

Admissibility and Appreciation of Evidence

**By Justice U.C. Dhyani,
Chairman,
Public Services Tribunal Dehradun**

AT NJA, Bhopal

Date:

01.2.2023

- Voyage for Discovery of Truth
- Reconstruction of past events

S-101

BURDEN OF PROOF

**One who asserts must prove
(the fact)**

Standard of Proof

- 1. Preponderance of Probability**
- 2. Proof beyond reasonable doubt**

Sir James Stephen

Falsus in uno falsus in omnibus

Corroboration is not a rule of
evidence in criminal trial .

Court has to sift the chaff from the
grain.

Balram Garg v. Securities and Exchange Board of India, 2022 SCC OnLine SC 472

The presumption is raised only when some foundational facts are established by the prosecution (SEBI). In the present case the foundational facts were not proved which could raise the alleged presumption.

- **Direct- Indirect**
- **Oral** (Who saw it, Who heard it, Who perceived it, Who holds the opinion) – Should be direct-
Corroboration is a rule of prudence.
- Deaf and Dumb Witness (section 119)
- May scribe his statement on a piece of paper in the court
- But it will tantamount to oral evidence

- **Documentary Evidence**
- **Circumstantial– Every link in the chain should be complete**
- **Suspicion, However Grave cannot take the place of Proof**
- **Distance between “May be – Must Be”**
- **Should be of conclusive Nature**
- **Exclude every other hypothesis**
- **Last seen evidence**

- Evidence Act does not apply to arbitrators.
- Affidavit is not evidence within section 3.
- Child witness should require corroboration.
- Supposition of a prudent man.
- S.25,26 and 27
- S 32- Dying Declaration

- S.118- Who may testify? All, unless the court considers that they are prevented from understanding the questions put to them , or from giving rational answers to those questions

- S.137- Examination in Chief
 - Cross Examination
 - Re examination
- S.154 – Questions by the party to his own witness
- S.159 – Refreshing memory
- S.161- Right of adverse party as to writing used to refresh memory (Like police diaries)

- S.141- Leading questions suggesting an answer
- S. 145- Cross-examination as to previous statements in writing

**Eye-witness, child witness,
injured witness, interested
witness, Dumb witness**

**Reliable, unreliable, partly reliable,
wholly reliable, wholly unreliable.**

Extra Judicial Confession

Plea of Alibi (S-11)

Handwriting expert, ballistic expert,
Firearm expert, Fingerprint expert,
Public analyst as expert

O XVIII CPC

Hearing of the Suit and Examination of Witnesses

Recording of evidence.—(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

T. Takano v. Securities and Exchange Board of India and Another, 2022 SCC OnLine SC 210

Whether Party has a right to disclosure of the material relevant to the proceedings initiated against him?

The right to disclosure is not absolute - SEBI can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market.

O XVIII CPC

Rule 11: Questions objected to and allowed by Court- The Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Rule 12: Remarks on demeanour of witnesses.—The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination. **280 CrPC Remarks respecting demeanour of witness.**

O XVIII CPC

Rule 17

Court may recall and examine witness.—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

137 /138 of the Indian Evidence Act 1872.

311 Crpc Power to summon material witness, or examine person present..

- May presume – Unless and until it is disproved or the court may call for proof of it
- Shall presume – Unless and until it is disproved
- Conclusive proof – Shall not allow the evidence to be given for disproving it

- S.112- Birth during marriage, conclusive proof of legitimacy – during the continuance of a valid marriage or within 280 days of its dissolution

CULPABLE MENTAL STATE

Culpa — blame

Culpable— deserving blame

- Intention— *mens rea*
- Motive
- Knowledge of a fact and belief
- Reason to believe a fact

**CULPABLE MENTAL STATE HAS TO
BE PROVED AS A FACT BEYOND
REASONABLE DOUBT**

THE PREVENTION OF
MONEY LAUNDERING
ACT, 2002

Sec24: Burden of proof.—In any proceeding relating to proceeds of crime under this Act,—

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

What ?

Why ?

Where ?

Whom ?

How ?

When ?

CROSS EXAMINATION (Sec. 165)

- **Counsel:** Is it a fact that you are sharing your apartment with a woman.
- **Witness:** Yes, that is a fact.
- **Counsel:** I put it to you that woman is not your wife.
- **Witness:** No she is not my wife.
- **Counsel:** I put it to you that woman is not your Mother.
- **Witness:** No she is not my mother.
- **Counsel:** she is not your daughter either.
- **Witness:** She is not my daughter.
- **Counsel:** Nor your sister.
- **Witness:** No, She is not my Sister.

- **At this point the counsel stated that he has no further questions to ask. While witness was leaving the witness box the judge asked him, “Who is that woman?”**
- **Witness: She is my grandmother.**

BUT, PLEASE DON'T ASK

- **'Did you close your legs?'**

US judge asked a rape survivor

Judge was Shown the Exit Door

THANK YOU

Q & A