 and 114(b)**—Court may take into consideration the confessional statement of a co-accused under section 30 of the Act against the one who did not confess but an accomplice is unworthy of credit unless he is corroborated in material particulars. *Nazrul Islam & others vs State* 45 DLR 142

**Sections 30, 3, 24 and 45**—Considering the medical evidence along with *Modi's Medical Jurisprudence and Toxicology*, there is no doubt that the victim has not been raped by the accused persons before her death. The confessional statements of two accused persons were procured by torture which were neither true nor voluntary and no conviction can be based on such confessional statements, Moreso, both the confessional statements are exculpatory in nature. There is no other evidence on record regarding rape corroborating the confessional statements. A confession of a co-accused is very weak evidence. It does not come within the definition of evidence as defined in section 3 of the Evidence Act. Thus the confession of a co-accused implicating other co-accused



is not legally admissible for the conviction of other co-accused. The Bishesh Adalat convicted accused Monsur, Mozam, Faruque and Montaz relying on the confessional statements made by Mohammad Ali and Rojab Ali which is not sustainable in law. *State vs Mozam @ Mozammel and others* 9 BLC 163.

**31. Admissions not conclusive proof but may estop—** Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

### Case Law

**Section 31—Admissions—Conclusive proof only when amounting to estoppel—Evidentiary value of.**

Admissions according to section 31, Evidence Act are not conclusive proof of the matters admitted. It is always open to a person who has made an admission to show that he had done so under some mistake, misapprehension or miscalculation. *Pakistan Development Corporation Ltd PLD 1960 (WP) Karachi* 885.

**Section 31—Admission on wrong impression of law—Not binding—No estoppel should ensue.** *Karuppan Chettiar (AIR) 1946 Madras* 398.

**Section 31—Admissions are not conclusive proof of the matters admitted and the party is at liberty to prove that these were made under mistake of law or fact or that these were untrue or were made under threat, inducement or fraud.** *Sonali Bank vs Hare Krishna Das and others* 49 DLR 282.

### STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

**32. Cases 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 acknowledgment 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 a 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 has arisen.

- (5) **Or relates to existence of relationship**—When the statement relates to the existence of any relationship <sup>1</sup>[by blood, marriage or adoption] between persons as to whose relationship <sup>1</sup>[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 <sup>1</sup>[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 expresses feelings relevant to matter in question**—When the statement was made by a number of persons, and expressed

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1. Inserted by the Indian Evidence (Amendment) Act, 1872 (XVIII of 1872) section 2.



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 <sup>1</sup>[Chittagong] 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 39[Chittagong], for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from <sup>2</sup>[Chittagong] 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 <sup>2</sup>[Chittagong] 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 has 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.

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1. Substituted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), section 3 and 2nd Schedule, for "Calcutta" (with effect from the 14th October, 1955).

2. The word "Chittagong" was substituted for the word "Karachi" by Act VIII of 1973, section 7 and 2nd Schedule (with effect from the 26th March, 1971).

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 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.

### Case Law

**Section 32**—The provision in section 164 of the Code of Criminal Procedure, does not in any way affect the admissibility of a statement made by a person if it falls within the terms stated in section 32 of the Indian Evidence Act. To be admissible under that section, it is not necessary that such statements, usually described as dying declaration, must necessarily have been recorded and much less recorded in accordance with the provisions contained in Chapter XXV of the Code of Criminal Procedure. Dying declarations are admissible even if orally made. *Allah Bakash PLD 1951 FC III; 3 DLR 388.*

**Section 32**—There is no absolute rule of law, or even a rule of prudence that a dying declaration unless corroborated by other independent evidence, is not fit to be acted upon and made the basis of conviction. *Khushal Rao PLD 1958 Supreme Court (Ind.) 203.*

**Section 32**—If the Court, after examining the dying declaration in all aspects, and testing its veracity. has come to the conclusion that it is not reliable by itself and that it suffers from an infirmity, then, without corroboration it cannot form the basis of conviction. *Kaushal Rao PLD 1958 Supreme Court (Ind.) 203.*

**Section 32**—A dying declaration is a valuable piece of evidence and if it is free from suspicion and believed to be true it may be sufficient for conviction *Shahbaz 9 DLR WPC (Lahore) 1.*

**Section 32**—Dying declaration—Test of veracity—When may be sufficient for conviction without corroboration. *Khushal Rao PLD 1958 Supreme Court (Ind) 203 : AIR 1940 Mad. 196 (FB).*

**Section 32**—Dying declaration made in one language but recorded in another—Evidentiary value not lowered. *Bakshish Singh PLD 1958 Supreme Court (India) 163.*

**Section 32**—Document in which deceased referred to herself as wife of R—Admissible in evidence to show her relationship with R. *Ranalal PLD 1960 Dhaka 52.*

**Section 32**—Section 32 requires that there shall be proof that a person cannot be found or cannot be procured without an unreasonable amount of delay or expense before his statement is admitted. This proof is condition precedent to the reception of his statement under this section. *Esmail Abdul Sattar PLD 1957 (WP) Kar. 765; PLR (1958) WP 1129.*

**Section 32**—Diary of the deceased—May be admitted as proof of motive. The diary of the deceased which recited different facts which could serve to prove motive for the crime was sought to be produced as evidence of motive. *Crown vs Abdul Ghani PLD 1956 (WP) Lah. 300; PLR 1956 Lah. 904.*

**Section 32**—Letters written by deceased—Admissible when they throw light on murder. *Ghulam Ahmed Khan PLD 1957 (WP) Kar. 824; 10 DLR WP Kar.55.*

**Section 32**—The test of admissibility of the statement against interest made by the deceased person are that :



1. the deceased must have had personal knowledge of the fact he was stating;
2. the facts stated should have been to the immediate prejudice of the deceased;
3. the statement must have been to the knowledge of the deceased contrary to his interest and;
4. the interest must be either pecuniary or proprietary. *Ghulam Muhammad Shah PLD 1950 BJ 9.*

**Section 32**—If a dying declaration is found to be genuine and true, it can by itself form a satisfactory basis for conviction. *Taj Mahmud 12 DLR (WP) Lahore 30 (DB).*

**Section 32**—Corroboration of dying declaration—if possible with the absconding of accused. *Khushal Rao PLD 1958 Supreme Court (Ind.) 203.*

**Section 32**—Original document lost—Deed-writer and his register not available—Memorandum in deed writer's hand—Admissible. *Ghulam Sarwar PLD 1952 Lah.36; PLR 1952 Lah. 21.*

**Section 32**—Dying declaration—Evidentiary value depends on particular circumstances of the case. *Main Khan 6 DLR Lah. 213; PLD 1954 Lah. 646.*

**Section 32**—Expectation of imminent death is not a requirement for treating the declaration as a dying declaration. What is relevant is whether the declaration is voluntary or under pressure from any outside quarter. Conviction can be based on such declaration. *Nurjahan Begum vs State 40 DLR 321.*

**Section 32**—Some of the main tests for determining the genuineness of a dying declaration are—(1) Whether intrinsically it rings true; (2) Whether there is no chance of mistake on the part of the dying man in identifying or naming his assailant; and (3) whether it is free from prompting from any outside quarter and is not inconsistent with the other evidence and circumstances of the case. *Zabta Khan vs State, PLD 1953 Pesh. 66; State vs Nuran Shah, PLD 1967 Pesh. 274.*

**Section 32**—The statement of a person surviving serious injuries is not a dying declaration and therefore not relevant under section 32. *Subban Khan vs State, PLD 1960 Lah. 1.*

**Section 32**—Section 32 applies in the case of medico-legal reports which are covered by the word "statement" in section 32(1) and are in any case relevant under section 32(2). "Statement" in section 32 means anything said or written.

Entries made by the doctor in his report can be proved for purposes of section 32 by calling a person who is acquainted with the hand-writing of the doctor. *Sharif PLD 1957 (WP) Lah. 669; PLR 1957 (2) WP 559; 9 DLR WP (Lah.) 37.*

**Section 32**—Dying declaration—When admissible—Section should not be interpreted too narrowly, *Abdul Ghani PLD 1956 Lahore 300; PLR 1956 Lahore 904.*

**Section 32**—Dying declaration—conviction can be founded on dying declaration alone. *Abdur Razik 16 DLR (WP) 73.*

**Section 32**—Recorded in English made the statement in Bengali—admissible. *Bahar Ali 11 DLR 258; PLD 1959 Dacca 832.*

**Section 32**—Record does not contain the exact words of the deceased—record unreliable. *Omar 13 DLR 251; (1962) PLD Dhaka 418.*

**Section 32**—Omission to mention in the dying declaration the name of one of the three witnesses due to serious physical condition is not of much significance. *Ghulam Hussain 13 DLR (SC) 147.*

**Section 32**—Its evidentiary value—Judge's failure to caution the jury is a serious omission. *Samar Mallick 12 DLR 438.*

**Section 32**—Statement made in the course of police investigation admissible. *Shahidullah Khan 12 DLR 537; (1961) PLD Dhaka 1.*

**Section 32**—If a dying declaration is found to be genuine and true, it can by itself form a satisfactory basis for conviction. *Taj Md 12 DLR (WP) 30; (1960) PLD (Lahore).*

**Section 32**—A dying declaration is inadmissible when upon its fact it is incomplete and no one can tell what the deceased was about to add. It is serious error to admit a dying declaration in part. *C. Waugh 9 DLR (PC) 353.*

**Section 32**—Mere serious error not to point out to the jury that it had not been liable to cross examination. *C. Waugh 9 DLR (PC) 353.*

**Section 32**—Dying declaration is not to be disregarded because part of it is false. *Khalilur Rahman 9 DLR 327.*

**Section 32**—Dying declaration—Recorded not as uttered—is not admissible. *Rejan Ali 7 DLR 141.*

**Section 32**—Hearsay evidence—The witness stated that he had heard from the deceased that the accused hired his van and taking him to Jessore. This part of the evidence, though hearsay, admissible in evidence being circumstances of the transaction resulting in the death of the deceased. *Abul Kashem vs State 42 DLR 378*

**Section 32**—Dying declaration—Conditions to act upon such declaration—The Court is to see whether the victim had the physical capability of making such a declaration. whether witnesses who had heard the deceased making such statement heard it correctly. Whether they reproduced names of assailants correctly and whether the maker of the declaration had an opportunity to recognise the assailants. *Hafizuddin vs State 42 DLR 397*.

**Section 32**—There appears some vagueness in the alleged verbal dying declaration and that is why before relying upon such dying declaration it is the rule of prudence that necessitates the corroboration of the same by reliable evidence. *Gadu Mia vs State 44 DLR 246*.

**Section 32**—Dying declaration—A dying man incapable of making any statement may by some gesture, sign or symbol express something which may be interpreted as his statements admissible under the law. But it is to be seen whether his expressions intrinsically ring true or not. *A Alim vs State 45 DLR 43*.

**Section 32**—Dying declaration—If it stands the normal test for judging its veracity it becomes a wholly reliable piece of evidence. but if it does not, it is far worse than an ordinary statement of a witness. The value of dying declaration depends in a case on its own facts and the circumstances in which it is made. *Bulu vs State 45 DLR 79*.

**Section 32**—For admissibility of a statement a person should not necessarily be in the expectation of death when he made it. *Mian Khan 6 DLR (WPC) 213*.

**Section 32**—Statement with regard to the cause of death of another person injured in the same transaction in which the person making the statement was injured is also admissible.

Dying declaration when admitted under section 32 of the Evidence Act stands on the same footing as any other evidence as to its value and credibility. *Tera Mian 7 DLR 539 (546)*.

**Section 32**—Recording of dying declaration in the form of questions and answers—improper 2 *DLR 30*.

**Section 32**—A dying declaration alone can be the basis for a convictions, if it is free from suspicion. *Shahbaz 9 DLR (WP) 1*.



**Section 32**—The diary is admissible in evidence. (1956) *PLD Lahore 300*.

**Section 32**—Letter written by the deceased prior to the occurrence showing relationship with the accused—admissible. *Ghulam Ahmed Khan 10 DLR 55; 1957 PLD (K) 824*.

**Section 32**—Statement of a dead person is a relevant fact as to the cause of his death.

Statement of a dead person is a relevant fact under that sub-section, when it is made by that 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. *Lutfun Nahar Begum 27 DLR (AD) 29*.

**Section 32**—"Circumstances of the transaction which resulted in his death", considered with reference to the facts of the present case. *Lutfun Nahar Begum 27 DLR (AD) 29*.

**Section 32**—A statement made by the deceased two days before his death is not an admissible evidence.

Though a statement alleged to have been made by the deceased two days prior to his death was found to be inadmissible, it was sought to be utilised to furnish a background or indeed a motive for the crime and it was held that "that however cannot excuse the reception of inadmissible evidence". *Lutfun Nahar Begum 27 DLR (AD) 29*.

**Section 32**—Practice of recording dying statement in the language other than the language of the declarant should be discouraged. *Rahmat Baksh 22 DLR 482*.

**Section 32**—Dying declaration to what extent can be relied on for assessing the guilt of the accused. *Tawaib Khan 22 DLR (SC) 16*.

**Section 32**—Dying declaration—No eye-witness of the occurrence but the evidence adduced by PW 1 who rushed to the victim immediately after the occurrence is trustworthy. *Abdul Hakim @ Lokman Hakim vs State 41 DLR (AD) 126*.

**Section 32**—First information report—Omission about dying declaration in the first information report will not affect the case. *Mujibur Rahman vs State 1985 BLD HC 110(b); contra—could not be relied upon PLR 1965 Pesh 11*.

**Section 32**—There is nothing to disbelieve or doubt the evidence of PW 8. Both the courts below have rightly relied on the evidence of PW 8. PWs 2 to 6

are also vital witnesses to whom the victim reported that after having his meal at the residence of the petitioner he started feeling burning sensation in the stomach which has been fully corroborated by PW 7. The death of the deceased caused due to poisoning has been proved by the evidence of the chemical examiner. *Afzal Hossain Mondal (Md) vs State 6 BLC (AD) 72.*

**Section 32**—There is nothing in the evidence that after recording the dying declaration in English any person present at the time of recording of dying declaration translated the same in Bengali and that explained the statement to the maker and that the maker admitted the correctness of the same. This being the position the correctness of the dying declaration is very much doubtful. *State vs Babul Hossain 52 DLR 400.*

**Section 32**—To make the dying declaration the basis for sentencing an accused to death or any other sentence the same is required to be found reliable. *State vs Babul Hossain 400.*

**Section 32**—An injured person under the impediment of death, while making oral or written dying declaration, will not falsely implicate even the persons inimical to him. *Milon @ Shahabuddin Ahmed vs State 53 DLR 464.*

**Section 32**—The first information report is a matter of special importance when its maker died shortly after he made it. The first information report is clearly admissible in evidence. This may also be treated as a dying declaration in view of the fact that victim himself dictated the ejarah at a time when his condition was really critical. *State vs Rashid Ahmed & others 54 DLR 333.*

**Section 32**—If the Court can unhesitatingly accept it and act upon it, a dying declaration by itself can form the basis of conviction under given circumstances. *State vs Rashid Ahmed & others 54 DLR 333.*

**Section 32**—Identification by torch light or hurricane light, at dead of night is not sufficient unless the distance is in close proximity and when there is a background of enmity and the witnesses are chance witnesses and not natural witnesses and natural and independent witnesses were not produced, it is unsafe to rely on the chance witnesses to connect the accused with the crime. *Nepoleon Khondker alias Lepu and another vs State 54 DLR 386.*

**Section 32**—The dying declaration of victim has not been reduced to writing, yet when it has been proved by overwhelming ocular evidence to prove the guilt of accused appellant, the dying declaration of victim itself stands out as a strong piece of evidence proving the guilt of the appellant. *Salim (Md) vs State 54 DLR 359.*

**Section 32**—When a dying declaration of the victim is stated by the witnesses and the declaration is not taken exactly in the own words of the deceased, but is merely a note of the substance of what had stated, it cannot be safely accepted as a sufficient basis for conviction. *State vs Kabel Molla and others* 55 DLR 108.

