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LETEST LEGAL NEWS

INDIA to BHARAT: How BHARAT Became INDIA? How Constituent Assembly Chose Article 1? Know Origin of Bharat and India

Bharat Not "India"… this discussion has once again intensified after the G20 Invite from the President referred to as "President of Bharat". In such a situation, it is very important for all of us to know and understand the journey behind the name of the country.

Our country has had different names since ancient times – like Jambudweep, Bharatkhand, Himvarsh, Ajnabh Varsh, Aryavarta, while the historians of their times gave names like Hind, Hindustan, Bharatvarsh, India, but among them 'Bharat' is the most used & popular.

Origin of Name "INDIA"

The name 'India' has a rich and interesting history, tracing its origins back to the ancient Indus valley civilization. Initially, there was no word like India or Indus; it all began with the word Sindhu. The Aryan people, who were Indo-Iranian in origin, referred to the great river Indus as the Sindhu, a Sanskrit word.

During the time period of 600 BCE to 300 BCE, Persian invaders arrived and started calling the river Sindhu as Hindu, which was the Persian equivalent. This marked the beginning of the name Hindu being associated with the river.

The Greek language gradually transformed the name from Hindu to Indos due to the loss of the /h/ sound in their dialects. Over time, this evolved into India as we know it today. Additionally, the Greeks also coined the term "Indian" to refer to the people living in the lower Indus basin.

The name India finds its roots in the ancient Indus valley civilization and the river Sindhu. The Persians and Greeks played a crucial role in giving the name its modern form. The names Sindhu, Hindu, Indos, and Bharat all hold significant historical and cultural importance in the rich tapestry of India's identity.

Why the name "BHARAT"?

'Bharat' is also mentioned in Vishnu Purana.

There is a verse in Vishnu Purana: Uttaram Yatsamudrasya Himadreshchaiva Dakshinam. Varsham Tad Bharatam Naam Bharati Yatra Santati **(उत्तरं यत्समुद्रस्य: हिमाद्रेश्चैव दक्षिणम् । वर्षं तद् भारतं नाम: भारती यत्र संततिः ।।)**

Meaning- The country that lies north of the ocean and south of the snowy mountains is called Bhāratam (India); there dwell the descendants of Bharata

Vishnu Purana says that when Rishabhdev left the forest, he gave succession to his eldest son Bharat due to which this country was named Bharatvarsha. Even in common parlance, we repeat this fact again and again that our entire nation lives from Kashmir to Kanyakumari. This is from one end of Bharat to the other.

Bharatkhand

The name Bharatkhand has been given in many other vedic texts including Vedas, Puranas, Mahabharata and Ramayana, which means part of Bharat, i.e. the land of Bharat.

Aryavarta

It is said that Aryans were the original inhabitants of Bharat. They reached here by sea routes and this country was settled by the Aryans. Because of this this country was called Aryavarta or the land of the Aryans.

Himvarsha

Bharat was earlier also called Himvarsha after the name of Himalayas. It is mentioned in Vayu Purana that long ago the name of Bharatvarsha was Himvarsha.

How the Constituent Assembly Chose?

The debate on Article 1 of the Indian Constitution in 1948 was marked by discussions on the name of the country. On November 17, 1948, the debate was scheduled to begin, but it was postponed on the suggestion of Govind Ballabh Pant.

It was on September 17, 1949, that Dr B R Ambedkar presented the final version of Article 1 to the House. This version included both 'Bharat' and 'India' as the names of the country. However, there were several members who expressed their disagreement with the use of 'India', as they believed it represented the country's colonial past.

One member, Seth Govind Das from Jabalpur, favored placing 'Bharat' above 'India'. Many members also demanded that it should be clarified that 'India' was a substitute for 'Bharat' in the English language. Das argued that "our country has been named 'India that is Bharat'. It is a matter of gratification that the name Bharat has been adopted, but the way in which this has been put there has not given us full satisfaction. 'India that is Bharat' is a strange name." He suggested using the words "Bharat known as India also in foreign countries" instead.

Shri Algu Rai Shastri of United Province said:

"It is, Sir, a matter of deep sorrow and deep regret for me that we in this country did not rise above the slave mentality and we did not say frankly what would be the name of our country. I think, Sir, there is no single country of the world which has such a clumsy name as we have given to our land that is '*India, that is Bharat*.' The fact, Sir, is it is no name at all and we have failed very badly in giving it a proper name. My feeling is, Sir, that having a beautiful type of its own this Constitution has lost much of its sweet flavour on account of this short-coming on account of the absence of the name of Ram and would not be acceptable to many Hanumans."

Khandubhai K. Desai said:

"India has, no doubt, recovered herself; we have got our ancient India now. As regards the name of the country the term India that is Bharat" has been laid down in the Constitution and some of my friends objected to this term. As for me, I have no serious objection to it. It is a fact that we cannot live in isolation

from the rest of the world; We have centuries old connections with England and the rest of the world. The world will always know us by the name of India. But so far as we are concerned, in our hearts and souls our country shall always remain as Bharat. So the term India and Bharat have been bracketed in order to meet the need of our countrymen as well as of the outsiders. The world will call us as India and we ourselves will call us as Bharat. Thus there will be blending of the East and the West."

Hari Vishnu Kamath used the example of the Irish Constitution to support his argument that 'India' was merely a translation of 'Bharat'. He referred to the Irish Constitution of 1937, which stated that "The name of the State is Eire, or, in the English language, Ireland". Kamath proposed that India should follow a similar approach.

Hargovind Pant, representing the hill districts of the United Provinces, emphasized that the people of Northern India strongly preferred the name 'Bharatvarsha' and nothing else. Pant criticized the attachment some members had towards the name 'India' and its association with foreign rule. He believed that clinging to the name 'India' would imply that they were not ashamed of the insulting word imposed on them by alien rulers.

While Das referred to ancient texts like the Vishnu Purana and Brahma Purana that mentioned 'Bharat', others mentioned the seventh-century Chinese traveler Hiuen Tsang who referred to the country as Bharat.

Das argued that naming the country 'Bharat' would not hinder its progress. He believed that the name should reflect the history and culture of the nation. He also mentioned a pamphlet that aimed to prove that 'India' was more ancient than 'Bharat', which he disagreed with.

Kamath suggested 'Bharat', 'Bharatvarsha', or 'Bharatbhumi' as possible names derived from scriptures. He highlighted that historians and philologists had different opinions on the origin of the name 'Bharat'.

Throughout the debate, Dr Ambedkar repeatedly stated that the question of the name Bharat was not opposed by members. He reminded the House that they were only discussing whether 'Bharat' should come after 'India'. Ambedkar believed that the focus should be on the work that needed to be done rather than dwelling on the civilizational debate.

In the end, the motion for the name of the country was adopted, signifying the acceptance of incorporating both 'Bharat' and 'India' in Article 1 of the Indian Constitution.

What the Supreme Court Said?

In June 2020 a case came before the Supreme Court through a public interest litigation (PIL) which sought to change the official name of India to Bharat. The Bench of then Chief Justice of India SA Bobde and Justices AS Bopanna and Hrishikesh Roy questioned the necessity of such petitions when the Constitution already acknowledged India as Bharat.

While closing the case, the Bench ruled that the petition should be treated as a representation and be considered by the appropriate Ministries. This decision mirrored a similar PIL in 2014, when the apex court allowed the petitioner to make a representation to the appropriate authorities.

Following the Supreme Court's ruling, the petitioner, Niranjan Bhatwal, sent a representation along with a copy of his plea to the Prime Minister of India, requesting appropriate action. However, the government declined the request and notified Bhatwal of their decision.

Bhatwal persisted and returned to the Supreme Court in 2015 with his plea. Unfortunately, this time his petition was dismissed. The Court concluded that they did not deem the case suitable for their interference under Article 32 of the Constitution and consequently dismissed the writ petition.

'Intention' and 'Knowledge' significant in deciding Murder Case: SC converts conviction to Culpable Homicide in Love Affair-Related Case, Read Judgement

In a recent judgment, the Supreme Court altered conviction of an ex-lover charged for Murder to that of Culpable Homicide relying on significance of 'Intention' and 'Knowledge' in determining the nature of the offense.

