

# **Principles of Evidence: Appreciation in Civil & Criminal Cases**

**By**

**Justice Ved Prakash**

**Chairperson**

**Law Commission of Madhya Pradesh**

# Introduction :

- As a Judge happens to be the **backbone of system** of dispensation of justice, likewise marshalling and appreciation is the **or order. backbone of a judgment.**
- The **quality of the judgment** or order ultimately depends upon proper marshalling and appreciation of evidence.
- These **two expressions** have no where been defined either in Evidence Act or in C.P.C. /Cr.P.C.

# **Examining The Issue From Following 5 Angles :**

- **Concept of marshalling and appreciation**
- **Statutory Principles**
- **The four fold time tested criteria**
- **Appreciation of evidence- Conventional Propositions**
- **Appreciation of evidence: Civil / Criminal Cases**

# The Concept of Marshalling

- Not the repetition but the **critical grouping together** of the relevant statements of witnesses for and against a particular point.
- The **skill of picking up various pieces of evidence on a particular disputed point** and putting them together.
- A Judge must have **clear picture of various disputed points** regarding which the evidence has to be marshalled.
- **Example** – evidence pertaining to age of the prosecutrix in a rape case.

# The Concept of Appreciation :

- **“Appreciation”** means assessing the worth, value and quality of a particular piece of evidence.
- Not bare reproduction of the evidence rather a **systematic, scientific and methodical** evaluation of evidence.
- The matter of believing evidence is **not altogether left to the mere intuition or discretion of an individual Judge**, for a Judge, in believing or disbelieving evidence has to act on his reasons in conformity with his **knowledge, observation, experience and settled principles of law.**

# The Concept of Appreciation :

- "The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined. by system, and subordinated to 'the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains."

**Benjamin N. Cardozo J. in 'The Nature of the Judicial Process'-Yale University Press, (1921)].**

# Highest Confidence Reposed In The Judge:

- More confidence reposed in the wisdom and experience of a Judge rather than in the dead letters of law.
- **Illustration (b) of Section 114** of Evidence Act - an accomplice is unworthy of credit unless corroborated in material particulars. **Section 133** which says that a conviction is not illegal merely because it proceeds from an uncorroborated testimony of an accomplice.
- **Section 165 Evidence Act.**

# **Statutory Principles: I. Qualification For Being A Witness**

- **No specific qualification for being a witness except-**
  - **Firstly- understands the questions put to him,**
  - **Secondly- possesses faculty to give rational answers to such questions.**  
**(Sec.118)**



# **Statutory Principles: II. No Particular Number of Witnesses:**

- **Section 134** enacts the basic rule of evidence that **no particular number of witnesses shall in any case be necessary for the proof of a fact.**
- It is the duty of Judge to record a finding on a disputed point by **weighing evidence and not by counting the number of witnesses** because it is the quality and not the quantity of the evidence which matters .

***(See - Maqsoodan and others v. State of U.P., AIR 1983 SC 126)***

# **Statutory Principles: III.**

## **Corroboration Not A Rule of Law:**

**Corroboration Not a Rule of Law: Except Sec.114  
Illus.(b)**

**rather a rule of caution and prudence / Section 133**

**Ocular Testimony: Ocular testimony of a witness may  
be classified into the following three categories, namely**

**:1. Wholly reliable-----2. Wholly unreliable.**

**3. Neither wholly reliable nor wholly unreliable.**

- **As held in Vadivelu Thevar v. State of Madras, AIR 1957 SC 614** in respect of first and second category, the court should have no difficulty in coming to conclusion either way - It is only in the 3<sup>rd</sup> case that corroboration is required.

# The Four Fold Time Tested Criteria: I.

## Probability Factor-

**Firstly : Probability Factor- The Qualifying Test :**

- **Section 3 of Evidence Act -“Proved” and “Disproved” is the factor of probability of a particular fact to the satisfaction of a prudent man.**
- **Section 114 Evidence Act: whether the statement is inherently improbable or contrary to the ordinary course of nature.**
- **Unless a piece of evidence confirms on the anvil of probability factor, it cannot be used to draw a particular conclusion because it is rather a qualifying test.**

# The Four Fold Time Tested

## Criteria: II. Intrinsic Quality:

- Whether the deposition is **mutually contradictory or inconsistent on substantial points.**
- An exercise of examining the evidence in the light of remaining evidence of the witness as well as that of other witnesses.
- Here comes the issue of **contradictions, omissions, distortions, exaggerations and anomalies.**
- It is **not enough to say that there are serious anomalies or contradictions** which go to discredit the witness on a particular point or that anomalies are of trivial nature and therefore, do not go to discredit the witness.
- The attempt should be to **identify the anomalies or the contradictions** and then to ascertain as to whether these anomalies or contradictions are of trivial nature or material ones.