**Section 32**—Dying declaration—If the dying declaration is acceptable as true conviction can be based upon the dying declaration alone in the absence of corroborative evidence on record. *State vs Abdul Hatem* 56 DLR 431.

**Section 32**—It is not required for a dying declaration that the maker should be in expectation of his immediate death nor it is restricted to homicidal death. *Humayun Matubbar vs State* 51 DLR 433.

**Section 32**—Dying declaration—The PWs 3, 11, 14, 16, 18 and 21 have univocally stated that deceased Majnu made a dying declaration before PW 14 implicating accused Sabuj, Babul and Golap as his assailants when the defence has not at all challenged the evidence of PW 16 regarding the dying declaration and most of the said witnesses are official witnesses and there is no reason to disbelieve them when dying declaration of the deceased which has degree of sanctity under the law, being the statement of a dying man, on the belief that he being placed in a situation of immediate apprehension of severance of his ties with the mundane affairs, he would not tell a lie and implicate innocent persons on false charges. *Babul Mia and 2 others vs State* 5 BLC 197.

**Section 32**—Merely because the victim died some days after recording the dying declaration will not render the dying declaration inadmissible under section 32 of the Evidence Act. *State vs Akkel Ali and others* 5 BLC 439.

**Section 32**—It is settled principle of law that a dying declaration should be recorded as far as practicable to record in the language of the declarant but in the instant case, the Magistrate recorded the same in his own language bonafide and honestly for which it can be believed and mere formality does not stand in the way to minimise the value of dying declaration. *State vs Abdul Hye Miaji and others* 1 BLC 125.

**Section 32**—Dying declaration if found true can be the sole basis of conviction without corroboration. In this case, that the appellant had threatened the victim with murder and he absconded after the occurrence till his arrest lend assurance as corroboration of dying declaration. *Mostafa (Md) vs State* 1 BLC 82.

**Section 32**—When a man gasps out his story soon after sustaining so many injuries on his person and apprehending imminent death, there is no time for him



to fabricate a new story as he is dying and in such circumstances, it cannot be expected that such a man can tell a lie and falsely implicate his enemies with the crime alleged. *State vs Abdul Hye Miaji and others 1 BLC 125.*

**Section 32**—PWs 1-7 mentioning the names of the accused persons that they have inflicted blows by knives and daggers on the person of the deceased which corroborates with dying declaration making it sufficiently strong to warrant conviction. *State vs Abdul Hye Miaji and others 1 BLC 125.*

**Section 32**—A dying declaration, whether written or oral, by the victim has got a special sanctity in the eye of law. When a dying declaration is found to be true and genuine the Court can safely act upon it, by itself it provides a good basis for conviction. In the instant case, dying declaration by victim Innas Ali rings intrinsically true and it is well supported by natural, probable and competent witnesses. Dying declaration in such circumstances becomes an unimpeachable piece of evidence. *Arshed Ali Mirza vs State 7 BLC 265.*

**Section 32**—Dying declaration—No eye-witness of the occurrence but the evidence adduced by PW I who rushed to the victim immediately after the occurrence is trustworthy. *Abdul Hakim vs State 6 BSCD 185.*

**Section 32(1)**—Unless the dying declaration as compared to other evidence appears to be true, it cannot by itself form the basis of conviction of the accused. *State vs Tota Mia 51 DLR 244.*

**Section 32(1)**—Except PW 6, PWs 2, 3 and 4 uniformly stated in their evidence that they all rushed to the place of occurrence after hearing the hue and cry from the hut and saw the victim Farida standing in the courtyard of the PO hut with burn injuries and the hut was on fire. Victim Farida then told them that accused Khokan set her on fire after confining her inside the hut with her hands and legs tied up so that she could not escape the death by fire, but their testimony that they were told by Farida at or about the time of occurrence that she was caused to suffer such burn injuries by accused Khokan to which she eventually succumbed provided valid and cogent evidence connecting accused Khokan with the offence charged. Because this part of the evidence, though hearsay, is admissible in evidence under section 32(1) of the Evidence Act being circumstances of the transaction resulting in the death of deceased Farida. *State vs Khokan Mridha 7 BLC 561.*

**Section 32(1)**—Dying declaration, though by nature very weak evidence, can be acted upon as a good piece of evidence even if it is not reduced in writing in any form provided it appears to be truthful and beyond reproach in the facts and circumstances of the case. It is found that PWs 1 to 5 are not only interested

and unreliable witnesses but they are also not truthful. The doctor in cross-examination says that the injury on the head of the deceased Selim was such as to make the deceased Selim unconscious and thus he was incapable of making any statement. It appears from the evidence of PW 7 that while making the alleged dying declaration there were many other uninvolved persons like doctors and officials in the hospital but none was examined. Hence, the evidence of PWs 3, 4 and 7 regarding dying declaration is unacceptable to act and rely on in finding complicity of the accused in this case in the absence of corroborative evidence of independent witnesses. *State vs Liton @ Abdul Matin and others* 7 BLC 622.

**Section 32(1)**—The PW 12, the doctor who recorded the statement of dying declaration, frankly admitted that while recording the dying declaration of the victim, he neither took signature of the declarant in the dying declaration nor did he hear all the words of the victim rather, he took help from his relatives who prompted the declarant, so no reliance can be placed on such dying declaration. *Zaman alias Muniruzzaman vs State* 9 BLC 327.

**Section 32(1)**—Dying declaration—The deceased Shahida made two dying declarations, one on the way to CMH and the other in the hospital but there are inconsistent versions regarding dying declarations which constrained the High Court Division to take the view that the deceased did not make dying declarations and such story of making dying declaration has been introduced subsequently. *State vs Liaqat Ali Khan* 9 BLC 351.

**Section 32(1)**—Dying declaration—Appellant, whether entitled to be acquitted when part of the dying declaration relating to co-accused was disbelieved—FIR was lodged on the same day—The Magistrate recorded the victim's dying declaration on the same day—Evidence of PW 1 who rushed to the victim immediately appears to be convincing—PW 3 went to the place of occurrence and the victim narrated the incident to him—The trial Court's acceptance of co-accused—A plea of alibi will not destroy the dying declaration altogether—Appeal dismissed. *Abdul Hakim vs State* 6 BSCD 184.

**Section 32(1)**—Dying declaration—Its probative value (by majority) : A dying declaration although a piece of substantive evidence has always been viewed with some degree of caution as the matter is not liable to cross-examination. It stands on the same footing as any other piece of evidence and has to be judged in the light of surrounding circumstances and common human experience. When there is a record of such statement of the deceased the court has to satisfy itself, in the first place, as to the genuineness of the same keeping in view all the evidence and circumstances in which the statement of the



deceased was said to have been recorded. The alleged dying declaration, the only piece of evidence against the appellant, having not been free from reasonable doubt, the accused is entitled to the benefit of doubt. *Shamsur Rahman. vs State 42 DLR (AD) 200.*

**Section 32(1)**—Legislature in its wisdom has put a dying declaration at par with evidence on oath for the simple reason that a man under the apprehension of death is not likely to speak falsehood and involve innocent persons in preference to his assailant.

When a Probationer Officer actually recorded the statement in presence of, and under the observation of, the Superior Officer (PW 9). there was hardly any wrong in his evidence that he recorded it in presence of the witnesses. *Nurjahan Begum vs State 42 DLR (AD) 130.*

**Section 32(1)**—Dying declaration—Judge's failure to warn the jury that the declaration was not liable to cross-examination does not vitiate the trial. *Abdur Rahman vs State 11 DLR 494.*

**Section 32(1)**—There is no rule of law that a dying declaration must be corroborated before it can be acted upon. *Ajmat Ali vs Crown 7 DLR 356.*

**Section 32(1)**—Dying declarations are admitted into evidence only on the principle of necessity, but a dying declaration can be made the basis of conviction only when the jury are satisfied beyond all shadow of doubt that the man who made the declaration had a good opportunity of recognising his assailant. *Ajmat Ali vs Crown 7 DLR 356.*

**Section 32(1)**—Dying declaration—Statement of a person about the cause of his death or circumstances leading to his death is substantive evidence under section 32(1) of the Evidence Act—If found to be reliable, then it may by itself be basis for conviction even without corroboration.

Statement falling under section 32(1) of the Evidence Act is called a "dying declaration" in ordinary parlance—A dying declaration may be recorded by any person who is available and it may be written or it may be verbal or it may be indicated by signs and gestures in answer to questions even—There is no requirement of law that a dying declaration should be recorded by a Magistrate as in the case of the confessional statement of an accused under section 164(3) CrPC. *Nurjahan Begum vs State 42 DR (AD) 130.*

**Section 32(1)**—In English law, a dying declaration is admissible only on a criminal charge of homicide or manslaughter, whereas in Pakistan it is admissible in all proceedings, civil or criminal, provided that the cause of the



declarant's death comes into question in those proceedings. *Lalji Dusadh vs E.*, 1928 AIR (Punj) 162; *State vs Kanchan Singh*, 1954 AIR (All) 153.

**Section 32(1)**—Dying declaration whether reliable or not is a question of fact. *Omar Ali vs State*, PLD 1962 Dhaka 418.

**Section 32(1)**—Evidential value of dying declaration; need for corroboration—There is no rule of law which says that no conviction can be based on a dying declaration without corroboration but a rule of prudence has been evolved by the Courts for safe dispensation of justice that ordinarily when a number of persons have been involved and there is background of enmity between the person making the dying declaration and the accused, the rule regarding seeking of corroboration should be invoked. *Ghulam Jilani vs State*, PLD 1970 Lah. 73.

**Section 32(1)**—There have been a number of cases in which dying declarations were found to be entirely false. Of course there is no rule of law which says that no conviction can be based on a dying declaration without corroboration but a rule of prudence has been evolved by the Courts for safe dispensation of justice that ordinarily when a number of persons have been involved and there is a background of enmity between the persons making the dying declaration and the accused, the rule regarding seeking of corroboration should be invoked. *Ghulam Jilani vs State*, 1970 P CrLJ 619; *Wasiullah vs Mirza Ali and others*, PLD 1963 SC 25; *Hamida Bano vs Ashiq Hussain*, PLD 1993 (SC) 109.

**Section 32(1)**—The dying declaration needs to be tested as regards its proof and reliability in the light of the evidence and surrounding circumstances. *Pir Mohammad Khan vs State* PLD 1970 (Kar) 399.

**Section 32(1)**—Where enmity existed between the accused and the deceased dying declaration was held to require corroboration. *Ghulam Hussain vs State*, PLD 1966 Pesh. 255.

**Section 32(1)**—Dying declaration—Its acceptability—In the present case the victim woman had made such a dying declaration not only to her father and to others but also to her younger brother who was beside her bed during the tragic fag end of her life. It is not expected from the wife that she would tell a lie against her husband at the dying moment of her life after leading a conjugal life for a pretty long period unless she is brutally tortured to the verge of her death. In such circumstances the dying declaration made to PWs 1, 5 and 7 is accepted and the trial Court rightly believed the same. *State vs Mannan Gazi* 6 BLC 187.

**Section 32(1)**—Dying declaration—The first information report was lodged 2 days after the recording of the alleged dying declaration which is not immune from suspicion and doubt and the dying declaration cannot be accepted as true and genuine to rely on a conviction of grave offence when the evidence shows that the deceased lost his sense at the courtyard on receiving injury and he regained the sense in Mymensingh Medical College Hospital and not at the time of making the alleged dying declaration at the said Health Complex and the evidence and circumstances of the case lend support to the defence case that the dying declaration is a concocted and procured one at the instance of one Manzurul Haque. *Kala Miah & others vs State* 6 BLC 335.

**Section 32(1)**—Oral dying declaration was made to PWs 2, 3, 4 and 5 who proved the same. Oral dying declaration is an important piece of evidence and it should be free from all infirmities. In the present case, the testimonies of PWs 2, 3, 4 and 5 in respect of dying declaration made by deceased Md Rabiul Alam to them involving the appellants suffer from discrepancies but so far the condemned prisoner is concerned the testimonies are quite consistent and convincing and it was open to learned Trial Judge to convict the condemned prisoner on the basis of truthful dying declaration which is well corroborated by legal evidence. If a part of oral dying declaration is discrepant the whole of such oral dying declaration cannot be rejected. *State vs Md Saidul Huq* 8 BLC 132.

**Section 32(1)**—The recording Magistrate of the dying declaration in cross has stated that Dr Lutfor Rahman identified the victim but he did not record it and that the statement made by the victim was not read over to him and that he omitted to mention when and where he recorded the statement and he also admitted that the victim could not tell before him the names of the accused who stabbed him by the sharp cutting weapon in his abdomen and the name of accused Rashid does not appear in the statement. Moreso, while the accused persons were examined under section 342, CrPC the dying declaration was not confronted to the accused which depicts a picture that reflects that the dying declaration has been procured from the deceased Jalil by intimidation. *Zahed alias Zahed Ali and ors vs State* 8 BLC 538.

**Sections 32(1),(2) and 35**—Admissibility of evidence—Doctor who prepared injury sheets and post mortem report resigned and his address was not known—Another doctor proved the reports to be in the handwriting by the previous doctor.

Basis for conviction—If a dying declaration is found to be true and genuine, it can by itself form a satisfactory basis for conviction. *Tuku Mia vs State; 1983 BLD 193(a)*.



**Section 32(2)**—Ordinary course of business does not mean any particular transaction of an exceptional kind, but business or employment in which the declarant is ordinarily or habitually engaged. *SM Quamruzzaman vs State 1981 BLD 107.*

**Section 32(2)**—Statements of relevant facts by a person dead or cannot be found—Statement admissible. *Khoka Jasimuddin 25 DLR 181.*

**Section 32(2)**—Memorandum made in the books (Accounts of expenditure) in the ordinary course of business is admissible under section 32(2) of the Evidence Act. *Sadequr Rahman Chowdhury vs Mvi. Abdul Bari 22 DLR 858.*

**Section 32(3)**—Statement against interest of the maker—Admissible only if he knew that the statement he was making was against his interest. *Srimati Savitri 3 DLR 429.*

Hearsay evidence when admitted—The principle upon which hearsay evidence is admitted under section 32(3) of the Evidence Act is that a man is not likely to make a statement against his own interest unless true, but this section does not arise unless the party knows the statement to be against his interest. Where there is no reason for thinking that the maker of the statement supposed that he was making the statement against his interest, the statement ought not to have been admitted in evidence and even if it be admitted it is of very slight evidential value. *Sm. Sabitri Debi vs Maharaj Bahadur Ram Bijay 3 DLR (PC) 429.*

Boundary description in a document between third parties is not admissible in evidence. *Sirajuddin Kazi vs Raj Raman Sen. 10 DLR 268.*

**Section 32(5)**—Relationship—Admission made by witness against his interest—Special means of knowledge may be presumed. *Muhammad Shafi PLD 1959 (WP) Lah 941.*

**Section 32(5)**—Statement about sister's death—Not made in judicial proceedings—Not admissible.

The statement was made by a witness about the death of her sister but she died before the statements could be recorded in judicial proceedings—Not admissible. *Ratan Gond. PLD 1959 (SC)(Ind.) 37.*

**Section 32(5)**—Expression "when the statement was made before the question in dispute was raised", Implication explained (in the present case in relation to the question of marriage).