The Division Bench of Justice S. Ravindra Bhatt and Justice Arvinda Kumar allowed the appeal filed against impugned judgment of Madras High Court and the conviction of the appellant under 302 was altered/converted to one under Section 304 part II of the Indian Penal Code.

Brief Facts of the Case:

The appellant, N. Ramkumar, had appealed against his conviction and sentence for the offence of murder under Section 302 of the Indian Penal Code (IPC). The appeal arose from an incident where the deceased, Sangeetha, was allegedly killed by the appellant. The lower courts convicted the appellant based on the evidence and sentenced him to life imprisonment.

The deceased, Sangeetha, was previously in a romantic relationship with the appellant. The prosecution alleged that the deceased had stopped seeing the appellant and had developed a relationship with a neighbor named Sudhakar. The appellant is said to have entered the deceased's house and confronted her about her relationship with Sudhakar. The prosecution contended that in a fit of rage, the appellant held the deceased by her ears and banged her head against a wall before fleeing the scene. The deceased was admitted to the hospital but died later on.

Initially, the case was registered under less serious charges but was later altered to charges of murder under Section 302 IPC. The Sessions Court convicted the appellant for the offences of house trespass (Section 450 IPC) and murder (Section 302 IPC). He was sentenced to rigorous imprisonment for five years and life imprisonment, respectively, with concurrent sentences. The High Court upheld the Sessions Court's decision, concluding that the appellant's actions amounted to murder under Section 302 IPC.

Contention of the Appellant:

The appellant's counsel argued that there was a delay in filing the complaint, which raised doubts about the reliability of the prosecution's case. The appellant's counsel also contended that the conviction was primarily based on the testimony of the deceased's mother, whose testimony was inconsistent and not trustworthy. They raised doubts about the veracity of the prosecution's claim that there was blood on the kitchen floor. The appellant's counsel further argued that the prosecution's theory presented in the complaint did not align with the evidence presented during the trial.

Contention of the Respondent:

The prosecution argued that there was no merit in the appellant's claims. They contended that the evidence presented by the prosecution had withstood cross-examination, and the witnesses were credible. The prosecution maintained that the appellant's motive for the crime was his jealousy and anger over the deceased's relationship with another man. They asserted that the High Court correctly affirmed the appellant's conviction.

Observation of the Court:

The Court began by noting that appellant was convicted and sentenced for offenses under Sections 450 and 302 of the Indian Penal Code and that the deceased was in love with the appellant. However, their relationship had soured, and she started talking to another person, allegedly the neighbour. The prosecution alleged that one day, the appellant trespassed into Sangeetha's house, had an altercation with her, and in a fit of rage, held her by her ears and dashed her head against the wall.

The Court noted that the appellant was initially charged under various sections of the IPC, including Sections 294(b), 448, 323, and 506(1), along with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. However, after the death of the deceased, the charges were altered to include Section 302 IPC. The court mentioned the medical evidence presented in the case, particularly the post-mortem report, which indicated that the deceased died of head injuries. There was also a discussion about the nature and location of the injuries.

The court noting the contention that there was a delay in filing the complaint, and the prosecution's case lacked trustworthiness and that there are contradictions in the testimony of witnesses went on to discussed various legal principles, including the distinction between "culpable homicide" and "murder," and the significance of "intention" and "knowledge" in determining the nature of the offense. It also emphasized the importance of examining the facts and circumstances of each case to determine the appropriate charge.

Decision of the Court:

The court ultimately decided to convert the appellant's sentence under Section 302 IPC to one under Section 304 Part II IPC. This decision is based on the court's analysis of the facts and the absence of premeditation on the part of the appellant. The appellant is sentenced to the period of imprisonment already undergone and is to be released forthwith if not required in any other case.

S. 27 Evidence Act | Discovery Can't Be Proved Against Person If He Wasn't Accused Of Any Offence & Wasn't In Custody Of Police At The Time Of Confess

The Supreme Court has held that for a confession made to the police to be admissible under Section 27 of the Evidence Act, two essential conditions must be met: the individual must be 'accused of any offence,' and they must be in 'police custody' at the time the confession is made.

The Court firmly held that "being in 'the custody of a police officer and being 'accused of an offense' are indispensable pre-requisites to render a confession made to the police admissible to a limited extent, by bringing into play the exception postulated under Section 27 of the Evidence Act."

A 3 judge bench of the Supreme Court comprising Justices BR Gavai, Justice JB Pardiwala, and Justice Sanjay Kumar was hearing an appeal against a judgment of the Madhya Pradesh High Court that had affirmed the conviction and sentence of life imprisonment for Omprakash Yadav, while the death penaltyfor Raja Yadav and Rajesh Yadav in relation to kidnapping and murder of a 15-year-old boy.

The appellant Omprakash Yadav was convicted under Section 364A read with Section 120B of the Indian Penal Code (IPC), while Raja Yadav and Rajesh Yadav were held guilty under Section 302 IPC read withn Section 120B and Section 364A read with Section 120B, respectively

The Court scrutinized the circumstances surrounding the recording of Rajesh Yadav's(appellant) confession, noting that the police had recorded his statement without formally arresting him. Consequently, he was not legally considered "accused of an offence" at that juncture. It was upon this contested confession that the discovery of the deceased's body was made.

The Court observed that at the time of the confession, the appellant Rajesh Yadav and his co-accused were not in "police custody."
In this context, the Court referred to Section 26 of the Indian Evidence Act, 1872, which stipulates that "no confession made by any person whilst he is in the custody of a police officer shall be proved against such person unless it is made in the immediate presence of a Magistrate."
Moreover, Section 27 of the same act, which acts as an exception to Section 26, states that "when any fact is deposed to 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."

The Court referred to the landmark case of Bodhraj alias Bodha v. State of Jammu & Kashmir (2002) 8 SCC 45, which stressed upon the reliability of information divulged by a prisoner in custody. It held that “this information, which would otherwise be admissible, becomes inadmissible under Section 26, of the Evidence Act as it did not come from a person in the ‘custody of a police officer’ or rather, came from a person not in the ‘custody of a police officer”. In other words, the exact information given by the accused ‘while in custody’, which led to recovery of the articles can be proved. It was noted that this doctrine is founded on the principle that if any fact is discovered as a search was made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.”

Further strengthening its stance, the Court also cited the case of State of Karnataka v. David Rozario (2002) 7 SCC 728 where the Court reinforced that information admissible under Section 27 of the Evidence Act becomes inadmissible if it does not come from a person in the 'custody of a police officer.' It rightly emphasized the significance of the information itself, rather than the police officer's opinion.

The Court also turned its attention to the case of Ashish Jain v. Makrand Singh (2019) 3 SCC 770 highlighting that an involuntary confessional statement of the accused is not admissible under Article 20(3) of the Constitution of India. While there is an embargo on accepting self-incriminatory evidence

if such evidence leads to the recovery of material objects related to a crime, it is typically considered to hold evidentiary value.

The Court noted that recently, in Boby v. State of Kerala 2023 LiveLaw (SC) 50, this Court referred to the decision of the Privy Council in Pulukuri Kotayya v. King Emperor (AIR 1947 Privy Council 67) and emphasized the crucial conditions of being "accused of any offense" and being in "police custody" to invoke Section 27 of the Evidence Act. It had opined that “the condition necessary to bring Section 27 into operation is that the discovery of a fact in consequence of information received from a person ‘accused of any offense’ in the ‘custody of a police officer’ must be deposed to, and thereupon so much of the information, as relates distinctly to the fact thereby discovered, may be proved. It was observed that normally, Section 27 is brought into operation when a person in ‘police custody’ produces from some place of concealment some object, such as a dead body, a weapon or ornamens, said to be connected with the crime, of which the informant is accused.” In the case on hand, though Rajesh Yadav was taken to the police station, be it on 29.03.2013 or even earlier, he could not be said to be in ‘police custody’ till he was arrested at 18:30 hours on 29.03.2013, as he did not figure as an ‘accused’ in the FIR and was not ‘accused of any offence’ till his arrest. Therefore, it was his arrest which resulted in actual ‘police custody’ till he was arrested at 18:30 hours on 29.03.2013, as he did not figure as an ‘accused’ in the FIR and was not ‘accused of any offence’ till his arrest. Therefore, it was his arrest which resulted in actual ‘police custody’, and the confession made by him, before such arrest and prior to his being ‘accused of any offence’, would be directly hit by Section 26 of the Evidence Act and there is no possibility of applying the exception under Section 27 to any information given by him in the course of such confession, even if it may have led to the discovery of any fact.