# The Four Fold Time Tested Criteria: III. The Animus:

- **Thirdly- The Animus:** find out the animus of the witness in deposing before the Court on that point **in favour of or against a particular party.**
  - Whether the witness is having **enmity** with the opposite party and therefore, possesses ample motive for deposing against him.
  - If it appears that the witness has a particular animus then **though it will not warrant outright rejection** of the evidence but it will **put the Court on guard** and evidence will have to be examined more carefully.

# The Four Fold Time Tested Criteria:IV. Demeanour:

- **Lastly, Demeanour:** whether the demeanour of the witness, whilst under examination, was abnormal or unsatisfactory.
- Be preceded by the preliminary test as to whether the witness is really a witness of fact not heresay .
- The approach of the Court must be integrated and not truncated or isolated meaning thereby inferences should not be drawn by picking up an isolated statement from here or there; [See – *Harijana Thirupala v. Public Prosecutor, High Court of A.P., (2006) 6 SCC 470*].

# Conventional Propositions :I. Rule of Proof Beyond Reasonable Doubt :

- Is a rule of caution and prudence because post conviction consequences in a criminal case are almost irreversible.
- **State of West Bengal v. Orilal Jaiswal, (1994) 1 SCC 73** that reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion.
- **Sucha Singh v. State of Punjab, AIR 2003 SC 3617**  
' a reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense.'

# Conventional Propositions :II. Falsus In Uno Falsus In Omnibus VS. Separating The Grain From Chaff.

- **Falsus in uno falsus in omnibus vs. Separating the grain from chaff.**
  - Held – that ‘ this maxim, which is neither a sound rule of law nor a rule of practice, is not applicable as far as criminal jurisprudence of our country is concerned’ (*See- Jakki @ Selvaraj v. State, 2007 Cr.L.J. 1671S.C.*).
  - In *Bhagwan Tana Patil v. State of Maharashtra, AIR 1974 SC 1974* the Apex Court ordained that the function of the Court is to **disengage the truth from the falsehood** and to accept what it finds to be true and reject the rest. It is only where the truth and falsehood are inextricably mixed up, polluted beyond refinement down the core the entire fabric of the narration given by a witness, that the Court might be justified in rejecting the same.



# Conventional Propositions :III. Let Hundred Guilty Persons Be Acquitted But Not A Single Innocent Person Be Convicted'

- A famous saying attributed to **Benjamin Franklin** ' It is better that a 100 guilty persons should escape then that one innocent person should suffer' (**Benjamin Franklin**, letter to Benjamin Vaughan, Mar. 14, 1785.-The Writings of Benjamin Franklin, ed. Albert H. Smyth, vol. o, p. 293)
- Franklin was paraphrasing the British legal theorist **William Blackstone**, who said that "For the law holds, that it is better that ten guilty persons escape, than that one innocent suffer." (**William Blackstone**, in his Commentaries on the laws of England, 9th ed., book 4, chapter 27, p. 358)
- Blackstone himself may have been paraphrasing **Voltaire**, who stated that "tis much more Prudence to acquit two Persons, tho' actually guilty, than to pass Sentence of condemnation on one that is virtuous and innocent.

# Conventional Propositions :III. Let Hundred Guilty Persons Be Acquitted But Not A Single Innocent Person Be Convicted'

- **Viscount Simon J.** observed that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of innocent.'
- ***State of U.P. v. Anil Singh, AIR 1988 SC 1998*** it has been stressed that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the judge has to perform.

# Appreciation : Civil & Criminal Cases:

No separate scheme provided in the Evidence Act for civil and criminal cases.

- Long back **Best J.** in *R. v. Burdett, (1820) 4 B. & Ald. 95* commented that there is no difference between the rules of evidence in civil and criminal cases. If the rules of evidence prescribe the best course to get at truth, they must be and are the same in all cases and in all civilized countries.
- **A civil case can be proved** by applying the yardstick of **preponderance of probabilities**. Reasons are obvious – The dispute itself may be quite old; Consequences not as rigorous as in criminal cases; while guilt in a criminal case be **proved beyond reasonable doubt**.



THANKS