In an issue to decide whether the deceased Mst Marian was the wife of Masta, the appellant or the wife of Mehdi Khan, the son of the respondent, the respondent filed an application for permission to file by way of additional evidence a certified copy of a power of attorney executed by the deceased Marian in favour of him where it was recited that she was the wife of Mehdi Khan, the son of the respondent and the District Judge accepted it as evidence to prove that she was the legally married wife of Mehdi Khan.

On appeal by special leave before the Supreme Court it was contended that the certified copy of the power of attorney executed by the deceased cannot be accepted in evidence as a dispute had already arisen about the marital status of the deceased earlier to the date of the execution of the power of attorney. It was pointed out that the deceased Mst. Marian had made an application against Masta, the appellant, under sections 107/151 CrPC, before the date of execution of the Mukhtarnama alleging that the appellant along with others were trying to force her to marry the appellant for the purpose of grabbing her property.

**Held**—The question of marriage of the deceased with Mehdi Khan not being the subject matter of dispute between the parties prior to the execution of Mukhtarnama, it is obvious that the statement is not hit by the principle of *lis mota* and was rightly accepted by the District Judge. *Masta vs Sarang*, 21 DLR (SC) 147.

**Section 32(5) and (6)**—Where in a suit the question of inheritance of A was involved and a copy of the statement of A in previous litigation admitting relationship with B was proved it was held that presumption arises that A had special means of knowledge of his relationship with B. *Muhammad Shah vs Zianab Bibi*, PLD 1959 Lah. 941.

**Sections 32 and 6**—Statement of Mafia, the daughter of condemned-prisoner Monu Meah, was recorded by the Headmaster of the High School implicating her father and others in the killing of victim Salma cannot be treated as a substantive piece of evidence as she despite being a charge-sheet witness has not been examined by the prosecution and it can at best be treated as a formal statement of a witness and such statement even if proved can be used only for the purpose of contradicting or corroborating the maker of a statement but it can never be treated as extra judicial confession as has been done by the trial Court. Statement of Mafia does not come under any clauses of hearsay evidence as contemplated by section 32 of the Evidence Act because it does not emanate from the same transaction nor any section within the clauses of section 6 of the Evidence Act. *State vs Monu Meah and others* 6 BLC 402.

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 authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the fact which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or 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.

### *Case Law*

**Section 33**—Adverse party—Meaning of—party calling the witness does not become adverse party if the witness is hostile. *Makhankhan PLD 1950 Sind 27; PLR 1948 Sind. 80.*

**Section 33**—Section 33 does not require it for a deposition to be admissible that the adverse party should have actually exercised his right to cross examine the witness. It is enough if he had the opportunity to cross-examine on the occasion. *Beni Madho AIR 1946 Oudh. 20.*

**Section 33**—Conditions for applicability—Opportunity for cross-examination not given—section not applicable. *Abdul Rahman AIR 1946 Lah. 275.*

**Section 33**—Incapacity to give evidence—How may be proved—Evidence of process-server not sufficient in all cases. *Chainchal Singh AIR 1946 PCI.*

**Section 33**—Interest of parties to proceedings should be same in previous proceedings—"Representative in interest" explained.

(1) The interest of the relevant party to the second proceeding in the subject matter of the first proceeding is consistent with and not antagonistic to the interest therein of the relevant party to the first proceeding and up.

(2) the interest of both in answer to be given to the particular issue in the first proceeding is identical. *Raghunnath Singh 8 DLR 577.*

**Section 33**—Non-availability of witnesses not proved—Retrial ordered. *Chutto PLD 1958 (WP) Kar. 18.*

**Section 33**—Non-availability of witness—Must be strictly proved before transferring statement to record.

Before evidence can be received under section 33 the Court is to satisfy itself that reasonable and diligent search was made to make the witness available in Court. *Abdul Gani 11 DLR 338; PLD 1959 Dacca 944.*

**Section 33**—Where evidence of a proceeding witness was put in under section 33 the Court is to satisfy itself that reasonable and diligent search was made to make the witness available in Court. *Azharuddin Ahmed 2 DLR 381.*

**Section 33**—Where the Sessions Judge admitted the previous statement of one arms-expert on the statement of the investigation officer who said that a report had been received that the arms expert, who had to appear as a witness is ill.

**Held**—The statement of the arms expert was not properly brought on the record of the trial judge. *Munsif Khan PLD 1960 WP Lah. 1206.*

**Section 33**—Unreasonable delay and expense—Sufficient reason for transfer of statement to the record. *Bakhshish Singh PLD 1958 SC (Ind.) 163.*

**Section 33**—"Witness could not be found"—Only person who went to serve summons could give definite evidence about the matter—Evidence of investigating officer not sufficient. *Allah Ditta 11 DLR (SC) 38; PLD 1958 SC (Pak) 290.*



**Section 33**—Witness incapable of giving evidence—Fact must be proved clearly before evidence may be admitted. *Aminul Haque 3 DLR 518; PLD 1952 FC 63.*

**Section 33**—Where it is desired to have recourse to section 33 of the Evidence Act on the ground that a witness is incapable of giving evidence, that fact must be proved and proved strictly. *Matia Badia 9 DLR 414; PLD 1957 Dacca 451.*

**Section 33**—Before evidence can be admitted under section 33 of the Evidence Act, it must be established that the witness is incapable of giving evidence and such incapacity must be proved and proved strictly. *State vs Abdur Rahim Sikder 10 DLR 61; PLD 1958 Dacca 257.*

**Section 33**—When evidence given by a witness in a judicial proceeding is sought to be used under section 33 in a subsequent judicial proceeding or in a later stage of the same judicial proceeding on the ground that the witness is incapable of giving evidence that fact must be proved strictly. In a civil case a party can, if he chooses, waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence. *Chainchal Singh AIR 1946 Privy Council 1.*

**Section 33**—Previous statement recorded by Magistrate not having jurisdiction—Not admissible in later proceedings. *Abdul Mannan 4 DLR 519; PLD 1954 Dacca 129.*

**Section 33**—Retrial—Doctor not found after retrial was ordered—Evidence given prior to order of retrial may be admitted. *Jahandad Khan PLD 1951 Azad J & K 50.*

**Section 33**—Statements of formal witnesses transferred to Sessions Court filed on that ground—Procedure illegal. *Ali Haider 10 DLR (SC) 193; PLD 1958 SC 392.*

**Section 33**—Scribe migrating to India—Evidence given by him before Registrar at the time of registration—Admissible in evidence. *Haji Jam PLD 1957 Karachi 754.*

**Section 33**—Where at the time his statement was transferred to the sessions record the witness was dead or gone to India—Section 33 of the Evidence Act applicable to the case and the statement was rightly transferred. *Ibrahim Bhak 7 DLR (FC) 123; PLD 1955 FC 113.*

**Section 33**—Witness of tender age—Not able to give evidence in Sessions case out of nervousness—Statement before trial Magistrate cannot be transferred under the section. *Mewa PLD 1958 Lahore 468.*

**Section 33**—Court informed on date for cross-examination of witness that witness was dead—Court should make inquiries about the truth of the allegation before transferring his previous statement to the file. *Srikishan Jhunjun Walla AIR 1946 Patna 384.*

**Section 33**—Where a witness dies after examination-in-chief and before cross examination his evidence is admissible. *Srikishan Jhunjunwalla AIR 1946 Patna 384.*

**Section 33**—Magistrate conducting identification parade—Evidence transferred to file without giving adequate reasons for it—Non-direction to jury about evidentiary value of evidence—Conviction set aside. *Kaloo Mandal 2 DLR 307.*

**Section 33**—The provisions of section 33 of the Evidence Act cannot be waived, the evidence of the witness illegally admitted must be excluded. *Ali Haider 10 DLR (SC) 193.*

**Section 33**—The fact that the witness "could not be found" has to be proved by direct evidence of persons having personal knowledge. *Allah Ditta 11 DLR (SC) 38; 1958 PLD (SC) 290.*

**Section 33**—Doctor's evidence given in an earlier trial—cannot be accepted under this section on a mere statement in a petition that he is ill. *Matia Badia 9 DLR 414.*

**Section 33**—Judicial proceeding: A proceeding before a court which had no jurisdiction to entertain it is not a judicial proceeding within the meaning of section 33 and the deposition of witness given in such a proceeding could not legally be put in the court of the Sessions Judge under section 33. *Abdul Mannan 4 DLR 519.*

**Section 33**—Previous deposition of a witness can be tendered in evidence in a subsequent statement between the same parties when the other party had an opportunity of cross-examining him, when such witness could not be produced in circumstances stated in section 33. *Salauddin vs State 32 DLR 227.*

**Section 33**—Evidence of the recording Magistrate was not placed before the trial Court under section 33 of the Evidence Act—Hence this cannot be used as evidence. *Angur vs State 41 DLR 66.*

**Section 33**—Incapacity to appear must be established. *A Rahim 10 DLR 61.*

**Section 33**—The expression "the adverse party" in section 33 is used to distinguish that party from "the party who calls" the witness. *Makhan Lal 1 PCR 116.*

**Section 33**—Section 33 not applicable to a statement under section 164 CrPC. *Mst. Fazlan 8 DLR (FC) 1.*

**Section 33**—Evidence of an absent witness cannot be admitted unless conditions are fulfilled. *53 CWN (DR) 98.*

**Section 33**—Evidence of a prosecution witness who died before he was tendered for cross-examination is not admissible under section 33 of the Evidence Act on the ground that he is dead. *Syed Idris 24 DLR 101.*

**Section 33**—Dying declaration—made elsewhere than at the police station, of more evidentiary value. *Ghulam Farid 18 DLR (SC) 460.*

**Section 33**—The Court must be satisfied by proof of the conditions laid down in the section. *Abdul Hashem 20 DLR 834.*

**Section 33**—Conditions laid down in section 33 of the Evidence Act are to be strictly satisfied. *21 DLR (WP) 49.*

**Section 33**—The confession not being proved according to law was illegally admitted in evidence. *Hiralal Das 3 DLR 383.*

**Section 33**—While allowing to be used as evidence, failure to give caution to the jury that the witnesses, whose evidence were so put in, had not been subjected to cross-examination. This omission vitiated the charge. *Abdur Rahman 2 DLR 285.*

**Section 33**—Evidence under section 33 cannot be brought on record after the examination of accused person under section 342 of the Code. *21 DLR 71.*

**Section 33**—Failure of the Court to record an order regarding its satisfaction for non-production of a witness will not render the evidence inadmissible. *Badsha Khan 10 DLR 580.*

**Section 33**—The provisions of section 33 of the Evidence Act cannot be waived, the evidence of the witnesses, illegally admitted, must be excluded. *Ali Haider 10 DLR (SC) 193.*

**Section 33**—Where a witness proves shy and speechless in the Sessions Court, section 33 of the Evidence Act does not apply and the evidence before the committing Magistrate cannot be *ipso facto* treated as evidence at the trial. The proper course in such cases would be to allow the prosecution, under section 154 of the Evidence Act, to ask the witness a leading question and then to get an admission or denial. *Meva vs State, PLD 1958 Lah. 468.*

**Section 33**—Reason for non-production of witness must be strictly proved before admitting his statement. *State vs Badshah Khan, PLD 1959 Dacca 226.*

**Section 33**—Non-availability of doctor should have been proved by direct evidence of the person who had to execute summons and hence without examination of such person the Court was in error in bringing the document on record. *Muhammad Shafi vs State, PLD 1972 Lah, 661 at P 668.*



**Section 33**—The requirement of law is that the Court before transferring the lower Court evidence to Sessions records under section 33 of the Evidence Act must be satisfied by proof of the conditions laid down in the section. *State vs Abdul Hashem*, 20 DLR 834.

**Section 33**—In criminal trials the counsel for the accused does not enjoy the same rights and privileges to make statements on behalf of his client as a counsel in a civil case does. *Munsif Khan vs State*, PLD 1960 Lah. 1206.

**Section 33**—Evidence of the recording Magistrate was not placed before the trial Court under section 33 of the Evidence Act—Hence this cannot be used as evidence.

But that statement of the Magistrate recorded in the earlier case cannot be taken into consideration in this case as it was not recorded in the presence of accused appellant Angur and also because he did not have the opportunity to cross-examine the said Magistrate. This appellant was then a witness. So the evidence of the recording Magistrate cannot be considered in this case and confessional statement cannot also be used against the appellant. *Angur vs State* 41 DLR 66.

**Section 33**—Burden of proof—Prosecution to discharge its burden by producing unimpeachable evidence of reliable witnesses—Benefit of doubt goes to the accused if doubt arises. *State vs Manik Bala* 41 DLR 435.

**Section 33**—Relevancy of evidence—Right ad opportunity to cross-examine—It is the right to cross-examine and not the exercise of such right that is material for the purpose of application of the provision under section 33 Evidence Act. *Shaikh Baharul Islam vs State* 43 DLR 336.

**Section 33**—Relevance of evidence by witness not available for cross-examination—There is no provision in the Evidence Act that the evidence of a witness which is admissible at the time he gave it should become inadmissible for the reason that he could not be cross-examined for some unavoidable reason. *Chowdhury Miah vs Dhanindra Kumar Shil* 45 DLR 110.

**Section 33**—When the concerned witness could not be produced in the dock for further cross-examination for the fault of the accused it cannot be said that the evidence of the witness is inadmissible. *Bakul and others vs State* 47 DLR 486.

**Section 33**—A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straitjacket formula would be laid down that non-examination of investigating officer per se vitiates a criminal trial. *Babul Sikder and others vs State represented by the DC* 56 DLR 174.

**Section 33**—Where a witness was examined-in-chief on commission and the opposite party had the opportunity of cross-examining him before his death,

the evidence so recorded is admissible in evidence. *Hossain Ali Biswas and others vs Rezia Khatun 2 BLC (AD) 94.*

**Section 33**—As the investigating officer was examined-in-chief and then he died but the defence got an opportunity to cross-examine him but they took adjournment for which the evidence given by him can be accepted under section 33 of the Evidence Act and non-examination of the Investigation Officer will not vitiate the trial. *Abdur Rahman vs State 1 BLC 215.*

**Section 33**—Money suit originally filed in Munsif's court—Suit pending—Deposition of plaintiff's witness (Bank's chief agent) taken by pleader commissioner under order of the Munsif's court—consequently the plaint amended, suits valuation enhanced and in result thereof Munsif ceased to exercise pecuniary jurisdiction over the case—Plaint returned and re-filed in another court—Deposition record under the order of Munsif, whether lawful—The deposition of Bank's chief agent taken on commission during pendency of the suit in Munsif's court before the amendment of the plaint and its subsequent presentation in a competent court, whether admissible in evidence at the trial of the case.