The Court applied these principles to conclude that “the purported discovery of the dead body, the murder weapon, and the other material objects, even if it was at the behest of Rajesh Yadav, cannot be proved against him, as he was not ‘accused of any offence’ and was not in ‘police custody’ at the point of time he allegedly. Needless to state, this lapse on the part of the police is fatal to the prosecution’s case, as it essentially turned upon the ‘recoveries’ made at the behest of the appellants, purportedly under Section 27 of the Evidence Act.”

CURRENT AFFAIRS

PayPal Challenges Indian Court's Ruling on "Payment System Operator" Status

PayPal is challenging a Delhi High Court ruling that classified it as a "payment system operator" under the Prevention of Money Laundering Act (PMLA), subjecting it to "reporting entity obligations." The court's single judge bench had concluded that all elements ..

Government Action Against Exotic Invasive Plant Species

In recent years, Conocarpus, a fast-growing exotic mangrove species, had been widely used to enhance green cover in Gujarat. However, concerns have arisen over the environmental and health impacts of this non-indigenous plant, leading authorities to take action. ContentsControlling Conocarpus ..

CRIIIO 4 GOOD Modules

India has maintained its 40th position out of 132 economies in the recently published Global Innovation Index (GII) 2023 by the World Intellectual Property Organization (WIPO). Over the past few years, India has consistently climbed the ranks in the GII, ..

Rat lungworm Infection in the US

Scientists are issuing warnings about the spread of a parasitic brain worm known as Rat lungworm, or Angiostrongylus cantonensis, in southeastern America. Traditionally found in Southeast Asia and the Pacific Islands, this invasive parasite is now making its presence felt ..

Displacement Dilemma: Challenges Faced by Refugees in Camps and Cities

As of May 2023, an astonishing 110 million people worldwide found themselves forcibly displaced. Within this staggering number, nearly half were internally displaced, while 20 percent were refugees living in camps. These concerning figures come from estimates by the International ..

Gender Inequality's Impact on Women and Cancer: A Lancet Commission Report

A newly released report by the Lancet Commission highlights the profound effects of gender inequality on women's experiences with cancer prevention, care, and treatment. Despite similar cancer burdens, women face significant disparities due to unequal power dynamics in society. The ..

India Ageing Report 2023

India is on the cusp of a significant demographic shift, as revealed by the India Ageing Report 2023, jointly released by the International Institute for Population Sciences and the United Nations Population Fund. By 2050, more than 20 percent of ..

Government Statistics on Tribal Land Claims

The implementation of the Forest Rights Act in India has raised concerns as nearly 40% of land claims filed by tribal communities have been rejected by various states. This issue is particularly pronounced in states like Uttarakhand, Karnataka, Uttar Pradesh, ..

LATEST JUDGEMENT

Phulel Singh Vs. State of Haryana
2023 Latest Caselaw 752 SC

Citation : 2023 Latest Caselaw 752 SC
Judgement Date : ***27 Sep 2023***
Case No : Crl.A. No.-000396-000396 / 2010

Phulel Singh Vs. State of Haryana

[Criminal Appeal No. 396 of 2010]

B.R. Gavai, J.

1. This appeal challenges the judgment and order dated 24th July 2009 passed by the Division Bench of the High Court for the States of Punjab and Haryana in Criminal Appeal Nos. 413-DBA of 2001 and 909-SB of 1999 along with Criminal Revision No. 134 of 2000, wherein the Division Bench partly allowed the appeal filed by the accused persons; whereby Jora Singh (Accused No. 1), father of the appellant herein was acquitted of the charge under Section 304-B of the Indian Penal Code, 1860 ("IPC" for short) and the conviction and sentence qua the appellant herein rendered by the learned court of Mrs. Nirmal Yadav, Sessions Judge, Sirsa (hereinafter referred to as "the trial court") in Sessions Trial No. 122 of 1994 vide judgment and order dated 14th September 1999 for the offence punishable under Section 304-B of IPC and sentence to undergo rigorous imprisonment for a period of seven years was upheld.

Whereas, Criminal Appeal No. 413- DBA of 2001 filed by the State of Haryana and Criminal Revision No. 134 of 2000 filed by Pavitar Singh (PW-3), brother of Kiran Kaur (hereinafter referred to as "deceased") challenging the acquittal of the accused persons for the charge under Section 302 of IPC were dismissed.

2. Shorn of details, the facts leading to the present appeal, are as under:

2.1 The marriage between the deceased and the appellant was solemnized in March, 1987, and they were blessed with a girl and a boy. It is the prosecution case that the appellant used to harass the deceased on account of insufficiency of dowry. It is further the prosecution case that, succumbing to the demands of the appellant, the parents of the deceased paid Rs.20,000/- to the appellant in cash and in 1990, they gave a scooter and gold ornaments weighing 2.5-3 tolas to the appellant.

Further, the deceased would tell her parents and her brother about the harassment and ill-treatment meted out to her at the hands of the appellant whenever she visited her parental house and eventually refused to reside in the house of the appellant. However, on account of the assurance and responsibility undertaken by Mohan Singh, the son-in-law of Jora Singh, father-in-law of the deceased, she was brought back to her matrimonial house.

Even then, the deceased was not treated properly by the appellant. According to the prosecution allegations, Pavitar Singh (PW-3), brother of the deceased had come to see the deceased at her matrimonial home in village Chatha about 3 to 4 days prior to the Diwali of 1991 when the deceased had informed him about the demand for dowry being made by the appellant and his family.

When Pavitar Singh (PW-3) returned home and informed his parents about the said harassment being meted out to the deceased in lieu of demand for dowry, Randhir Singh (PW-4), father of the deceased, went to Major Singh (PW-6), Sarpanch of his village, who assured him that they would go to the house of the appellant for counselling them after Diwali. Following which, on 5th November 1991, i.e., on the festive day of Diwali, Dr. Sharma of Bhagwangarh had come to Rama Mandi.

On his return, he informed Pavitar Singh (PW-3) and other family members that the deceased had been burnt and that she was being taken to Ludhiana. Thereupon, Pavitar Singh (PW-3), Randhir Singh (PW-4) and cousin Gur Raj Singh reached the Daya Nand Medical College and Hospital, Ludhiana (hereinafter referred to as "DMC, Ludhiana") where the deceased was admitted and lay unconscious.

On 5th November 1991, Dr. Jasmeet Singh Dhir (PW-7), the Medical Officer at DMC, Ludhiana, who had medico-legally examined the deceased, opined that she had 91% burns on her body and accordingly sent ruqa (Ex.-P.J) to the Station House Officer (SHO), Police Station Sarabha Nagar, Ludhiana on the same day at about 05.10 p.m. regarding admission of the deceased in the hospital.

2.2 On 7th November 2011, when the deceased regained consciousness, she told Pavitar Singh (PW-3) and others that it was the appellant who had burnt her. Following which, Randhir Singh (PW-4) made an application (Ex. P.D./1) to the Sub-Divisional Magistrate (SDM), Ludhiana, for recording of the statement of the deceased. On the following day, i.e., 8th November 2011, Mr. Sadhu Singh (PW-5), the then Executive Magistrate, Ludhiana received the said application along with endorsements of the SDM, Ludhiana (Ex. P.D/2 and P.D/3).

Upon receiving the same, the Executive Magistrate, Ludhiana reached the DMC, Ludhiana and moved another application (Ex. P.S.) before the Medical Officer at about 04.15 p.m. thereby seeking his opinion with regards to the fitness of the deceased. When Dr. Jatinder Pal Singh (PW-8) gave his opinion (Ex. P.S/1) that the deceased was fit to make a statement, Mr. Sadhu Singh (PW-5) proceeded to record the statement of the deceased (Ex. P.L.) on the same day at about 04.40 p.m.

The statement was read over and explained to the deceased, who had put her thumb impression on the same after admitting to its contents to be correct. A First Information Report ("FIR" for short) (Ex. P.E./1) was recorded based on the said statement of the deceased against Jora Singh, father-in-law of the deceased, appellant herein and Dhan Kaur, mother-in-law of the deceased, for the offences punishable under Sections 498- A, 307, 406 and 34 of IPC.