**Held**—(i) the Court of Munsif had undoubtedly necessary jurisdiction to make an order at the time when the deposition was taken as the value of the suit was then perfectly within its pecuniary powers. The subsequent amendment of the plaint cannot take away his powers retrospectively.

(ii) The money suit as was originally instituted in Munsif's Court was a judicial proceeding between the same parties in which the questions in issue were substantially the same as in the suit instituted subsequently in the Sub-Judge's Court and the pleader commissioner was authorised to take down the deposition of the Bank's Chief Agent by virtue of an order of the Presiding Judge of the Court.

(iii) Section 33 of the Evidence Act permits the admission of such evidence. *Jamula Rashid and others vs Central Bank of India and others 1 BSCD 177.*

**Section 33 Proviso (1)**—Previous deposition of a witness can be tendered in evidence in a subsequent proceeding between the same parties when the other party had an opportunity of cross-examining him when such witness could not be produced in circumstances stated in section 33. *Salauddin vs State 32 DLR 227.*

**Section 33 Proviso (1)**—Evidence given at the preliminary enquiry is admissible as a substantive evidence—When a witness is examined subsequently he may be contradicted under section 145 Evidence Act. Similarly, evidence given in a judicial proceeding or before a person authorised by law to take it, when admitted in evidence under section 33 of the Evidence Act, becomes substantive evidence. So also the evidence of a witness in a criminal case given by him in the committing Court when brought under section 288 of the Code of Criminal Procedure on record of the Sessions Court, may be used as substantive



evidence at the trial. Though a previous statement made by witness cannot be used as substantive evidence it can, nevertheless, be used under section 145 of the Evidence Act to contradict him for the purpose for which his attention must be drawn to that part of his previous statement which is in conflict with his evidence. *Birendra Ch Saha vs Sashi Mohan Saha* 27 DLR (SC) 89.

**Section 33 Proviso (1)**—Evidence of a witness who is dead or cannot be found is admissible in evidence under section 33.

**Section 33 Proviso (1)**—Under section 33 of the Evidence Act, evidence given by a witness before any person authorised by law to take it is relevant for the purpose of proving in a subsequent judicial proceeding the truth of facts which it states, when the witness is dead or cannot be found, etc. *Mukhlesur Rahman vs Shaukat Ali* 36 DLR 285.

#### STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

**34. Entries in books of account when relevant**<sup>1</sup>—Entries in books of account, 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 <sup>2</sup>(Taka) 1,000 and shows entries in his account books showing B to be indebted to him for this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

#### Case Law

**Section 34**—Conviction for an offence based on mere entries in the book of account bad in law. *Golam Mowla* 15 DLR 125.

**Section 34**—Account-books are not "valuable securities" and an entry in them cannot be the basis of charging a person with liability of what is noted therein. *Radha Ballav Das* 12 DLR 72; (1960) PLD (Dac) 371.

1. Cf. section 240 of the Companies Act, 1913 (VII of 1913) and Schedule 1 Order VII, rule 17 of the Code of Civil Procedure, 1908 (Act V of 1908). As to admissibility in evidence of certified copies of entries in Bankers' Books see section 4 of the Bankers' Books Evidence Act, 1891 (XVIII of 1891).

2. The word "Taka" was substituted for the word "rupees" by Act VIII of 1973, section 3 and 2nd Schedule (with effect from the 26th March, 1971).



**Section 34**—Entries in books of accounts can be used as corroborative evidence. *Makhan Lal 2 DLR 223*.

**Section 34**—Corroborative evidence regarding entries in books of account: Section 34 of the Evidence Act does not in any way limit the materials on which the Court may rely to support the entries in books of account. Such materials may be in the shape of vouchers, receipt of other documentary evidence. It may also take the shape of oral evidence. *Razzak Mia alias Abdur Razzak Khan vs Tabibar Rahman 17 DLR 729*.

**Section 34**—Accounts of expenditure, improperly termed as accounts books, maintained by rural people without following conventional style of credit and debit sides and daily opening and closing balance—Admissible in evidence under section 34 of the Evidence Act. *Sadequr Rahman Chowdhury vs. Mvi. Abdul Bari 22 DLR 858*.

**Section 34**—Khata accounts kept in regular course of business are admissible in evidence. *Satish Ch. Pal vs Majidan Begum; 10 DLR 271*.

**Section 34**—Entries in books of accounts alleged to have been written by a person—Mere production of the document without proving that person's handwriting does not constitute evidence.

**Section 34**—Entries in books of accounts regularly kept in the course of business are only declared to be relevant whenever they refer to a matter into which the Court has to enquire. But this does not dispense with the requirement of section 67 of the Evidence Act that if a document is alleged to have been written by any person, the signature or the handwriting of so much of the document as is alleged to be in his handwriting, must be proved to be in his handwriting. Mere production of the account books kept in regular course of business, therefore, does not constitute evidence of the transaction and accounts therein recorded. *Bengal Friends & Co. vs Gour Benode Saha, 21 DLR (SC) 357*.

**Section 34**—The Khata accounts kept in a regular course of business when there is nothing to show that they were not genuine, are admissible in evidence under section 34. *Satish Chandra vs Mazidan Begum, PLD 1958 Dacca 541*.

**Section 34**—Where the books of account of a deceased party are in the handwriting of such party they are relevant not only under section 34 but also under section 32(2) and constitute in law sufficient evidence by themselves. Entries in such books do not need corroboration contemplated by section 34. *Zubeda Bai vs Seth Adam Haji Peer Mohammad Essak. PLD 1963 Kar 631*.

**Section 34**—No person can be charged with liability only on basis of entries in account books. *Asia African Co, Ltd. vs Mukhtar Ahmed, PLD 1968 Kar 37.*

**Section 34**—Statement in books of account may be corroborated by any evidence oral or documentary. *Habibullah vs Muhammad Amin. PLD 1965 Kar 445.*

**Section 34**—Circumstantial evidence—When such evidence can be relied upon—Circumstantial evidence relied upon by the prosecution must be cogent, succinct and reliable. The circumstances must be of an incriminating nature or character. All the proved circumstances must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence. *Mostain Mollah vs State 44 DLR 295.*

**Section 34**—It was incumbent on the Courts below to properly scrutinise the material circumstances for determining whether the chain of circumstantial evidence is so complete as to lead to the only conclusion of the appellant's guilt. *Osman Gani vs State 54 DLR (AD) 34.*

**Section 34**—The exception taken by the Counsel for non-examination of all or reasonable number of witnesses cited in the prosecution report is of no merit since it is for the prosecution to decide amongst the cited witnesses how many it will examine for establishing its case against the accused persons. *Zahed Ali Foreman (Driver) and others vs State 56 DLR (AD) 29.*

**35. Relevancy of entry in public record made in performance of duty**—An entry in any public or other official book, register or 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 record is kept, is itself a relevant fact.

### Case Law

**Section 35**—A register kept in the police-station is document. (1956) 8 PLD (Lah). 293.

**Section 35**—Khasra girdawari—Admissible in evidence—No presumption of correctness—Evidentiary value. *Niaz Ahmad Abdul Rehman PLD 1961 (WP) Baghdadul Jadid 6.*

**Section 35**—Khata account kept regularly—Admissible in evidence. *Satish Chandra 10 DLR 271; PLD 1958 Dacca 541.*

**Section 35**—Batwara Record, entries in—Admissible.

**Section 35**—Symbolical possession is sufficient to interrupt adverse possessions when the adverse possessor is a party to the execution proceedings in which the symbolical possession is given as regards persons who are not parties, only actual dispossession can interrupt their adverse possession. *Maharaja Sir Bir Bikram Kishore Manikya Bahadur PLD 1952 Dacca 214; PLD 1951 Dacca 518.*

**Section 35**—Birth and death registers—*Prima facie* proof of age shown in them and are public documents. *Abdul Rehman 4 DLR 237.*

**Section 35**—Copy and duplicate—Provision in statute for preparation of copy of official document—Copy admissible as duplicate. *Bhirawan PLD 1955 Lahore 187.*

**Section 35**—Death register—Copies may be admitted under the section *Mst. Bhirawan PLD 1955 Lahore 187.*

**Section 35**—Deara Survey records are a valuable piece of evidence. *Akubali Howladar AIR 1946 Cal. 326.*

**Section 35**—Khasra and Shaira abadi—Entries admissible in evidence. *Mohammad Gulzar PLD 1960 (WP) Lahore 504.*

**Section 35**—Municipal School Teacher—Record prepared by, is admissible in evidence. *Mahmood Fatima PLD 1954 Lahore 325.*

**Section 35**—Mutation proceedings—Order in—Cannot be used as proof of title. *Aisha Bibi PLD 1957 (WP) Lahore 371; PLR 1957 (2) WP 441.*

**Section 35**—Report lodged under section 155 of the CrPC admissible under section 35. *Barada Prashad Bhattacharjee 12 DLR 566.*

**Section 35**—Those survey papers may not be documents of title, but in absence of proof that they are incorrect, they are evidence of title. *Kamal Prasad Sakul 4 DLR 48.*

**Section 35**—Wajib-ul-Arz—Statement in, are admissible even when made under misconception of official duty. *Prem Jagat Kuer AIR 1946 Oudh 163.*

**Section 35**—When an entry in a public document is a relevant fact: Under the Law of Evidence an entry in any public document, official register or records,



stating a fact in issue of relevant fact, made by a public servant in the discharge of his official duties or by any other person in performance of a duty specially enjoined by law of the country is by itself a relevant fact. *Kazi Mazaharul Huq & others vs State* 33 DLR 262.

Mutation proceedings not judicial proceedings and can at best be used as an item of evidence: I am aware of the presumption which is attached to the official acts under section 35 of the Evidence Act to the mutation proceedings, but would venture to say that the evidence of the Mutation Officers should be accepted with very great caution. This being the situation, the Courts must insist on some evidence other than the mutation proceedings in support of the sale and any person who relies solely on the mutation proceedings without obtaining anything in black and white evidencing the transaction would do so at his risk, *Bibi Mukhtiar vs Amerzan and another* 20 DLR (WP) 309.

**Section 35**—The trial Court rightly admitted the document into evidence and its reliance upon it cannot be assailed. The document, Exhibit 2, is a certificate of marriage granted by a public officer appointed under the statute and as such admissible under the provision of section 35 of the Evidence Act. The entry concerned relates to a time when no such controversy as the present one could have been contemplated and the seal of the Marriage Registrar's office which it bears excludes all doubts of its genuineness.

If it is proved that Bahar Jan lived in Mohar's house and was brought up and given in marriage as his daughter this would clearly amount to an assertion that Bahar Jan was the daughter of Mohar. *Imamuddin vs Sukkar Ali* 26 DLR 56.

**Section 35**—Mutation entries in revenue record—Carry rebuttable presumption of truth which continues to operate till dislodged by more convincing evidence—Statements to Revenue Authorities, allegedly made in mutation proceeding, neither placed before Civil Court nor admitted by party—Revenue Officer when examined in Civil Court failing to substantiate such statement—Inference of doubt as to genuineness of statement and authenticity of such entry drawn by Court. *Ali Bahadur Khan vs. Muhammad Yusuf Khan, 1969 PLD (Peshawar) 85.*

**Section 35**—Batwara papers—Batwara Papers finally adopted by the Revenue Court in a proceeding for partition under the Assam Land Revenue Regulation are admissible in evidence under section 35 of the Evidence Act. *I PLR (Dac) 518.*

**Section 35**—Where the question is whether the notice of a proceedings had been served, an entry in the order-sheet to the effect that they have been served

is evidence of the fact of service under section 35. Whether from such service the issue should be decided in favour of the service would depend on the facts and circumstances of each particular case. *Tarangini Debi vs Gobinda Mallik* 9 DLR 57.

**Section 35**—Entries in birth and death register—Birth and Death Register maintained under Act IV of 1873 and the Register of Births and Deaths kept at the Police Station under Village Chowkidary Act (Act VI of 1870) are public documents within the meaning of sections 74 and 35 of the Evidence Act. Entries in birth and death registers are *prima facie* proof of statements as to age contained therein. *Abdul Rahman vs Upendra N Majumdar* 4 DLR 237.

**Section 35**—A record preserved by a Municipal Board School teacher as regards date of birth of a student is admissible under section 35. 1954 PLR (Lah) 456.

**Section 35**—The section deals with two kinds of documents, one in which entries are made by any person in performance of a duty specially enjoined by the law and the other a record kept by a public servant in the usual discharge of his official function.

Copy of an entry in record of deaths kept by a District Officer of Health, even if such record is itself a copy of the Register of Deaths kept at the police stations is relevant to prove the date of death of a person.

If by law there is a provision for the preparation of a particular document which is a copy of another public document, the copy prepared is also a public document under section 35, Evidence Act. It may be regarded as duplicate, but even then if it is regarded as a copy, it does become a public record. 1955 PLR (Lah) 407.

**Section 35**—School Register, Admit Cards and Board's Certificate are public documents and admissible in evidence under section 35, Evidence Act. Their evidentiary value as regards age of a boy not treated as being correct—tendency being to understate such age. *Abul Hashem vs Mobarak Uddin* 38 DLR 145.

✓ **Section 35**—Lower appellate Court's finding as a final court of fact, about age as given in the Admit Card that the boy's Admit Card gives under-statement of his age the High Court Division accepts that as binding on it. *Abul Hashem vs Mobarak Uddin* 38 DLR 145.

**Section 35**—Where the doctor preparing injury sheets and post-mortem report resigned and went out of Pakistan and his whereabouts were

unascertainable and another doctor approved the medical reports to be in the handwriting of absentee doctor it was held that the documents were prepared in ordinary course of business and in discharge of professional duties and were relevant facts and admissible as substantive evidence. *State vs Bakhmir*, PLD 1969 Pesh. 335 at page 346.

**Section 35**—A report entered in a register kept in the police station under section 145, CrPC in which report of non-cognizable offences are recorded is a public document being the outcome of a public officer of the executive branch of the Government. Such a report is relevant under section 35 of the Evidence Act and is a public document within the meaning of section 74. *Nur Khatun vs Nur Khan*, PLD 1956 Lah. 293.

**Section 35**—Entries in register of mutations duly sanctioned but not incorporated in Record-of-Rights are nevertheless relevant as evidence under section 35, Evidence Act. 1872. PLD 1965 Lah. 472.

**Section 35**—The entries in mutation registers are relevant to establish relationship between parties. PLD 1965 Lah. 482.

**Section 35**—The Guardianship Certificate is not an entry in public or official book or register or record and therefore, it is inadmissible in evidence to prove the age of a minor under section 35. *Badiuzzaman vs Habibullah* PLD 1968 Dacca 919.

**Section 35**—Entry in school register—Admit Card and Board's certificate are admissible but evidentiary value will vary from case to case. *Abul Hasem vs Mubarakuddin* 1986 BLD (HC) 250.

**Section 35**—A seizure list, a post mortem report, a confessional statement recorded under section 164 of the CrPC or any statement of any person recorded under section 161 of the Code not being in public or other official book, register or record, they are not admissible under section 35 of the Evidence Act. *State vs Ershad Ali Sikder and others* 56 DLR 185.