On 18th November 1991, at about 06.00 p.m., Dr. Jatinder Pal Singh (PW-8) sent ruqa (Ex. P.M.) to the Police Station Sarabha Nagar, Ludhiana, regarding the death of the deceased. Following which, the Assistant Sub Inspector (ASI), Sri Bhagwan (PW-9) prepared an inquest report at the DMC, Ludhiana on 19th November 1991 with regards to the dead body of the deceased and made an application for conducting of post-mortem examination as well (Ex. P.R./1).

2.3 Upon completion of investigation, a charge-sheet came to be filed in the court of jurisdictional Magistrate. Since the case was exclusively triable by the learned Sessions Judge, it came to be committed to the learned Sessions Court. Charges were framed for the offences punishable under Section 302 read with Section 34 of IPC and Section 304-B of IPC. The accused pleaded not guilty and claimed to be tried.

2.4 In order to substantiate the charges levelled against the accused persons, the prosecution examined as many as nine witnesses. Thereafter, the accused persons were examined under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short). They denied the prosecution allegations regarding demand for dowry and harassment of the deceased and alleged that they were being falsely implicated. The accused persons also denied that the deceased was set ablaze by them.

At the conclusion of trial, the learned trial court convicted all the three accused persons for the offence punishable under Section 304-B of IPC for causing the dowry death of the deceased and accordingly sentenced them to undergo rigorous imprisonment for a period of seven years along with fine. However, the learned trial court was pleased to extend the benefit of doubt qua the charge under Section 302 of IPC and thus, acquitted the accused persons of the said charge.

2.5 Being aggrieved thereby, the accused persons preferred an appeal before the High Court with regards to the conviction and sentence awarded by the learned trial court; whereas, the State of Haryana and Pavitar Singh (PW-3) also filed their respective appeals before the High Court with regards to the acquittal of the accused persons for the charge under Section 302 of IPC.

The High Court, by the impugned judgement, while observing that the appeal preferred by Dhan Kaur, mother-inlaw of the deceased stood abated as she had died during the proceedings; dismissed the appeals filed by the State of Haryana and Pavitar Singh (PW-3), and partly allowed the appeals filed by Jora Singh, father-in-law of the deceased and the appellant herein thereby acquitting Jora Singh, father-inlaw of the charge levelled against him under Section 304-B of IPC, but confirmed the conviction and sentence awarded by the learned trial court to the appellant herein.

3. Being aggrieved thereby, the present appeal.

4. We have heard Shri Rajul Bhargav, learned Senior Counsel appearing on behalf of the appellant and Shri Samar Vijay Singh, learned counsel appearing on behalf of the State.

5. Shri Bhargav submitted that the trial court as well as the High Court has grossly erred in convicting the appellant. He submits that the reliance placed on the dying declaration is totally unsustainable. He submits that the very first information given by the deceased herself to the doctor while admitting to the hospital, would show that the deceased had put up kerosene on herself and set herself on fire.

He submits that as a matter of fact, it is the present appellant who had tried to extinguish the fire. The learned Senior Counsel therefore submits that the subsequent dying declaration, which is recorded after 3-4 days of the accident, could not have been relied on by the courts. He submits that the said dying declaration was a tutored one at the instance of her relatives and the conviction solely based on the same is not sustainable.

The learned Senior Counsel relies on a recent judgment of this Court in the case of Makhan Singh v. State of Haryana1 decided on 16th August 2022 to which two of us (B.R. Gavai, J., Pamidighantam Sri Narasimha, J.) were on the Bench.

6. Shri Bhargav further submitted that the case under Section 304-B of IPC is also not made out. He submitted that there is no evidence on record to show that the deceased was meted out to any harassment on account of non-fulfillment of demand of dowry.

He submitted that even if the evidence of the relatives of the deceased is taken on face value, it would not show that there was any harassment to the deceased on account of non-fulfillment of demand of dowry. He submitted that even the evidence of independent witness Major Singh (PW-6), Sarpanch of the village would also not support the prosecution case.

7. Shri Singh, on the contrary, submitted that the prosecution has proved the case beyond reasonable doubt. He further submitted that the dying declaration is recorded by the Executive Magistrate. He further submitted that Dr. Jatinder Pal Singh (PW-8) has testified that the deceased was in the sound state of mind and fit to make the statement. He therefore submitted that the conviction recorded on the basis of the said dying declaration warrants no interference.

8. Shri Singh further submitted that the evidence of PWs 3 and 4, who were relatives of the deceased along with Major Singh (PW-6), Sarpanch of the village would establish, beyond all reasonable doubt, that the deceased was meted out harassment on account of non-fulfillment of demand of dowry. He therefore prays for dismissal of the present appeal.

9. With the assistance of the parties, we have perused the evidence and materials placed on record.

10. The present case mainly rests on the dying declaration of the deceased. No doubt, that a conviction can be solely recorded on the basis of dying declaration. However, for doing so, the court must come to a conclusion that the dying declaration is trustworthy, reliable and one which inspires confidence. In the present case, the dying declaration is recorded by Shri Sadhu Singh (PW-5), Executive Magistrate.

He stated that he obtained the certificate from the doctor regarding the fitness of the deceased to make the statement. He further stated that he recorded the statement of the deceased and thereafter it was read over and explained to her. He further states that she had thumb marked the same after admitting its contents to be correct.

In the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate, the deceased is said to have stated that on 5th November 1991 at around 12.00 noon, her husband Phulel Singh, i.e., the appellant herein, Jora Singh, father-in-law and Dhan Kaur, mother-in-law caught hold of her. Her husband, the appellant herein put kerosene on her person and set her ablaze. She further stated that when she was set on fire, she raised an alarm but the accused overpowered her.

11. It is relevant to note that the deceased received burn injuries on 5th November 1991 but the dying declaration came to be recorded on 8th November 1991 after an application was made by the relatives of the deceased to the SDM, Ludhiana. Shri Sadhu Singh (PW-5), Executive Magistrate, in his evidence, admitted that the boys, who had brought the application containing the order of the SDM, Ludhiana had told him that the statement of the deceased should be recorded and that she was in a position to make the statement.

He further admitted that those boys had told him that whatever they had to tell the deceased, they had told her and that he should accompany them to record her statement. He has further admitted that those 2-3 boys were related to the deceased and some other persons were also in the room in which he recorded the statement of the deceased.

12. It could thus be seen that there is a grave doubt as to whether the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate was a voluntary one or tutored at the instance of respondent No.5. It is further relevant to note that Dr. Jatinder Pal Singh (PW-8), in his deposition itself, states that Shri Sadhu Singh (PW-5), Executive Magistrate had recorded

the dying declaration of the deceased on 8th November 1991 at 04.40 p.m. whereas the opinion with regard to her fitness was given by him at 06.00 p.m. on 8th November 1991.

He has further admitted that he had not mentioned in the bed-head ticket that he had attested the statement of the deceased at 04.40 p.m. on 8th November 1991. It is thus doubtful as to whether Dr. Jatinder Pal Singh (PW-8) had really examined the deceased with regard to her fitness prior to her statement being recorded by Shri Sadhu Singh (PW-5), Executive Magistrate.

13. It is further relevant to note that Dr. Jasmeet Singh Dhir (PW-7) has stated that the history recorded by him while admitting the deceased, was narrated by the deceased herself. He has further stated that the deceased had also narrated that her husband had extinguished fire by pouring water on her.

14. In the totality of the circumstances, it cannot be said that the dying declaration (Ex. P.L.) is free from doubt.

15. The most glaring aspect that is required to be considered is that the High Court itself has disbelieved the dying declaration insofar as Jora Singh, father-in-law of the deceased is concerned. We fail to understand as to how the same dying declaration could have been made basis for conviction of the appellant when the same was disbelieved insofar as another accused is concerned.

16. It will also be apposite to refer to the deposition of Shri Bhagwan, ASI, Investigating Officer (PW-9). He has stated in his deposition that he had come to the conclusion that the present case was not a case under Section 307 of IPC or Section 498-A of IPC but a case under Section 309 of IPC. He has further stated that the higher authorities that is Shri Sukhdev Singh, DSP and Shri Rajinder Singh, SHO had verified the investigation conducted by him and found the same as correct and agreed with his conclusions.

He has further stated that during investigation, it was revealed that the deceased was short-tempered and that accused Jora Singh was not there in the village on the fateful day and that he had gone to Rama Mandi for making purchases for Diwali.

17. Insofar as the evidence regarding harassment on account of non-fulfillment of demand of dowry is concerned, the prosecution relies on the evidence of Pavitar Singh (PW-3), brother of the deceased, Randhir Singh (PW-4), father of the deceased and Major Singh (PW-6), Sarpanch of the village. Insofar as PWs 3 and 4 are concerned, they are relatives of the deceased and their evidence will have to be scrutinized with greater care, caution and circumspection.

Insofar as harassment with regard to non-fulfillment of demand of dowry is concerned, except the vague allegation, there is nothing in their evidence to support the prosecution case. Insofar as Major Singh (PW-6), Sarpanch of the village is concerned, he stated that he was informed by Randhir Singh (PW-4), father of the deceased that in-laws of the deceased were harassing her and therefore they should go to village Chatha.

However, he also does not state that he was informed by Randhir Singh (PW-4), father of the deceased that the deceased was meted out to any harassment on account of non-fulfillment of demand of dowry. We are therefore of the considered view that there is no evidence to prove beyond reasonable doubt that the deceased was harassed on account of non-fulfillment of demand of dowry. We therefore find that the case under Section 304-B of IPC is not made out by the prosecution.

18. In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The judgment and order of conviction as recorded by the trial court dated 14th September 1999 and affirmed by the High Court vide its impugned judgment and order dated 24th July 2009 are quashed and set aside; and

(iii) The appellant is acquitted of all the charges levelled against him and his bail bonds shall stand discharged.

19. Pending application(s), if any, shall stand disposed of in the above terms.

.....J. [B.R. Gavai]

.....J. [Pamidighantam Sri Narasimha]

.....J. [Prashant Kumar Mishra]

New Delhi;

H. D. Sundara & Ors. Vs. State of Karnataka
2023 Latest Caselaw 747 SC

Citation : 2023 Latest Caselaw 747 SC
Judgement Date : ***26 Sep 2023***
Case No : Crl.A. No.-000247-000247 / 2011

H. D. Sundara & Ors. Vs. State of Karnataka

[Criminal Appeal No. 247 of 2011]

Abhay S. Oka, J.

1. This is an appeal preferred by the accused challenging the impugned judgment of the High Court of Karnataka at Bangalore by which the order of their acquittal, passed by the Sessions Court, was overturned. The appellants were convicted for the offences punishable under Part I of Section 304 and Section 324 read with Section 149 of the Indian Penal Code, 1860 (for short, 'IPC'). They were sentenced to undergo rigorous imprisonment for seven years and pay a fine of Rs. 5,000/-.

Factual Aspects

2. We may refer to a few factual aspects of the case. PW-1 (Jagadeesha) is the complainant. The complainant's family had property in the village Hebbale. The appellant no.1 - accused no.1-Mariyappa is PW-1's uncle, with whom PW-1's family was having a dispute over water. Manjunatha and Shivarama are the brothers of PW-1, who are the victims of the offence. On 29th August 1999, both entered the village Hebbale to engage labourers for plucking ginger. PW-1 followed them. On the road to the village, he found that PW-2 (Sundara) and PW-6 (Ravi) were sitting on a culvert.

When he was talking to them, they heard the hue and cry from the village, and therefore, they rushed to the village and found that the appellants, who are relatives of PW-1, were holding various weapons like sticks, kathi and club and they were assaulting Manjunatha and Shivarama. It is alleged that accused no.1-Mariyappa assaulted Shivarama by using a club. Accused no.8-Puttappa also assaulted Manjunatha by using a club. Accused no.7- Rajappa used a stick as a weapon of assault for assaulting Shivarama. Accused no.5-Somashekara stabbed Shivarama by using a knife.

Accused no.6-Krishnappa assaulted Manjunatha on his head by using a club. Further, an assault was made by accused no.3-Chandrahasa by putting a stone on the chest of Shivarama. Even accused no.4-Rajakumara crushed the leg of Shivarama with a stone. Though PW-1, PW-2 and PW-6 tried to rescue the deceased, they could not save the deceased. Accused no.3-Chandrahasa caught hold of PW-2 (Sundara) and assaulted him by using a sickle (kathi). Accused no. 1 assaulted PW-1 with a club. Accused no.1 also assaulted PW- 1's mother on the right hand.

3. The Trial Court acquitted all the accused. However, by the impugned judgment, the High Court has interfered and convicted the appellants as narrated above.

4. Accused no.6 died during the pendency of the trial. The accused no.1 - appellant no.1 and accused no.7 - appellant no.7 died during the pendency of this appeal. Counsel for the appellants has filed I.A. No. 71417 of 2023 - application for permission to file additional documents. Annexure A-1 and A- 2 are copies of the Death Certificates of appellant no.1 and appellant no.7 respectively.

The said application is allowed and the Cause Title stands modified accordingly. Formal amendment to the Cause Title be carried out accordingly. The appeal stands abated as regards these two appellants. Accused no.2 - appellant no.2, accused no.3 - appellant no.3, accused no.4 - appellant no.4 and accused no.6 - appellant no.6 have so far undergone incarceration for a period of about one year and two months. Accused no.5 - appellant no.5-Somashekar has been incarcerated for five years and three months.

Submissions

5. Mr. S. Nagamuthu, the learned senior counsel appearing for the appellants submitted that the High Court did not apply its mind to the evidence on record. Moreover, the High Court has not recorded any finding that the only conclusion possible was that the guilt of the accused has been established beyond a reasonable doubt. Without recording any such finding, the High Court has overturned the order of acquittal.

Moreover, no specific finding is recorded by the High Court that every accused or any particular accused caused the death of the two deceased persons. He pointed out that there is no finding about the applicability of Section 149 of IPC. He would, therefore, submit that the impugned judgment cannot be sustained. Moreover, there is a delay in recording FIR.

The learned senior counsel also pointed out that though a grievous injury was suffered by accused no.1 - appellant no.1, the prosecution offered no explanation about the said injury. He submitted that in view of the said injury, in fact, a First Information Report (for short, 'FIR') ought to have been registered, and an investigation ought to have been carried out.

6. Mr. Nishanth Patil, the Additional Advocate General for the State of Karnataka, submitted that the delay in registering the FIR may be of a very few hours, which has been explained. Moreover, the evidence of eyewitnesses PW-1, PW-2, PW-3, PW- 6 and PW-7 proves the

appellants' guilt beyond a reasonable doubt. In fact, that would have been the only conclusion which could be drawn on the basis of evidence on record. He submitted that if the impugned judgment is not satisfactory, this Court, after re-appreciating the evidence of the prosecution witnesses and other material on record, can satisfy its conscience about the correctness of the ultimate conclusion of the High Court.

Consideration of Submissions

7. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C. can be summarised as follows: -

(a) The acquittal of the accused further strengthens the presumption of innocence;

(b) The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

(c) The Appellate Court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the Trial Court is a possible view which could have been taken on the basis of the evidence on record;

(d) If the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and

(e) The Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

8. Normally, when an Appellate Court exercises appellate jurisdiction, the duty of the Appellate Court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The Appellate Court normally ascertains whether the decision under challenge is legal or illegal.

But while dealing with an appeal against acquittal, the Appellate Court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the Appellate Court must first decide whether the Trial Court's view was a possible view. The Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt.

Only by recording such a conclusion an order of acquittal cannot be reversed unless the Appellate Court also concludes that it was the only possible conclusion. Thus, the Appellate Court must see whether the view taken by the Trial Court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the Trial Court is a possible view, the Appellate Court cannot interfere with the order of acquittal on the ground that another view could have been taken.

9. There is one more aspect of the matter. In many cases, the learned Trial Judge who eventually passes the order of acquittal has an occasion to record the oral testimony of all material witnesses. Thus, in such cases, the Trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour.

While deciding about the reliability of the version of prosecution witnesses, their demeanour remains in the back of the mind of the learned Trial Judge. As observed in the commentary by Sarkar on the Law of Evidence, the demeanour of a witness frequently furnishes a clue to the weight of his testimony. This aspect has to be borne in mind while dealing with an appeal against acquittal.