**Section 35**—The lower appellate Court upon assigning several reasons rightly doubted the genuineness of Ext. 6 and reversed the finding of the trial Court that Fakir Mondal had died before passing of the rent decree and the auction sale, and further held that Fakir Mondal had died after passing of the rent decree and the alleged auction sale. *Benode Bihari Mondal vs Arubindu Sarder and others* 4 BLC (AD) 191.

**Section 35**—The death certificates which have been issued following the provisions of the Birth and Deaths Registration Act being public document



admitted without objection will prevail over the death certificates issued by Sanitary Inspector which was wrongly accepted by the learned Subordinate Judge whereby he misread and misconstrued the evidence of death certificates. *Adhir Ranjan Chakrabarty and ors vs Mohendra Nath Guha and ors* 5 BLC 192.

**Sections 35 and 13**—Parentage of the daughter being questioned a very old kabinnama registered under the Bengal Mohamedan Marriage and Divorce Registration Act produced to establish the legitimacy of the daughter. Such document can be relied on for the purpose. *Imamuddin vs Sukkar Ali Molla* 26 DLR 56.

**Sections 35 and 32(1), (2)**—Admissibility of evidence—Doctor who prepared injury sheets and post mortem report resigned and his address was not known—Another doctor proved the reports to be in the handwriting by the previous doctor.

**Held**—Reports can be relied upon as substantive pieces of evidence. *Bakhmir* 22 DLR (WP) 27.

**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 the <sup>1</sup>[Government], as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

### Case Law

**Section 36**—Maps and surveys are official documents—Maps and surveys made in India for revenue purpose are official documents prepared by competent persons and with much publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they are made. They are not conclusive and may be shown to be wrong, but in the absence of evidence to the contrary, they may be judicially received in evidence as correct when made. *Barada P Bhattacharjya vs Girindra K Das* 4 DLR 48.

**Section 36**—That survey papers may not be documents of title, but in the absence of proof that they are incorrect, they are evidence of title. *Barada P Bhattacharjya vs Girindra K Das*. 4 DLR 48.

1. The word "Government" was substituted for the words "Central Government or any Provincial Government" by Act VIII of 1973, 2nd Schedule (with effect from 26-3-71).

**Section 36**—Maps prepared by private persons and not under authority of Government—Are irrelevant unless proof of fact that they were generally offered for public sale is given—So also no presumption in favour of the accuracy of such maps can be drawn under section 83. *Ram Kishore vs Union of India* 27 DLR (SC) 93.

**37. Relevancy of statement as to fact of public nature, contained in certain acts or 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 <sup>1</sup>[of the United Kingdom], or in any <sup>2</sup>[Act of Parliament] or in a Government notification <sup>3\*\*\*</sup> is a relevant fact.

<sup>4\*</sup> \* \* \* \* \*

### Case Law

A statement made in the Gazette notification that an Act has been assented to by the President is proof of that fact. *K C Gajapati Narayana Deo vs. The State of Orissa*, 1953 AIR (Orissa) 185.

**38. Relevancy of statement 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, and 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.

1. Inserted by Administrative Order, 1961 Article 2 and Schedule (with effect from the 23rd March, 1956).

2. The words within square brackets were substituted for the words "Act of the Central Legislature, or of any other legislative authority in Pakistan constituted by any laws for the time being in force" by Act VIII of 1973, section 8 and 2nd Schedule (with effect from 26-3-71).

3. The words "or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to the London Gazette or the Government Gazette of any Dominion, Colony or possession of His Majesty" were omitted, by Act VIII of 1973 section 8 and 2nd Schedule (with effect from 26-3-71).

4. The last Paragraph was repealed by Act 10 of 1914.

## HOW MUCH OF A STATEMENT IS TO BE PROVED

**39. What evidence to be given when statement forms part of a conversation, document, 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 of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, 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.

*Case Law*

**Section 39—**Because a document has been proved and admitted in evidence, it does not follow that all the recitals, statements and references therein can be used as proof of the facts to which they relate. *Tika Ram vs Moti Lal, 1930 AIR (All) 299.*

## JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

**40. Previous judgments relevant to bar a second suit or trial—**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 trial.

*Case Law*

**Section 40—**Previous judgment—Probative value of—Whether reasons given by High Court Division for deprecating the evidentiary value of the previous judgment are tenable. *Hazi Waziullah vs ADC 41 DLR (AD) 97.*

When the amicable partition of the same property is the subject-matter in both the suits, the previous judgment showing the amicable partition is certainly and evidence in the present suit. *Hazi Waziullah vs ADC 41 DLR (AD) 97.*



**Sections 40, 41, 42, 43 and 44**—“Relevant” means and relates to admissibility only—Evidentially value of a judgment which is relevant is different from the question whether it is admissible in evidence. *Hazi Waziullah vs ADC 41 DLR (AD) 97.*

**41. Relevancy of certain judgments in probate, etc., jurisdiction**—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes 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 such 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 confers accrued at the time when such judgment, order or decree came into operation;

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

that any legal character which it takes away from any such person ceased at the time from which such judgment, <sup>1</sup>[order or decree] declared that it had ceased 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, <sup>1</sup>[order or decree] declares that it had been or should be his property.

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1. Inserted by the Indian Evidence Act, Amendment Act (XVIII of 1872), section 3.

**Case Law**

**Section 41**—Applicability—Applicable only to special specified cases—Jurisdiction to make pronouncements does not exist in other cases. *Mumi 8 DLR (WP) 25; PLD 1956 Lahore 403.*

**Section 41**—Civil Court not a court of matrimonial jurisdiction within the meaning of section 41. *8 DLR (WPC) 25.*

**Sections 41, 40, 42, 43 and 44**—“Relevant” means and relates to admissibility only—Evidentially value of a judgment which is relevant is different from the question whether it is admissible in evidence. *Hazi Waziullah vs ADC 41 DLR (AD) 97.*

**42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41**—Judgments, order or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

**Illustration**

A sues B for trespass of his land. B alleges the existence of 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 for 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 way exists.

**Case Law**

**Section 42**—Coroner's inquisition—Not admissible in evidence. *Bhogwandas Tulsidas AIR 1946 Bombay 184.*

**Section 42**—Document admitted on admission of parties—Objection to admission cannot be taken at appellate stage. *Mohd Zaker Sukani 12 DLR 566.*

**Section 42**—Writ for delivery of possession—Admissible as evidence of possession—Onus of proving possession was not physical is on the other side. *Muhammad Zaker PLD 1961 Dacca 71.*

**Sections 42, 40, 41, 43 and 44**—“Relevant” means and relates to admissibility only—Evidentially value of a judgment which is relevant is different from the question whether it is admissible in evidence. *Hazi Waziullah vs ADC 41 DLR (AD) 97*.

**Sections 42, 13 and 43**—The law is now settled that a Judgment whether inter parties or not may be conclusive evidence against all persons of its existence, date and legal effect, as distinguished from the accuracy of the decision rendered. The former judgments and decrees were not themselves a transaction or an instance within the meaning of section 13 of the Evidence Act, but the suit in which they were made was a transaction or an instance in which the defendant's right of possession was claimed and recognised and that to establish that such transaction or instance took place the previous judgment was the best evidence. *Robert Pinaru vs Moulana Habibur Rahman and others 8 BLC (AD) 115*.

**43. Judgments, etc—other than those mentioned in sections 40 to 42 when relevant**—Judgments, orders or decrees, other than 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 be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. That 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. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

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

A afterwards sues C for the 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 B. C, B's son, murders A in consequence.

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

<sup>1</sup>[(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 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.]

### Case Law

**Section 43**—Judgment of Criminal Courts, to what extent admissible in civil cases. The findings of Criminal Courts are not admissible in evidence in civil suit. Recitals of admissions in the judgments in criminal cases are admissible in certain circumstances only but are otherwise inadmissible. *SN Gupta 11 DLR 470; PLD 1960 Dacca 153.*

**Section 43**—Judgment of another criminal case in respect of different charge not admissible. *Md Khurshid 15 DLR (SC) 102.*

**Section 43**—An order under section 144 CrPC regarding possession cannot be treated as substantive evidence of possession. *S N Gupta 11 DLR 470.*

**Section 43**—Finding of Civil Court not relevant in dispute with respect to same matter in Criminal Court. *(1956) PLD (Lah) 490.*

**Section 43**—Under section 40 a previous judgment, order or decree, is relevant to bar a second suit, that is, when such a judgment operates as *res judicata* under section 11 CPC. Under section 41 a final judgment, order or decree of a competent court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, is not only relevant but also is conclusive both against the parties thereto as well as against the rest of the world, that is, it is a judgment *in rem* as distinguished from a judgment *in personam*. Under section 42 a judgment is relevant if it relates to any matter of public nature but it is not a conclusive proof of the fact it states. None of these sections, 40, 41 and 42, obviously is attracted to the instant case. It is section 43 which may be attracted to the instant case. *Hazi Waziulah vs ADC Revenue 41 DLR (AD) 97.*

**Section 43**—Admissibility of recitals in the orders and the judgment : Imam Din, father of Malik Din, made an oral gift of a portion of his land in favour of Aslam, son of his predeceased son, and in the mutation proceedings this gift in

1. Inserted by the Indian Evidence Act, (1872) Amendment Act, 1891 (III of 1891), section 5.

favour of Aslam, on Imam Din's admission before the Revenue Authority was duly recorded. Malik Din filed an appeal before the Collector against this mutation in the revenue record in which his sole contention was that the gift by Imam Din was void as the same was made while Imam Din was in unsound mind. The Collector by his order rejected this plea and upheld the correctness of the mutation.

Thereafter a civil suit was instituted for cancellation of the gift and one of the contentions raised on behalf of the donee was that Malik Din in his grounds of appeal before the Collector did not challenge the factum of mutation on the basis of the gift. In the appeal which arose out of the aforesaid court suit the High Court relied on the recitals in the order of the Collector in regard to the grounds set up by Malik Din. It was contended on behalf of Malik Din that the recitals in a judgment are no evidence to prove the exact admission made by a party unless the whole of the statements is recited therein.

**Held**—The High Court was right in holding that the recitals in the order of the Collector to the effect that in the grounds of appeal filed before the Collector Malik Din had not challenged the factum of mutation and for this limited purpose the recital in the Collector's order was admissible.

The Collector's order in the present case was admitted merely to prove the grounds upon which Malik Din had on the previous occasion sought to challenge the mutation and from this limited purpose the recital was admissible, at any rate, as a secondary evidence of the substance of his pleadings, that is, his memorandum of appeal. *Malik Din vs Mohammad Aslam 21 DLR (SC) 94.*

**Section 43**—Judgment inter-partes or not—Contents therein, to what extent admissible—Judgments, whether inter-partes or not, are conclusive evidence for and against all persons whether parties, privies, or strangers of its own existence, date and legal effect, as distinguished from the accuracy of the decision rendered. In other words, the law attributes unerring verity to the substantive as opposed to the judicial portions of the record. But where the judgment is inter-partes, even recitals in such a judgment are admissible. A previous judgment is admissible also to prove statement or admission on an acknowledgment made by a party or the predecessor-in-interest of a party, in his pleadings in a previous litigation. Similarly, a judgment narrating the substance of the pleadings of the parties to a litigation is admissible to establish the allegations made by them on that occasion. *Malik Din vs Mohammad Aslam, 21 DLR (SC) 94.*

**Section 43**—Previous judgment—Admissibility of—Not binding upon the Respondent No.4 and the Government as the new issues raised in a review case had no occasion to be considered in the previous judgment. *Dr Syed Matiur Rab vs Bangladesh 42 DLR (AD) 126.*



**Section 43**—The fact that the accused was acquitted or convicted in a criminal case but not the findings can be relied in a civil suit between the parties. *Akhtar Husain Shariff vs Munshi Akkas Husain; 1983 BLD (AD) 334 (b). Md Arshad Ali vs Abed Ali; 1984 BLD 150(a).*

**Section 43**—A criminal proceeding is not admissible and cannot be taken into consideration in deciding a civil proceeding. *Shamsul Huda (Md) and another vs Mahmooda Khatun and others 5 BLC 649.*

**Section 43**—The lower appellate Court having rested its decision on the judgment of a criminal court passed in a proceeding under section 145, CrPC wherein possession regarding the suit land was found in favour of the plaintiff and such decision on this pertinent question of possession appears to have suffered from patent illegality. *Monohar Ali alias Maiyna vs Nabibur Rahman Choudhury being dead his heirs Sayeda Khatun & ors 4 BLC 138.*

**Section 43**—On perusal of Ext 1 and Ext 2 series it transpires that in the plaint, the Preliminary Decree and the Final Decree, the substituted defendant Nos. 21 Kha and 21 Ga had been described as minors and they were not at all represented by any guardian appointed by the Court as mandated under Order XXXII, rule 3 of the Code. The *ex parte* decree passed against them being totally unrepresented by a guardian appointed by the Court was wholly without jurisdiction and the same was a nullity and cannot be enforced against them and also against their heirs and transferees. *Shahani Bibi being dead her heirs : Mohammad Azim and others vs Nur Islam being dead his heirs : Doly Islam and others 4 BLC 195.*

**Section 43**—The plaintiff has signally failed to prove that the property detailed in the schedule including schedule Cha and Tha (f) property of Title Suit No. 167 of 1916 attracted CS Plot No. 114 of CS Khatian No. 128 is the suit property of the present suit. Unless the plaintiff proves that the property described in the schedule of the previous suit attracted the present suit plot, the plaintiff cannot at all claim title on the present suit property and her title cannot also be declared thereon. *Shahani Bibi being dead her heirs : Mohammad Azim and others vs Nur Islam being dead his heirs : Doly Islam and others 4 BLC 195.*

**Section 43**—A criminal proceeding is not admissible and cannot be taken into consideration in deciding a civil proceeding. *Shamsul Huda (Md) and another vs Mahmooda Khatun and others 6 BLC 82.*

**Section 43**—Since the Exhibit 12 series and Exhibit 19 are judgments and orders of various Courts which speak of assertion of right of the plaintiff as a sole surviving heir of Ismail and since that assertion of relationship is a fact in issue in the present case, they were rightly considered by the trial Court as good



evidence in terms of section 43 of the Evidence Act and hence the trial Court has not committed any illegality in declaring the plaintiff was entitled to inherit the leasehold right in the shop as it is now well settled that monthly tenancy is heritable. *Islamic Foundation Bangladesh vs Firoz Alam & others* 6 BLC 599.

**Section 43**—The learned trial Court took into consideration of the record of another criminal case and the police report under section 173, CrPC submitted in that case and drew an adverse inference against the condemned person relying on the same which was neither produced before the trial court by the defence nor any of the witnesses made any statement about that case. The learned trial Court cannot take judicial notice of another criminal proceeding and it cannot be used against the condemned prisoner. *State vs Nazrul Islam @ Nazrul* 9 BLC 129.

**Sections 43 and 13**—Whether judgment which decreed the suit on a finding that there was an amicable partition is admissible under sections 13 and 43 of the Evidence Act. *Hazi Waziullah vs Additional Deputy Commissioner* 41 DLR (AD) 97.

**Sections 43 and 13**—Evidentiary value to the previous judgment in Writ Petition Nos. 682 of 1980 as to the status of the petitioner in view of the provisions of section 43 read with section 13 of the Evidence Act not accorded—Effect of.