10. Coming back to the facts of the case, after having carefully perused the impugned judgment, we find that there is no discussion about the testimony of eyewitnesses for deciding whether their testimony could be believed. In fact, there are no findings recorded by the High Court after reappreciating the evidence. There is not even a finding to indicate that the High Court considered the question whether the view taken by the Trial Court was a possible view.

Without recording any reasons and without recording any finding regarding the role played by the appellants individually and collectively, the High Court has jumped to the conclusion that the guilt of the accused has been established. The judgment does not throw any light on the question who were the authors of the injuries sustained by the deceased and the injured witnesses. There is no finding as to how Section 149 of IPC gets attracted.

11. Thus, the only conclusion which can be drawn is that the High Court, as an Appellate Court, while hearing the appeal against acquittal, has not done its duty.

12. However, we cannot take recourse to the order of remand since the subject offence has taken place about twenty-three and half years back. We have perused the evidence of the eyewitnesses, namely PW-1, PW-2, PW-3, PW-6 and PW-7, and the Trial Court findings. We find that the Trial Court has made a very detailed analysis of the depositions of the witnesses.

The incident was of 9:00 p.m. The Trial Court noted that at 11:40 p.m. on the date of the incident, PW-1 was examined by a doctor in a hospital. FIR was not lodged immediately thereafter. It was registered at 1:30 a.m. on the next date. The Trial Court noted that the appellant no.1's thumb was disfigured. For this grievous injury suffered by the appellant no.1 - accused no.1, there was no explanation by the prosecution.

13. The Trial Court found that the failure to investigate the cause of injury suffered by the accused no.1 is a serious lacuna in a prosecution case. On facts, it is further noted by the Trial Court that on the basis of prior complaint filed by the accused no.1 - appellant no.1 alleging commission of assault by PW-1, PW-2, PW-7, and PW-12, all of them got anticipatory bail from the competent court.

14. There was a fight over property between the accused and the family of the complainant. After in-depth scrutiny of the testimony of the eyewitnesses, for the reasons recorded, the Trial Court was unable to accept their testimony. After having examined the evidence of the material prosecution witnesses and findings of the Trial Court, we must hold that the conclusions recorded by the Trial Court were possible conclusions which could have been recorded on the basis of the evidence on record.

15. Therefore, the appeal succeeds, and we set aside the impugned Judgment dated 21st September 2010. We direct that unless the appellants are required to be detained in custody in connection with some other case, they shall be forthwith set at liberty.

16. The Appeal is accordingly allowed.

.....J. (Abhay S. Oka)

.....J. (Sanjay Karol)

New Delhi;

Sweety Kumari Vs. State of Bihar and Ors.
2023 Latest Caselaw 742 SC

Citation : 2023 Latest Caselaw 742 SC
Judgement Date : ***22 Sep 2023***
Case No : C.A. No.-006072-006072 / 2023

Sweety Kumari Vs. State of Bihar and Ors.

[Civil Appeal No. 6072 of 2023 arising out of SLP (C) No. 9964 of 2022]

[Civil Appeal No. 6073 of 2023 arising out of SLP (C) No. 12637 of 2022]

[Civil Appeal No. 6074 of 2023 arising out of SLP (C) No. 16749 of 2023]

J. K. Maheshwari, J.

1. Leave granted.

2. In the instant three appeals, the judgments passed by the High Court of Judicature at Patna (hereinafter referred to as "High Court") in Sweety Kumari v. State of Bihar and Others (CWJC No. 18038/2021) dated 03.11.2021; Vikramaditya Mishra v. State of Bihar and Others (CWJC No. 3707/2020) dated 04.09.2021; and Aditi v. Bihar Public Service Commission Patna and Others. (CWJC No. 15325/2022) dated 19.04.2023 are under challenge.

By the said judgments, the High Court upheld the decision of the official Respondents. The candidature of appellants was rejected by the official respondents on account of non-furnishing of original character certificates (in case of Sweety Kumari and Vikramaditya Mishra) and law degree (in case of Aditi) respectively.

3. The High Court in the first two cases dismissed the writ petitions relying upon the order passed in the case of a similarly situated candidate titled as Aarav Jain v. The Bihar Public Service Commission and Ors. (CWJC No. 24282/2019) decided on 04.05.2021. Whereas in the third case, the High Court while dealing with the case of the appellant Aditi and one similarly placed candidate named Ankita, through a common order found that though the appellant Aditi has her case on merits at par with Ankita, but due to non-availability of the vacancy in EWS category the relief as granted to Ankita cannot be extended to appellant Aditi.

4. The appellants Sweety Kumari, a candidate of Scheduled Caste (SC) category and Vikramaditya Mishra, unreserved category candidate, appeared in 30th Bihar Judicial Service Competitive Examination (hereinafter referred to as "30th Examination") conducted for selection of Civil Judge (Junior Division) pursuant to an Advertisement No. 6 of 2018 dated 21.08.2018/23.08.2018.

Both the candidates have been declared successful in the preliminary examination vide the results declared on 07.01.2019 and main examination vide result declared on 05.10.2019 after obtaining more marks than the cut-off for their respective category. Pursuant to this, they were called for interview vide letter dated 15.12.2019.

5. The candidature of the appellants Sweety Kumari and Vikramaditya Mishra was rejected on account of not producing the original character certificates at the time of interview. True photocopies were produced. However, while declaring the result on 27.11.2019/29.11.2019, the candidature of the present two appellants as well as of one, Aarav Jain were rejected by a common communication.

6. On other hand, appellant Aditi applied in the Economically Weaker Section (EWS) category in furtherance to the 31st Bihar Judicial Service Competitive Examination (hereinafter referred to as "31st Examination"). She secured 501 marks, whereas cut-off was 499. Her candidature was rejected on the ground of not having the law degree certificate on the date of interview.

The candidature of the similarly situated candidate Ankita was also cancelled on the same ground. However, on the filing of separate writ petitions which was disposed of by a common order, Ankita was granted relief by the High Court due to availability of vacancy in SC category, but Aditi was denied relief due to non-availability of the vacancy in the EWS category.

7. In view of the foregoing factual scenario, the questions that fall for consideration before us are as under:

i) Whether the rejection of the candidatures of the appellants due to non-production of the original certificate at the time of interview by the Bihar Public Service Commission (hereinafter referred to as "BPSC") is justified?

ii) In the facts and circumstances of the case, what relief can be granted to the appellants?

8. Undisputed facts of the case succinctly put are that the appellants Sweety Kumari and Vikramaditya Mishra appeared in 30th Examination in furtherance to the advertisement No. 6 of 2018 published on 21.08.2018/23.08.2018 by the BPSC to fill up the 349 vacancies. The said advertisement was issued in furtherance of the Bihar Civil Service (Judicial Branch) Recruitment Rules, 1955 (hereinafter referred to as "the Rules").

Appellant Sweety Kumari applied in SC category while appellant Vikramaditya Mishra applied in the un-reserved category. Aarav Jain along with seven other candidates also applied in the unreserved, SC, EBC and BC categories respectively. Their candidature had also been rejected on similar grounds. On challenging the said rejection, the High Court passed a detailed order in CWJC No. 24282 of 2019 titled as 'Aarav Jain v. The Bihar Public Service Commission and others' and dismissed the said petition by upholding the rejection by the BPSC.

9. By the impugned orders dated 03.11.2021 and 04.09.2021, the writ petitions filed by Sweety Kumari and Vikramaditya Mishra respectively, have been rejected relying upon judgment dated 04.05.2021 passed in the case of Aarav Jain.

10. Aarav Jain and seven others similarly placed candidates filed their respective petitions before this Court in Civil Appeal No. 4242 of 2022 titled Aarav Jain v. The Bihar Public Service Commission and Ors. as the leading matter which were decided by a common judgment dated 23.05.2022. By the said judgment this Court repelled the contention of BPSC regarding cancellation of the candidature due to non-submission of the originals at the time of the interview as their true photocopies were on record and subsequently, the originals were also submitted before BPSC.

This Court was of the opinion that the plea of non-submission of the originals at the time of interview is neither related to the qualification nor eligibility and a verification and vigilance report is anyway obtained by the State during probation. Therefore, the production of the

original was not a mandatory condition. The stand of the BPSC had materially resulted in the dis-qualification of candidates who were otherwise in the merit list. Therefore, in the facts and circumstances of the case, this Court directed that the rejection of candidature was improper, unjustified and not warranted.

11. This Court granted relief to the eight candidates in the civil appeal of Aarav Jain (supra) by adjusting the available five vacancies in the unreserved category and for the other three candidates belonging to EBC, SC and BC category, it was directed to the State to either adjust them against future vacancies which were stated to be available at that time or the State was permitted to borrow three posts from future vacancies, one each in respective categories.

It was also held that the power to vary the vacancies of the said advertisement always vests in the employer under the wisdom and discretion of the State. This Court gave weight to the fact that all the candidates secured marks more than the cut-off and, therefore, such meritorious candidates would only be an asset for the institution helping in disposal of cases. This Court further directed to allow to all these eight candidates the benefits of increment and other notional benefits at par to other selected candidates as per their merits without arrears of salary.

12. In the said appeal, one Jyoti Joshi filed an application for intervention seeking directions for her appointment in implementation of judgment dated 09.02.2022 passed in CWJC No. 7751 of 2020 by the High Court and also sought clarification to the effect that the interim order dated 23.07.2021 passed in Aarav Jain (supra) has not interfered with her appointment. This Court dismissed the said intervention application vide the judgment passed in Aarav Jain (supra) and denied her the benefit because she was in the waiting list and not in the merit list.

More so, the interim orders dated 23.02.2021, 08.10.2021 and 07.02.2022 passed in Aarav Jain (supra), keeping the posts vacant, being prior in time, have also not been brought to the notice of the High Court, before passing of the final order dated 09.02.2022. It is apparent that the civil appeals filed in the case of Aarav Jain (supra) have been decided in favour of the candidates and against the employer and the said order was already implemented.

13. We have heard learned counsel for the parties and have perused the Bihar Civil Service (Judicial Branch) (Recruitment), Rules, 1955 (hereinafter referred to as the 'Rules') and the Advertisement No. 6 of 2018. Rule 7(b) of the Rules contemplates that a candidate must satisfy BPSC that his character is such as to qualify him for appointment to the service. Rule 9 prescribes that the candidate should submit evidence as to educational qualifications; certificate of character from the Heads of the Colleges, where he/she has studied; the reference of two known persons; certificate of medical practitioner in prescribed form; and the certificate of the duration of practice from the respective authorities.

The second note to Rule 9 indicates that the certificates and other documents required should be true copies of the originals and each of them should be certified by a gazetted officer, specifying that after seeing the original, he certified the true copy of the same. The candidate may be required to produce the original before BPSC at the time of viva voce test.

14. In view of this position in the rules it can safely be perceived that the candidate must be of good character so as to satisfy BPSC in this regard by submitting true photocopies and upon requirement by BPSC, the original may be produced at the time of viva voce test.

Therefore, it is clear that the candidate should possess the character certificate and if required, it may be made available at the time of interview. The said language makes it clear that the production of the original certificates at the time of interview is not mandatory but directory. This

is apparent from the language of second note to Rule 9 which uses the word "may be required to produce the originals before commission at the time of viva-voce test".

15. In furtherance to the Rules, the advertisement No. 6 of 2018 was issued. Clause 7(ii) of the said advertisement is regarding online applications which prescribes that for any defects in entry made by candidate in the course of filling the online application, the commission shall not be responsible, and correction and change in this regard shall not be permissible. As per Clause 8(1) of the advertisement, the documents attached to the online application form may be produced when the commission demands at the time of the interview or at any point of time.

As per Clause 9, the certificates regarding qualification is required to be possessed prior to the last date. As per Clause 10, all the certificates and marksheets are required to be submitted at the time of interview and the commission shall have discretion to take a decision regarding eligibility of candidates not complying with the said directions. Clause 11 of the advertisement relates to the fact that the candidate shall ensure that he has all the required certificate in original at the time of filling of application form.

16. In view of the various clauses, as referred to hereinabove, even going by the advertisement, the certificates of educational qualification and other required documents on the date of the submission of the online application form must be necessarily possessed but its production is not mandatory.

In clause 3 of the interview letter sent to the candidates, indeed it was mentioned that they shall be present with the certificates, mark-sheet and other documents including character certificate, in original form and its self-attested photocopies in two numbers. Appellant Sweety Kumari has averred in the writ petition and the Special Leave Petition that her original character certificate was submitted in the State Bar Council and the same was not made available to her within the stipulated deadline despite her best attempts.

On the other hand, appellant Vikramaditya Mishra has averred that the department of his Law College has sent the original character certificate to the Controller of Examination, BPSC by post which was dispatched on 25.11.2019 and delivered to BPSC on 27.11.2019. Despite, the same, their candidature was rejected for want of original copies of the character certificate.

17. In the case of Aarav Jain (supra), this Court has not accepted the plea taken by BPSC that production of original certificate was mandatory because the candidates possessed such certificates on the date of submission of the application form. This Court was of the opinion that once such a condition is not mandatory, then non-production of original copies at the time of interview would not be sufficient to reject the candidature of a candidate who was placed in the merit.

18. The view taken by this Court is fortified by the analogy drawn in the case of Charles K. Skaria and Others vs. Dr. C. Mathew and Others (1980) 2 SCC 752 whereby Justice Krishna Iyer speaking for the Court held that the factum of eligibility is different from factum of proof thereof. This Court held that if a person possesses eligibility before the date of actual selection, he cannot be denied benefit because its proof is produced later.

19. In the present case, the proof is available and true photocopies were on record. The appellants' candidature could not have been rejected merely because the original was not produced before the Commission at the time of interview in particular when such requirement was not mandatory, in view of the manner in which the Rules are couched.

20. Now, coming to the case of appellant Aditi in SLP (Civil) No. 16749/2023, she has passed the final examination but the certificate of law degree was not issued to her. The High Court in the impugned order dated 19.04.2023 has relied upon the judgment of Charles K. Skaria (supra) to support her contention and observed that when the candidate possesses the required essential qualification on the date on which it was required, then there cannot be any justification in not accepting the late arrival of the certificate because of the pandemic.

However, the High Court has declined to grant the relief on the pretext that she had applied under EWS category for which 23 posts were earmarked and those posts have already been filled up. The High Court also observed that though she has secured 501 marks which was 2 marks more than the cut off for the EWS category, but it was not known as to who may be the last successful candidate in the EWS category. Also at the time of passing of impugned order those posts had already been filled. Thus due to non-availability of posts, the relief was denied.

21. As per the directions issued by this Court vide order dated 14.8.2023, the Registrar General of the High Court of Judicature at Patna filed an affidavit after perusing the documents produced before him by the State of Bihar and the BPSC. In the said affidavit, it is admitted that the case of the appellants Sweety Kumari and Vikramaditya Mishra is similar to the case of Aarav Jain (supra).

As per the information furnished by the High Court, appellant Sweety Kumari in SC category secured 414 marks when the cut-off was 405 marks and the appellant Vikramaditya who applied under unreserved category secured 543 marks whereas the cut off under the unreserved category was 517. It is also fairly stated that in the 30th Examination, the total vacancies were 349 but after issuing of the directions by this Court, the State appointed 351 candidates deducting one post each of EWS and SC category from the future vacancies which were to be advertised under the 32nd Examination.

22. Learned counsel for the appellant Sweety Kumari has fairly stated before this Court that she got selected in the 31st Examination under the SC category and joined the service. In view of the discussion made hereinabove and the affidavit filed by the Registrar General, it is clear that the case of appellant Sweety Kumari and appellant Vikramaditya Mishra are at par with the case of Aarav Jain and other seven candidates who were appointed in furtherance of the judgment of this Court dated 23.05.2022 in Aarav Jain (supra).

23. Appellants in Aarav Jain (supra) have been appointed by the State Government extending the number of vacancies advertised in the 30th Examination by borrowing those extra vacancies from the 32nd Examination. The vacancies notified for the 32nd Examination are in process of being filled. The case of appellants Sweety Kumari and Vikramaditya Mishra were dismissed by the High Court relying upon its earlier judgment dated 04.05.2021 in Aarav Jain v. The Bihar Public Service Commission (CWJC No. 24282/2019).

The said judgment dated 04.05.2021 was challenged by Aarav Jain and seven other candidates by filing special leave petitions. The said special leave petitions were converted into civil appeals and this Court vide judgment dated 23.05.2022 set-aside the judgment dated 04.05.2021 of the High Court.