Previous judgment—Admissibility of—Not binding upon the respondent No.4 and the Government as the new issues raised in a review case had no occasion to be considered in the previous judgment. *Dr Syed Matiur Rab vs Bangladesh* 42 DLR (AD) 126.

**Sections 43 and 13**—Relevance of previous judgment—judgment in a prior suit together with the plaint and other steps is admissible in evidence. *Haji Waziullah vs ADC (Rev.) & others* 7 BSCD 86.

**Sections 43, 41, 42 and 44**—“Relevant” means and relates to admissibility only—Evidentiary value of a judgment which is relevant is different from the question whether it is admissible in evidence. *Hazi Waziullah vs ADC* 41 DLR (AD) 97.

**Sections 43, 13 and 42**—The law is now settled that a Judgment whether inter parties or not may be conclusive evidence against all persons of its existence, date and legal effect, as distinguished from the accuracy of the decision rendered. The former judgments and decrees were not themselves a transaction or an instance within the meaning of section 13 of the Evidence Act, but the suit in which they were made was a transaction or an instance in which the defendant's right of possession was claimed and recognised and that to establish that such transaction or instance took place the previous judgment was the best evidence. *Robert Pinaru vs Moulana Habibur Rahman and others* 8 BLC (AD) 115.

~~Sec~~ 44. Fraud or collusion in obtaining judgment, or incompetency 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 sections 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.

### Case Law

**Section 44**—After the passing of a decree, it can only be challenged under section 44 of the Evidence Act to show that it was obtained either by fraud or collusion and on no other ground. *Rakhal Chandra Das vs Benecha Khatun* 24 DLR 63.

**Section 44**—A fraudulent decree can be impugned in another suit by way of defence without filing a separate suit to set aside the same. *Sultan Ahmed vs Waziullah*, BLD 1987 235 at 238.

**Section 44**—Court's judgment, burden of—When the petition has produced a judgment and decree, the burden is on the adverse party to show that the court was not competent to pass the decree. *Rahela Khatun vs Court of Settlement* 45 DLR 5.

**Section 44**—Farud—When a judgment is set up by one party as a bar to the claim of the other, the latter can show that the same was delivered without jurisdiction or was obtained by fraud. It is not necessary for him to have the judgment set aside by a separate suit. *Abdul Gani Khan vs Shamser Ali* 45 DLR 349.

### OPINIONS 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, as to identity of hand-writing <sup>1</sup>[or finger impressions], the opinions upon that point of persons specially skilled in such foreign law,

1. Inserted by Indian Evidence Act 1899 (V of 1899), section 3. For discussion in Council as to whether "finger impressions" include "thumb impressions", see Gazette of India, 1898, Part VI, pages 24.

science or art, <sup>1</sup>[or in questions as to identity of handwriting] <sup>2</sup>[or finger impressions] are relevant facts.

Such persons are called experts.

### **Illustrations**

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

The opinion 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 incapable 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 of unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the facts which they do, or of 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 opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

### *Case Law*

Handwriting—How may be proved—Expert's opinion—Not the only mode of proof:

✓ (1) By proof of signature and handwriting of person alleged to have signed or written the document (section 67).

✓ (2) By the opinion of experts who can compare handwriting with the handwriting (section 45).

✓ (3) By a witness who is acquainted with the handwriting of the person by whom it is supposed to be written and signed (section 47).

✓ (4) By comparison of signature or writing with other admitted and proved (section 73). *Benoy Bhusan 6 DLR 50; PLD 1956 Dacca 14.*

1. Inserted by the Indian Evidence Act Amendment Act (XVIII of 1872) section 4.

2. Inserted by Indian Evidence Act 1899 (V of 1899), section 3. For discussion in Council as to whether "finger impressions" include "thumb impressions", see Gazette of India, 1898, Part VI, pages 24.



**Section 45**—Record-of-rights—Presumption of correctness—Plaintiff can rebut the presumption only by proving that mutation order was false. *Ghulam Muhammad Shah (1950) PLD Baghdad-ul-Jadid 9.*

**Section 45**—The opinion of an expert is admissible but it cannot be considered to be infallible. It should not be safe to maintain the conviction based on the sole testimony of an expert. *Muhammad Abdul Qayyum Siddiqi PLD 1956 (WP) Karachi 234.*

**Section 45**—Handwriting expert—Conviction should not be based on evidence of hand-writing expert. *Muhammad Hasan 5 DLR (WP) 6.*

**Section 45**—Handwriting expert's evidence is important when corroborated. *Ram Chandra PLD 1957 SC (India) 331.*

**Section 45**—Handwriting—If Court may make comparison to see genuineness of.

**Held**—The Court has power to make comparisons and to come to a conclusion from it. *Makhan PLD 1958 Azad J & K 40.*

**Section 45**—It is not desirable that a judge should take upon himself the task of comparing signature in order to find out whether there has been a forgery in a case. The least the Judge should do is to seek the assistance of the lawyers concerned in comparing the two signatures and arriving at his conclusions. It is not unusual to find a difference in the writing of one and the same person even after short interval of time. It all depends upon so many extraneous circumstances—the pen, the ink, the paper, the posture of his hand, the general condition in which he writes. It is for this reason that the law merely requires a consideration of the general character. *Darshan Singh AIR (33) 1946 Allahabad 67.*

**Section 45**—Handwriting expert—Reliance should be placed on his statement with great caution—Court should look to the whole evidence before deciding the question. *Mushtaq Ahmad Gurmani PLD 1958 (WP) Lahore 747; PLR 1959 Lahore 801.*

**Section 45**—Handwriting—Newspaper print not satisfactory for test of handwriting. *Mustaq Ahmed Gurmani PLD 1968 (WP) Lahore 747; PLR 1959 Lahore 801.*

**Section 45**—Hand-writing expert—Not giving sound reasons for opinion—Value of evidence. *M A Motalib 13 DLR 436 (DB); PLD 1960 Dac. 897.*

**Section 45**—Jewish Law—Expert evidence admissible. *Jacob AIR 1946 Cal. 90.*

**Section 45**—Expert evidence not conclusive—Evidence given by a handwriting expert can never be conclusive, because it is, after all, opinion

evidence. Opinion of the handwriting expert as to the authorship of the questioned writings or signatures is not infallible; on the contrary, it is not a safeguard for leading to any conclusion. *Md Shamsul Huq vs State* 20 DLR 540; AIR 1963 SC 1728; BLD 1987 (AD) 142 (to be received with great caution).

**Section 45**—Insanity—opinion of expert relevant. *Deorao* AIR 1946 Nagpur 321 (DB)

**Section 45**—Medical expert—Who may give evidence as—Question to be decided by the Court. *Abdullah* PLD 1950 Peshawar 19.

**Section 45**—Medical evidence on distance from which firearms were fired—Not conclusive, *Haq Nawaz* PLD 1959 (WP) Karachi 137.

**Section 45**—Opinion of doctor—Admissible. *State vs Sharif* 9 DLR (WP) 37; PLD 1957 (WP) Lahore 669; PLR 1957(2)(W) 559.

**Section 45**—Poisoning—Chemical examiner consulting doctor who attended the deceased before submitting report—Procedure not approved. *Abdul Ghani* PLD 1956 (WP) Lahore 300; PLR 1956 Lah. 904.

**Section 45**—Opinion of the handwriting expert as to the authorship of the questioned writings or signatures is not infallible; on the contrary it is not a safeguard for leading to any conclusion. *Md Shamsul Huque* 20 DLR 540.

**Section 45**—Necessity of examining the doctor in court who held the post-mortem examination—Reliance on testimony of other witnesses in matters where expert's opinion is necessary. *Usman Khan* 21 DLR (SC)194.

**Section 45**—Photostat copy of document—Question of authenticity may be decided by court without evidence of expert. *Mushtaq Ahmed Gurmani* PLD 1958 (WP) Lahore 747; PLR 1958 (WP)1308.

**Section 45**—Tract evidence—Much reliance cannot be placed on. *Pritom Singh* PLD 1957 Supreme Court (Ind.) 15.

**Section 45**—Age—Weight to be attached to doctor's opinion. *Abdullah* PLD 1960 Peshawar 19; PLR 1960 (2) WP 105.

**Section 45**—There can be no doubt whatever that evidence of the opinion of a witness, as an expert, or any branch of the law, whether it be the Muslim Law, or any other Law, was wholly irrelevant except within the question was about a point of foreign law. *Moula Bux* PLD 1952 Sind 54; PLR Sind 50.

**Section 45**—Opinion given by a fingerprint expert is reliable. *Rahimuddin* 12 DLR 453; 1960 PLD (Dac) 975.



**Section 45**—Handwriting expert—opinion of, admissible but a conviction cannot be sustained merely on the expert's opinion *Md A Qayyum 3 DLR (WPC) 30*.

**Section 45**—Digestion of food—Medical views not always correct. *Shahidullah Khan 12 DLR 537; 1961 PLD (Dac) 1*.

**Section 45**—On matters which are within the exclusive knowledge of medical experts, the founded opinion of court should better be on expert evidence or some text book of acknowledged authority. *Md Sarfaraj Khan 5 DLR (FC) 280*.

**Section 45**—Statement of doctor as to age—Not supported by reliable evidence carries no value. *Golam Quader 6 DLR (WPC) 178*.

**Section 45**—The evidence of a doctor as regards the age of a person is nothing more than an opinion of an expert and is of little value unless it is corroborated by convincing material of the record. *Ghulam Rasul PCR 225*.

**Section 45**—Physical examination of the girl by the doctor without subjecting her to scientific test not conclusive for determination of her age, *Banney Khan. 18 DLR (WP) 28*.

**Section 45**—Weight which can be attached to expert's opinion considered when other authentic evidence conflicts with expert's opinion.

An expert's opinion may be considered by the Court in forming its own opinion on the issue before it. Section 45 of the Evidence Act does not say that the opinion of an expert is binding upon the Court. The evidence of an expert is considered in order to enable the Court to come to a satisfactory conclusion. An expert giving his opinion must give reasons in support of his opinion and if the Court thinks that the reasons are not cogent or that there is other authentic evidence on the point and that evidence is in conflict with the opinion of the expert then the court is quite competent to prefer that evidence to the expert's opinion. *Prafullah Kamal Bhattacharya vs Ministry of Home 28 DLR 123*.

**Section 45**—Evidence of doctors—to what extent it can be relied on—The evidence of a medical expert, particularly of a doctor who had conducted a post-mortem examination, is a very important piece of evidence in criminal trials and medical officers who are entrusted with this work should visualize that it is not a mere formal duty to give evidence in the Court of Law, but the real purpose is that a doctor should give a correct opinion to enable a court to arrive at a correct decision. *Sabir Hossain 21 DLR (WP) 5*.

**Section 45**—Handwriting expert's opinion—needs very careful examination. *Muhammad Umer 21 DLR (WP) 12*.

**Section 45**—The statement of the doctor unsupported by any other reliable evidence is of no value. *Ghulam Qadir PLD 1951 Baghdad-ul-Jadid 7*.



**Section 45**—One cannot agree that a Court is bound to accept as gospel truth each word of what a doctor states as an opinion. In law the statement of an expert stands on precisely the same footing as that of any witness and may or may not be accepted by Court. Ordinarily, the Court will be slow to reject the opinion of a witness who is an expert in the matter he deposes about, but that is not to be understood to mean that the word of an expert is like law to the Court called upon to deal with his evidence as a witness. *Ghulam Nabi PLD 1957 (WP) Lahore 109.*

**Section 45**—Expert evidence—opinion about part of the document being written at a later date—admissible. *Abdul Qadier PLD 1956 (WP) Lahore 100; 1956 PLR Lahore 757.*

**Section 45**—Extracts from books on medical jurisprudence—How should be treated. The High Court disbelieved medical evidence by saying that the doctor was not in accord with the opinion expressed in books on medical jurisprudence by authors like Modi and Iyon.

**Held**—it cannot be said that opinion of these authors were given in regard to circumstances exactly similar to these which arose in the case now before us; nor is this a satisfactory way of disposing of the evidence of an expert unless the passages which are sought to discredit his opinions are put to him. *Bagawan Das PLD 1957 (SC) India 426.*

**Section 45**—Finger-print expert—Eighteen ridges of fingers compared—Evidence reliable. *Rahimuddin PLD 1960 Dacca 975; 12 DLR 453.*

**Section 45**—Foreign Law—A businessman may be produced as an expert on foreign law if he has become one on account of the nature of his businesses. *Said Ajami PLD 1956 Privy Council 34.*

**Section 45**—Handwriting expert's opinion—Weight to be attached to: The science of the study of calligraphy is inexact and has not yet attained any degree of accuracy. Hence the opinion of handwriting expert should be received with great caution and it is unsafe to base a decision purely on expert opinion without sufficient corroboration. *Eskandar Ali vs Alhamara Begum 19 DLR 791.*

**Section 45**—Court competent to form its opinion on a comparison of the handwritings. *Eskandar Ali vs Musammat Alhamara Begum 19 DLR 791.*

**Section 45**—Accused may be convicted on the uncorroborated opinion of finger print expert provided the opinion is found by the Court to be correct. The Judge must apply his mind to the question whether it is correct or not. The expert must not only give his opinion but also record the grounds for such opinion at the time when he examines the impression and explain them to the Court in presence of the accused. *Imtiaz Mia vs Crown 7 DLR 218.*

**Section 45**—The opinion of a certain number of witnesses that a photograph is not obscene is not the true test, or the correct method by which the obscenity of an object is to be decided, and the duty of determining obscenity must ultimately devolve upon the Court which will take into consideration the evidence before it but which will ultimately be the judge of the question. *Yakub vs State 12 DLR (WP) 45; 1959 PLD (Lah) 172.*

**Section 45**—Where the features relied upon are physical characteristics which are susceptible of examination by scientific methods, with a view to identification, or differentiation, it is advisable that such aids should be called in for the resolution of doubts, which in the absence of reliable direct evidence must necessarily attach to such features regarded as evidence. It can only be in very rare cases that mere visual inspection with the naked eye, unaided by scientific training or methods, can afford the necessary degree of satisfaction. *SMK Alvi vs Crown 5 DLR (FC) 161 (184).*

**Section 45**—Empty cartridges stated to have been fired from gun recovered from the possession of the accused—Not by itself sufficient to prove complicity in crime. *6 PLD (Lah) 179.*

**Section 45**—The evidence of eye-witnesses could not be rejected merely on the strength of some confused statements in the post-mortem report about which the doctor was not questioned at all in Court. *1950 PLD (Lah) 90.*

**Section 45**—The opinion of an expert is never binding on a Court. It is admitted in evidence only to help the Court in arriving at a correct decision. But it does not follow that the opinion of an expert is always correct. *1950 PLD (Lah) 507.*

**Section 45**—Handwriting—Presence of all peculiarities of a handwriting in the disputed handwriting does not by itself exclude possibility of the disputed handwriting being forgery *Rafiq Ahmed vs State 11 DLR(SC) 91; 1958 PLD (SC) 317.*

**Section 45**—Handwriting expert—Dangerous to rely entirely on his opinion. *Saadat Ali Khan PLD 1952 Baluchistan 1.*

**Section 45**—The evidence of a hand-writing expert is usually of a weak kind and it is unsafe to base a conviction thereon. Superintendent and Remembrancer of Legal Affairs, *East Bengal vs Mazharul Huq, PLD 1955 Dacca 77; PLR 1953 Dacca 142; 6 DLR 146.*

**Section 45**—Medical evidence is only corroborative in nature—Ocular evidence of the eye witness which substantially corroborates the major injuries on the person of the deceased must be accepted. *Abdul Quddus vs State 43 DLR (AD) 234.*



**Section 45**—Opinion of expert—evidence and opinion of expert deserve consideration like any other evidence but such evidence has to be received with great caution. *Sheikh Salimuddin vs Ataur Rahman* 43 DLR 18.

**Section 45**—Deposition of a doctor giving certain opinion formed by examining certain facts is not an absolute truth. *Abdur Rahman Syed vs State* 44 DLR 556.

**Section 45**—The opinion of a doctor, unless supported by reliable evidence, does not carry any value. *Siraj Mal & others vs State* 45 DLR 688.

**Section 45**—The Court was not justified in convicting the accused without examination and comparison of the disputed signature on the back of the cheque by handwriting expert with his specimen signatures. *Khadem Ali Akand (Md) vs State* 49 DLR 441.

**Section 45**—The High Court Division rightly found that it was unsafe to convict the accused persons on the uncorroborated opinion of handwriting and fingerprint expert. *State vs Raihan Ali Khandker and others* 50 DLR (AD) 23.

**Section 45**—Neither the finger prints forwarded to the expert were taken as per order nor in presence of the Court. Under the facts and circumstances conviction based solely on expert report is liable to be set aside. *Sobha Rani Biswas vs State and ors* 52 DLR 293.

**Section 45**—Where the direct evidence is not supported by expert evidence, and evidence is wanting in the most material part of prosecution case it would be difficult to convict the accused on the basis of such evidence. *Nepoleon Khondker alias Lepu and another vs State* 54 DLR 386.

**Section 45**—Medical evidence—The material obtained on the swab must be preserved and forwarded for examination by the expert for the presence of human spermatozoa which is a positive sign of rape. It seems that the doctor examined the external part of the injuries of vagina and failed to make detail dissection so as to ascertain to prove the actual occurrence of rape. *State vs Harish* 54 DLR 473.

**Section 45**—The evidence of an expert cannot alone be treated and used to form basis to find an accused guilty and to form basis of his conviction independent of the substantive evidence of the PWs in the case. *Kalu Sheikh alias Kalam Sheikh and others vs State* 54 DLR 502.

**Section 45**—In the absence of examination of the hand writing expert the report given by such expert cannot be accepted as evidence and such report will not help the plaintiff in any way to prove his case. *Shamsul Haque (Md) vs Munsur Ali and others* 5 BLC 519.



**Section 45**—As there was a doubt about the LTI of the petitioner No. 1, the Court of Settlement ought to have examined the admitted LTI with the disputed LTI of the said petitioner by the expert and thereby he has failed to exercise his jurisdiction. *Akhtari Begum and another vs Court of Settlement and another 2 BLC 341.*

**Section 45**—The Court below erred in law in disallowing the plaintiffs' prayer for calling the registered document and comparison of the disputed document with contemporary other document allegedly executed by the deceased plaintiff and the same has occasioned failure of justice. *Shahadat Hossain (Md) and others vs Md Golam Mowla 3 BLC 254.*

**Section 45**—Although the doctor deposed that the injuries he found were grievous in nature but those injuries are not grievous as contemplated under section 320 of the Penal Code. *Aminul Islam alias Ranga and others vs State 5 BLC (AD) 179.*

**Section 45**—Although the local witnesses deposed that appellant Mustafizur Rahman caused injury by using an explosive substance but the doctor opined that the injury was caused by a chemical substance when the Investigating officer failed to get the injury and the shirt of PW. 1 examined by an expert to find out whether PW 1 sustained injury by explosive substance it cannot be said that it is proved that Mustafizur Rahman caused injury by explosive substance. *Aminul Islam alias Ranga and others vs State 5 BLC (AD) 179.*

**Section 45**—The doctor opined that the age of the girl was between 16 and 18 years which cannot be relied upon as it is absolutely vague and indefinite. *Hasina Begum vs State and another 1 BLC 315.*

**Section 45**—Court compared the report of the first post-mortem examination with Modi's Medical Jurisprudence and came to a finding that the report was wrong as it was a case of suicidal death from coma due to taking fatal dose of Seduxen and not a death due to asphyxia resulting from hanging. *State vs Yahiya alias Thandu & ors 1 BLC 185.*

**Section 45**—As the explosive substance was not tested by chemical expert and the seizure list witness even did not know the contents of the polythene bag the alleged recovery from the appellants was not proved and the conviction was set aside. *Mohammad Ali and another vs State 1 BLC 164.*

**Section 45**—A 14 years old girl being an informant deposed in Court that she was raped by the appellants when there was no enmity between the parties and the two other neutral witnesses who stated that the victim girl came running near the shop of witness Ashraf without any pajama on her body and all other local witnesses corroborated this fact which manifestly proved that the informant

was raped by the appellants in spite of contrary evidence of doctor. *Badal and another vs State, represented by the Deputy Commissioner 4 BLC 381.*

**Section 45**—It is submitted on behalf of the petitioner that as there was a delay of about a month in the examination of the viscera by the chemical examiner his report cannot be relied upon. When the chemical examiner was not confronted on the quality of viscera there is nothing to doubt or disbelieve the report. *Afzal Hossain Mondal (Md) vs State 6 BLC (AD) 72 .*

**Section 45**—The autopsy report does not substantiate the prosecution case. The doctor who held the post-mortem examination has clearly stated in his examination-in-chief that the cause of death was due to injury No. 1 which was ante-mortem and homicidal in nature when in cross-examination he has stated that injury No. 1 might be caused from accident or from falling down and therefore, from the evidence of the doctor that the injury No. 1 could be due to accident or from falling down, the appellants are entitled to get benefit of doubt. *Kala Miah & others vs State 6 BLC 335.*

**Section 45**—In the absence of any chemical examination of the blood the defence theory that the blood might be the blood of a slaughtered cow cannot be ruled out altogether. It was the duty of the prosecution to establish that the blood allegedly found on the seized articles was human blood by chemical examination. This is a serious lacuna on the part of the prosecution which renders the seizing of blood stained articles highly doubtful. *State vs Monu Meah and others 6 BLC 402.*

**Section 45**—It appears that the learned Joint District Judge on assessment of evidence on record found that the petitioners' application under Order IX, rule 13 was barred by limitation and could not prove the fact of her illness. The High Court Division after considering the facts and circumstances of the case and the decision placed before them rightly held that without examination of doctor the medical certificate granted by him regarding illness is inadmissible in evidence. *Anwara Begum and others vs Shah Newaj 8 BLC (AD) 160.*

**Section 45**—Medical evidence was only corroborative in nature and the ocular evidence of the eye witnesses substantially corroborate the major injury on the person. The High Court Division has, therefore, held that the learned trial Court had rightly convicted the accused petitioner for the offence punishable under section 302 of the Penal Code. As the accused petitioner was found to be a young man of about 20 years of age and gave only one blow to the deceased and he had been in the death cell for more than 3 year, the High Court Division rightly reduced his sentence of death to imprisonment for life for ends of justice. *Shamim (Md) alias Shamim Sikder vs State 8 BLC (AD) 174.*



**Section 45**—Rifle eminently falls within the categories of guns. Shots from rifles are shots from guns and as such are gun shots. The condemned prisoner can get any benefit pressing into service that shots were rifle shot and not gun shots. There are positive evidence that the condemned prisoners fired from rifles and rifles had been seized through seizure list, Exhibit 7/1. In the face of positive evidence, non-examination of the rifle by ballistic expert would not throw the prosecution case out of Court so far the complicity of condemned prisoners are concerned. *State vs ASI Md Ayub Ali Sardar and others* 8 BLC 177.

**Section 45**—When the medical evidence is that the injuries were ante-mortem and homicidal in nature, the High Court Division does not find any difficulty to reach the conclusion that the victim Mammy received the injuries before her death. Moreover, such injuries cannot be found in case of suicide. The High Court Division, however, could not find any explanation for such injuries from the statement of Ripon (in brief) or any defence suggestion. It is true that victim Mammy was hanged. But one must not forget, in the forensic science, hangings are found to be of three kinds, namely, suicidal, homicidal or accidental. Had it been a case of suicide, there could not be found injury Nos. 2, 3, 4, 6 and 7. *State vs Md Abul Kalam Azad* 8 BLC 464.

**Section 45**—There is no direct evidence that the writings in the application for conversion of the account were in the hand of Syed Shamsuddin Ahmed. None of the PWs identified those writings as of his hand. So, there is no substantial evidence in support of it and in that case his conviction on the basis of the opinion of the handwriting expert alone is unsafe. Since there is no convincing evidence, direct or circumstantial, to connect him with the offences under sections 409, 467 and 201 of the Penal Code, he is found not guilty under those sections and is acquitted honourably. *Kazi Shamsul Alam and others vs State* 8 BLC 714.

**Section 45**—The statement made by the accused appellant during his examination under section 342, CrPC supported by series of prescriptions, the prosecution and hospital papers indicate that the deceased was suffering from various ailments since after her marriage and that she was admitted into hospital for taking excessive dose of medicine for sleep and failure to entertain the prayer for holding second post-mortem examination on the dead body of the deceased makes a reasonable man suspicious about the opinion of the medical board who held post-mortem examination on the dead body of the deceased. *Mahbul Alam vs State* 9 BLC 260.

**Section 45**—The victim Shahida Chowdhury died after 7 days of the occurrence and during this period, she was operated upon and some other



intervening circumstances resulted in the cause of death. The doctor himself was confused and sought for expert's opinion for ascertaining the nature of injuries. The injuries caused by the accused Liaqat Ali are not sufficient to cause the death of the victim Shahida in the ordinary course of nature. The facts proved by the prosecution do not bring the case within clause '3rdly' of section 300 of the Penal Code but the act of the convict Liaqat comes within clause (b) of section 299 of the Penal Code, that is to say, the convict intended the bodily injuries which are likely to cause death as distinguished from one which is sufficient to cause death in the ordinary course of nature. The charge under section 302 of the Penal Code has not been proved by the prosecution but the offence committed by the convict Liaqat Ali Khan falls under Part I of section 304 of the Penal Code and he is convicted thereunder and sentenced to suffer rigorous imprisonment for ten years. *State vs Liaqat Ali Khan 9 BLC 351.*

**Section 45**—In medical report head injury had been noted and such injury had been attributed as the cause of death but in inquest report there was no reference of any injury on head. Mere omission of a particular injury or infliction on the body cannot invalidate the prosecution case. Discrepancy occurring between Inquest Report and Post Mortem Report can neither be termed to be fatal, nor even a suspicious circumstance so as to ensure benefit to the accused resulting in dismissal of the prosecution case. Post Mortem Report having been prepared by a medical man and medical expert and Inquest Report having been prepared by a non-medical man, the former being product of an expert shall prevail over the latter. Post Mortem Report is a document which by itself is not a substantive evidence. Doctor's statement in Court has the credibility of a substantive evidence and not report. In a similar vein Inquest Report, also, cannot be termed to be a basic or substantive evidence being prepared by police personnel, a non-medical man, at the earliest stage of the proceeding. Medical evidence of Doctor, the PW 5 supported by trustworthy evidence of the PWs 1, 2 and 3 is sufficient proof that head injury was the cause of death of the wife of the condemned prisoner. *State vs Ainul Haque 9 BLC 529.*

**Section 45**—Bainapatra—Execution—Presumption—Overwriting—Expert's opinion—Bainapatra not filed or produced at the time of filing the plaint as required under Order 7, rule 14, CPC but produced for the first time about two years after filing of the suit which was written on a stamp paper valued at Re. 1/- procured from some vendor whose particulars were not mentioned thereon—plaintiff's father alleged to be the stamp paper purchaser from a person of a different village, did not depose in support of the plaintiff's claim though his father deposed in a misc. case arising out of the suit—Overwriting in the Bainapatra while it was in the court's custody—Opinion of the Handwriting

expert—Such opinion is only a relevant fact under section 45 of the Evidence Act—Court will certainly consider the expert's opinion but it is the court which alone will come to its own conclusion regarding the matter on which the expert gives opinion—That is why such expert's opinion is always received with great caution—Handwriting expert's opinion must be considered along with other evidence—where independent witness could have attested the execution, the bringing of only the plaintiff's relations raised reasonable doubt not only about the execution and passing of consideration but also about the contract as a whole. *Eklas Khan and others vs Poresh Chandra Das and others* 6 BSCD 185.

**Sections 45, 3, 24 and 30**—Considering the medical evidence along with Modi's Medical Jurisprudence and Toxicology, there is no doubt that the victim has not been raped by the accused persons before her death. The confessional statements of two accused persons were procured by torture which were neither true nor voluntary and no conviction can be based on such confessional statements, Moreso, both the confessional statements are exculpatory in nature. There is no other evidence on record regarding rape corroborating the confessional statements. A confession of a co-accused is very weak evidence. It does not come within the definition of evidence as defined in section 3 of the Evidence Act. Thus the confession of a co-accused implicating other co-accused is not legally admissible for the conviction of other co-accused. The Bishesh Adalat convicted accused Monsur, Mozam, Faruque and Montaz relying on the confessional statements made by Mohammad Ali and Rojab Ali which is not sustainable in law. *State vs Mozam @ Mozammel and others* 9 BLC 163.

**Sections 45-47**—The deposition of the medical witness is his substantive evidence whereas his medical certificate is corroborative evidence which cannot be considered without the substantive evidence. *Md Hadiuzzaman vs State; 1986 BLD (AD) 191(b)*.

**Sections 45, 47**—Genuineness of document—How may be proved. The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact, it may be proof of handwriting of the contents or of the signature. It may be proved by internal evidence afforded by the contents of the documents. In an appropriate law—the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship. *Mobarik Ali Ahmed, PLD 1958 (SC) India 115*.

**Sections 45, 47, 67, 73**—Modes of proving handwriting or signature: It is not necessary that whenever a person denies signature or handwriting in document, it should be sent to an expert for opinion. There are other modes of



proving handwriting or signature as provided in sections 45, 47, 67 and 73 of the Evidence act. *Abdul Gani Malitha vs. Sariatulla Biswas*, 16 DLR 157.

**Sections 45, 47, 67 and 73**—Section 73 provides for the direct comparison by the Court of deputed signature with undisputed one. The other modes of proving hand-writing or signature have been provided in sections 45, 47 & 67 of the Act. The Court when it thinks necessary, may compare the signature itself but it is not bound to do so in every case. *Pradip Chandra Shaha vs Urmila Bala Roy and another* 5 BSCD 173.

**Sections 45 and 55**—From the evidence of ocular witnesses 2, 3, 4 and 5 it is found that the alarm was raised by the deceased while he was attacked and being beaten entreating the accused not to kill him. From the trend of the evidence given as to the occurrence by the eye-witnesses it appears that the entire act of assault causing injuries to deceased Salim took place in their presence. But in reality it cannot so happen. In normal course of things, it is not expected that the accused will wait till the witnesses come and then inflict injuries on their victim in the full view of the witnesses when the post mortem report shows that the deceased Selim sustained only 3 injuries, first one was on the head, second one was on the back of his waist and the third one on his left knee and there was no repetition of the blows struck by the accused. The time taken in causing the said injuries would not be that long as would allow the aforesaid eye-witnesses to come to the place of occurrence and witness vividly as to which of the accused struck which blow on which part of the body of the deceased and in doing so which type of weapon was used. It is therefore, extremely difficult to accept the said witnesses as truthful witnesses and their evidence as reliable evidence. *State vs Liton @ Abdul Matin and others* 7 BLC 622.

**Sections 45 and 60**—The inquest report being the first recorded version of the offence based on actual observation that the victim was not only raped but raped by a number of persons is admissible as direct evidence under section 60 of the Evidence Act when the post mortem report and the chemical examination report support the commission of rape. In spite of the finding of the doctors such as that no mark of rape was found it is held that the victim was raped before she met her death which brings the offence under the ambit of Nari-o-Shishu Nirjatan (Daman Bishes) Ain, 1995. *State vs Md Joynal Abedin and others* 5 BLC 672.

**Sections 45 and 73**—It is always open to the Court to decide as to whether it should itself compare the questioned signature or handwriting to come to a decision or send the same for an expert opinion. *Monju Mia and others vs Shiraj Mia and others* 56 DLR 264.



**Sections 45 and 73**—It is well settled principle of law that opinion of handwriting expert is not conclusive evidence but it helps the court to come to satisfactory conclusion. Section 73 empowers the court to compare itself the disputed signature with the admitted signature of the executant, when such comparison is fairly made by the court committing no wrong it calls for no interference with the conviction and sentence based on consistent and reliable evidence on record. Compassionate view is taken regarding the sentence of the appellants altering it to the period already undergone as the appellants belong to the same family and they suffered from constant mental agony which caused adverse effect to their family lives. *Azahar Ali & others vs State 5 BLC 262.*

**Sections 45 and 60**—The consistent case of the prosecution is that accused Abdul Ali gave a blow by a Pal which is a pointed weapon whereupon Paritosh Kunda fell into the water but from the deposition of PW 27, Dr Abdul Ghani Khondakar it does not appear that he has found any punctured or penetrated wound on the dead body and such inconsistency of the ocular evidence with the medical evidence goes to show that the occurrence was not seen by the witnesses as claimed and it did not happen in the manner as alleged by the prosecution. *State vs Md Abdul Ali and others 6 BLC 152.*

**Sections 45 and 73**—It appears that the learned trial Court rightly rejected the application of the plaintiff to send the disputed signature to the hand writing expert as there are sufficient materials on record to determine the point. Learned trial Court rightly rejected the application for expert on the ground of delay as well because such application was filed after a lapse of more than one year from the date of filing of the written statement where the defendant denied the bainapatra in question. *Bazlur Rahman and another vs Md Manik Ali 6 BLC 624.*

**Section 45 and 73**—Examination of LTI—It is true Court itself can compare any signature of LTI of any concerned person himself under section 73 Evidence Act but it is better to have an expert's opinion also, particularly in a case of LTI. *Sk Abdul Qasem vs Mayez Uddin Mondal 45 DLR 169.*

**Sections 45 and 73**—The expert's opinion is not a substantive piece of evidence. The Courts below were quite competent to arrive at their own conclusion as to whether or not the signatures appearing on Ext 3 series were those of the petitioner. *Nurul Huq alias Md Nurul Hoque vs State 50 DLR (AD) 88.*

**Sections 45 and 73**—The signature of the defendant on the alleged deed of agreement is found by the hand-writing expert as forged and on comparison of

the signature on the alleged agreement with the admitted signature of the defendant the High Court Division rightly found that those were not in the hand of the defendant for which it calls for no interference. *Syed Munsif Ali vs Shashanka Mohan Chowdhury & another* 3 BLC (AD) 85.

**Sections 45 and 73**—The safe and best course for the Court would be to avoid the practice of comparing the writing or signature etc. and should not stake its judgment on the opinion formed or view taken upon resorting to risky or, in other words, unsatisfactory and dangerous procedure and the desired course should be to go for microscopic enlargement and expert advice since the science of examination of signature, writing, etc. for determination of similarity has advanced enough and it has reached to the stage of accuracy and certainty as well as expertise skill is also available. *Tarak Chandra Majhi vs Atahar Ali Howlader and 8 BLC (AD) 67*.

**Sections 45 and 73**—Since by scientific process or method examination of signature, particularly thumb impression, has developed much, it is safe and sound to leave the matter of such examination to the expert or to the person specialised in the examination. *Serajuddin Ahmed and others vs AKM Saiful Alam and others* 56 DLR (AD) 41.

**Sections 45 and 73**—There are different modes of proving the signature or hand writing on documents but section 45 is one of them and in the instant case the court decided to have opinion of the expert and there is no hard and fast rule for the court as to which mode it should follow. *Dr Wakil Ahmed and ors vs Sufia Khatun and ors* 53 DLR 214.

**Sections 45 and 73**—Comparison of disputed signature LTI cannot be done by the expert with the said registered document which is not admitted or proved to the satisfaction of the court. *Dinesh Chandra Deb vs Dulal Chandra Karmaker and others* 53 DLR 259.

**Sections 45 and 101**—The learned single Judge has rightly held that the onus was shifted upon the defendant No. 1 to show that the summons of the earlier suit was served upon the plaintiff and he will have to prove further that the 'soleh' decree was not obtained by practicing fraud and collusion. The finding of the lower appellate court that the plaintiff put her thumb impression on the solenama is based on conjecture. *Kartic Chandra Sarker and others vs Anarathi Mondal and other* 8 BLC (AD) 158.

**Sections 45 and 106**—Since death to the wife was caused while she was residing in the house of her husband, the convict petitioner, he is competent to say how death occurred to his wife and that the explanation which he offered



having been found untrue, the conviction and sentence that was passed by the learned Sessions Judge has rightly been affirmed by the High Court Division. *Abul Hossain Khan vs State 8 BLC (AD) 172.*

**Sections 45 and 114(g)**—None of the prosecution witnesses has deposed that the appellant by manipulating and interpolating the certificate by inserting figure 3 before 23 misappropriated 323 maunds of jute seeds from the godown. None from the department concerned came before the trial Court to depose that actual misappropriation was done by the appellant himself. Thus, the prosecution has failed to prove its case. *Mozibur Rahman (Md) vs State 6 BLC (AD) 127.*

**Sections 45 and 115**—The comparison of the LTI by the court is its discretion and it does not depend on parties' prayer alone nor any court can be compelled to take recourse to particular mode of proof of hand writing. *Dr Wakil Ahmed and ors vs Sufia Khatun and ors 53 DLR 214.*

**Sections 45 and 137**—The evidence as given by PW 1 that Exhibit 2 was written by Mahbubur Rahman wherein by interpolation he made the balance as Taka 35,100 in place of Taka 100 had not been challenged in cross-examination. So, it is to be presumed that the defence accepted the above testimony of PW 1 as true. PW 11 also identified the signature of Mahbubur Rahman as appearing in Exhibit 2 which also remained unchallenged. In presence of such unchallenged direct evidence of PW 1 that the Exhibit 2 was written by Mahbubur Rahman corroborated by PW 11 there is no necessity for examining and comparing the writings of Exhibit 2 by handwriting expert which is a weak type of corroborative evidence. Therefore, his complicity in the commission of offences under sections 409 and 467 of the Penal Code is proved but the charge under section 201 of the Penal Code had not been substantiated. *Kazi Shamsul Alam & ors vs State 8 BLC 714.*

**Sections 45 and 137**—If on an internal examination, the doctor failed to give the nature of injuries, exact position and measurement, how could the court come to the conclusion on perusal of death certificate, which was issued on the basis of the records of the hospital, not on the basis of examination of the dead body. The learned Metropolitan Additional Sessions Judge was therefore not justified in forming his opinion as to the cause of death due to the stab injuries relying on the death certificate, particularly when none proved the injuries and without affording the defence to cross examine the author who issued the same. This finding of the learned Additional Sessions Judge is not based on legal evidence on record and cannot be sustainable in law. *State vs Liaquat Ali Khan 9 BLC 351.*



46. **Facts bearing upon opinions of experts**—Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions 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 sea-wall.

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.

47. **Opinion as to handwriting when relevant**—When the Court has to form an opinion as to the person by whom any 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 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 documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents 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 <sup>1</sup>[Chittagong], who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence, D is 's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of 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.

### Case Law

**Section 47**—Acquaintance with signatures obtained in the ordinary course—enough. *Muzharul Huq 6 DLR 146.*

**Section 47**—Proof of document—Witness proving must be acquainted with writing in ordinary course of business—Personal acquaintance not necessary. *Muzharul Hoq 6 DLR 146.*

**Section 47**—Explanation—If details are not brought out in cross as to how a witness was acquainted with a man's handwriting—Testimony unchallenged to be accepted. *Muhammad Sadiq Javeed 21 DLR (WP) 62.*

**Section 47**—Opinion as to hand writing—The evidence of PWs 1 & 5 as to the writing in Exts 1-3 being not believable, the documents were not legally proved as the writings thereof could not be proved. *Noor Mohammad Khan vs Bangladesh 42 DLR 434.*

**Sections 47, 45, 67 and 73**—Modes of proving handwriting or signature: It is not necessary that whenever a person denies signature or handwriting in document, it should be sent to an expert for opinion. There are other modes of proving handwriting or signature as provided in sections 45, 47, 67 and 73 of the Evidence Act. *Abdul Gani Malitha vs Sariatulla Biswas, 16 DLR 157.*

**Sections 47, 45, 67 and 73**—Section 73 provides for the direct comparison by the Court of deputed signature with undisputed one. The other modes of proving hand-writing or signature have been provided in sections 45, 47 & 67 of the Act. The Court when it thinks necessary, may compare the signature itself but it is not bound to do so in every case. *Pradip Chandra Shaha vs Urmila Bala Roy and another 5 BSCD 173.*

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1. Substituted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), section 3 and 2nd Schedule, for "Calcutta" (with effect from the 14th October, 1955).

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

*Explanation*—The expression "general custom of right" includes customs of rights common to any considerable class of persons.

### ***Illustration***

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.

### ***Case Law***

**Section 48**—Persons having special means of knowledge—Opinions of persons who are in a position to know of the existence of a custom or usage in their locality are relevant under this section. *Sariatullah Sarkar vs Pran Nath Nandi*, 26 ILR (Cal) 184; *Dalgish vs Guzuffer Hossain*, 23 ILR (Cal) 427.

**49. Opinion as to usages, tenets, etc., when relevant**—When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation or,

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

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





### Case Law

Witness deposing to words used by accused while accepting bribe—Witness's opinion as to meaning of words used not relevant and admissible. *Monzoor Ahmed Khan 1557 PLD (Lah) 473.*

**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 Divorce Act (IV of 1869), or in prosecution under sections 494, 495, 497 or 498 of the <sup>1</sup>\* \* Penal Code.

### 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.

### Case Law

**Section 50**—Evidence of general repute on the question of relationship is admissible in evidence. *Bibi Amu PLD 1958 (WP) Karachi 420; PLR 1959 (WP)(1) 1288.*

**Section 50**—Relationship—Distribution and devolution of family property—very valuable evidence of "family conduct" to prove relationship of one person to another—Such expression of opinion by conduct can be strong piece of evidence against person claiming to be lineal descendant of a deceased. *Ali Bahadur Khan vs Muhammad Yusuf Khan, (1969) 21 PLD (Peshwar) 85.*

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1. The word "Pakistan" was omitted by Act VIII of 1973, 2nd Schedule.

**Section 50**—Witness's opinion as regards relationship between the father and his issue—Independent witness's opinion about the conduct of A towards B showing that the relationship between A and B had been one of father and daughter is admissible in evidence under sec. 50 of Evidence Act. *Imamuddin vs Sukkar Ali Mollah* 26 DLR 56.

**Section 50**—Opinion on relationship with reference to devolution and distribution of family property—Section 50 read with section 114 of the Evidence Act would make the conduct of the members of a family, evidenced by the acceptance of the members of the family, about the devolution and distribution of the family property amongst its members, a very valuable evidence of family conduct, as contemplated under section 50 of the Evidence Act.

Evidence as to devolution and distribution of family property would be a very valuable circumstantial evidence of conduct of the family members under section 50 of the Evidence Act and would be a very relevant evidence to prove pedigree and relationship between the members of the family. *Gopal Chandra Mondal vs Lashmat Dasi* 34 DLR 145.

**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.

#### **Case Law**

**Section 51**—It is not enough for the Chemical Examiner to merely state his opinion. He must state the grounds on which he arrived at the opinion. *Gajrani vs Emperor*, AIR 1933 All 394; 144 IC 357.

### 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 improbable any conduct imputed to him is irrelevant, except insofar 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 a good character is relevant.

### *Case Law*

**Section 53**—Character of the accused—Magistrate inquiring into by looking through police files—Improper—Character not relevant. *Goya Lal AIR (33) 1946 Oudh 233.*

**Section 53**—A man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. *Habeb Mohammad vs State, 1954 AIR (SC) 51.*

<sup>1</sup>[**54. Previous bad character not relevant, except in reply**—In criminal proceedings the fact that the accused person has a bad character is relevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

*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]

### *Case Law*

**Section 54**—Bad character, evidence of—May be considered to see if there could be motive for murder. *Mangal Singh PLD 1957 SC (Ind) 182.*

**Section 54**—Evidence of bad character of accused persons is not admissible in evidence in view of the provisions of section 54 of the Evidence Act, On such

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1. Substituted, by the Indian Evidence Act, 1972 (Amendment) Act 1891, (III of 1891), section 6, for the original section.



evidence the accused cannot be held to be collaborators within the meaning of Article 2(b) of President's Order No.8 of 1972. *Abdul Aziz vs State* 33 DLR 402.

**Section 54**—Under the law of Evidence an entry in any public document, official register or records, stating a fact in issue or relevant fact, made by a public servant in the discharge of his official duties or by any other person in performance of a duty specially enjoined by law of the country, is by itself a relevant fact. *Kazi Mazharul Huq vs State* 33 DLR 262.

**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 sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but <sup>1</sup>[except as provided in section 54,] evidence may be given only of general reputation and general disposition, and not of particular facts by which reputation or disposition were shown.

### *Case Law*

**Sections 55 and 45**—From the evidence of ocular witnesses 2, 3, 4 and 5 it is found that the alarm was raised by the deceased while he was attacked and being beaten entreating the accused not to kill him. From the trend of the evidence given as to the occurrence by the eye-witnesses it appears that the entire act of assault causing injuries to deceased Salim took place in their presence. But in reality it cannot so happen. In normal course of things, it is not expected that the accused will wait till the witnesses come and then inflict injuries on their victim in the full view of the witnesses when the post-mortem report shows that the deceased Selim sustained only 3 injuries, first one was on the head, second one was on the back of his waist and the third one on his left knee and there was no repetition of the blows struck by the accused. The time taken in causing the said injuries would not be that long as would allow the aforesaid eye-witnesses to come to the place of occurrence and witness vividly as to which of the accused struck which blow on which part of the body of the deceased and in doing so which type of weapon was used. It is therefore, extremely difficult to accept the said witnesses as truthful witnesses and their evidence as reliable evidence. *State vs Liton @ Abdul Matin and others* 7 BLC 622.

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1. Inserted by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), section 7.