24. Therefore, there cannot be any reason to deny similar benefits to the present two appellants at par with Aarav Jain and seven other candidates as ordered by this Court in Aarav Jain (supra). We are of the considered view that present aforesaid two appellants (Sweety Kumari, Vikramaditya Mishra) cannot be discriminated by not granting relief merely because of non-availability of vacancies in the 30th Examination.

25. Reverting to the case of appellant Aditi, which is related to the 31st Examination, as per the affidavit submitted by the Registrar General, it is apparent that out of 221 vacancies advertised, only 214 candidates were recommended for appointment and seven vacancies have been carried forward to the 32nd Examination. Thus, there are vacancies, which are yet to be filled up for the 32nd Examination. The process of selection is not yet complete.

Learned counsel appearing on behalf of the State of Bihar and BPSC, in the peculiar facts of the case, have fairly stated that because of the directions issued by this Court in the case of Aarav Jain (supra), the other candidates who secured more marks than the cut-off in the merit of the respective categories, can be accommodated. However, upon issuance of directions by this Court, the State Government is ready to accommodate all the three candidates (namely Sweety Kumari, Vikramaditya Mishra and Aditi) who have also secured more marks than cut-off for their respective categories.

26. In view of the discussion made hereinabove, because Sweety Kumari secured 414 marks though cut off in SC category was 405 and Vikramaditya Mishra secured 543 marks, though cut off was 517 in the unreserved category in the 30th examination and they were candidates of merit, they be extended the benefit at par with the Aarav Jain (supra) and others.

27. The appellant Aditi appeared in 31st Examination, and secured 501 marks, whereas cut off was 499 in EWS category. Therefore, the respondents are directed to adjust one vacancy of EWS for the same examination or from the next examination and extend similar benefits to Aditi, in view of the ratio of Aarav Jain (supra).

28. Accordingly, we set-aside the impugned judgments dated 03.11.2021, 04.09.2021 and 19.04.2023 passed by the High Court. The appellants Sweety Kumari and Vikramaditya Mishra be accommodated being successful candidate in the 30th Examination and appellant Aditi be accommodated being a successful candidate in the 31st Examination.

29. We clarify that this judgment is passed in the peculiar facts of the case to mitigate the plea of discrimination to candidates who are before us and who knocked the door of the court well within time.

It is made clear here that similarly situated candidates would not be entitled to claim the same benefit further, because they have not come before this Court within a reasonable time.

30. In view of above, the appeals are allowed. Pending application, if any, stands disposed of. No order as to costs.

.....J. (J.K. Maheshwari)

.....J. (K.V. Viswanathan)

New Delhi;

MCQ'S

1. in the Preamble is-
(A) To define and amend the law of evidence
(B) To consolidate, define and amend the law of evidence
(C) To highlight, define and consolidate the law of evidence
(D) To highlight, consolidate, define and amend the law of evidence

2. The evidence unearthed The object of Indian Evidence Act, 1872 as set out by the sniffer dog falls under-
(A) Oral evidence
(B) Documentary evidence
(C) Hearsay evidence
(D) Scientific evidence

3. Whenever it is directed by the Indian Evidence Act, 1872 that the court shall presume a fact, it shall regard such fact as-
(A) Proved, unless and until it is disproved
(B) Proved, unless and until it is disproved or may call for proof of it
(C) Proved
(D) Proved and shall not allow evidence to be given for the purpose of disproving it

4. A fact is said to be 'not proved' –
(A) When it is disproved
(B) When, after considering the matters before it, the court believes that it does not exist
(C) When a prudent man considers that the fact does not exist
(D) When it is neither proved nor disproved

5. What is the meaning of 'Not proved' under Evidence Act?
(A) Fact does not exist
(B) Non-existence probable
(C) Court has doubt
(D) Neither proved nor disproved

6. That a man heard or saw somethings, it is-
(A) A fact (B) A document
(C) An evidence (D) Done

7. That a man has a certain reputation, it is-
(A) An evidence (B) A fact
(C) A document (D) All

8. Court includes-
(A) All magistrates and Judges
(B) All persons authorised to take evidence
(C) (A) and (B) both
(D) None of these

9. A map or plan is-
(A) A document (B) A fact
(C) An evidence (D) None of these

10. Caricature is-
(A) An evidence (B) A document
(C) A fact (D) None of these

11. Presumption are given-
(A) In Section 2 (B) In Section 3
(C) In Section 4 (D) In Section 5

12. Which is not a document ?
(A) Caricature
(B) Writing
(C) Inscription on a stone
(D) A man has certain reputation

13. Indian Evidence act came into force on-
(A) 1-9-1872 (B) 1-11-1872
(C) 15-9-1872 (D) 1-9-1862

14. Evidence includes –
(A) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry
(B) All documents including electronic record produced for the inspection of the Court
(C) (A) and (B) both
(D) None of these

15. Indian Evidence Act was drafted by –
(A) Charchil (B) Dalhouse
(C) Stephan (D) Macauly

16. Indian Evidence Act applies to-
(A) Proceedings for oaths
(B) Proceedings before arbitrator
(C) Judicial Proceedings in Court
(D) None of these

17. Evidence law is-
(A) Lex Fori (B) Lex loci solutionis
(C) (A) and (B) both (D) None of these

18. Indian Evidence Act includes –
(A) Oral Evidence
(B) Documentary Evidence
(C) Electronic records
(D) All of the above

19. Presumption under Evidence law are-
(A) Presumption of facts
(B) Presumptions of law
(C) (A) and (B) both
(D) None of these

20. Which of the following is not a Court as per definition ?
(A) Magistrate
(B) Judge

(C) Arbitrator
(D) Income Tax appellate authority

21. Evidence of custom cannot be given to establish-
(A) A civil right
(B) An easementary right
(C) A customary right
(D) A criminal right

22. The question is, whether 'A' committed a crime at Kolkata on a certain day. in answer to this question, which of the following fact is relevant?
(A) That 'A' was out that day at Mumbai
(B) That 'A' habitually goes to Kolkata
(C) That 'A' habitually commits crime
(D) None of the above

23. Match List-I and List-II and select the correct answer using code given below lists-
List-I (Relevancy of facts)
(a) Facts as effect of fact in issue
(b) Facts forming part of same transaction
(c) Facts which constitute preparation for any fact in issue
(d) Facts necessary to explain or introduce relevant facts
List-II (Section of Evidence Act)
1. Section 9
2. Section 8
3. Section 7
4. Section 6

Codes:

	(a)	**(b)**	**(c)**	**(d)**
(A)	1	2	3	4
(B)	4	3	2	1
(C)	3	4	2	1
(D)	2	3	1	4

24. Which one of the following provisions of Evidence Act provides that previous bad character of an accused is not relevant ?
(A) Section 54 (B) Section 52
(C) Section 53 (D) Section 118

25. Which one of the following Section of Evidence Act says that confession caused by inducement, threat or promise is irrelevant?
(A) Section 25 (B) Section 26
(C) Section 27 (D) None of these

26. In which of the following cases it was held that Section 27 of Evidence Act is an exception to Sections 24, 25 and 26 ?
(A) Pakala Narain Swamy V/s. King Emperor
(B) Inayatulah V/s. State of Maharashtra
(C) State of U.P. V/s. Deoman Upadhya
(D) Kotayya V/s. King Emperor

27. Which one of the following statement is correct?
(A) Admission can be oral only
(B) Admission can be documentary only
(C) Admission can be oral or documentary
(D) Admissions are conclusive proof of matters admitted

28. The facts though not in issue are so connected with fact in issue as to form part of same transaction are-
(A) Relevant under rule of res jestae
(B) Not relevant
(C) Hearsay evidence
(D) Primary evidence

29. Admissions and confessions are-
1. Exception to hearsay evidence
2. Part of hearsay evidence
3. From relevant evidence
4. Admitted in evidence on proof
Select correct answer using code given below-
Code:
(A) 1, 2 and 4 (B) 1, 3 and 4
(C) 1 and 2 (D) 2

30. Case of Pakala Narain Swamy V/s. Emperor relates to-
(A) Doctrine of estoppels
(B) Accomplice
(C) Dying declaration
(D) Hostile witness

31. A confession is inadmissible if it is made by accused-
(A) To a magistrate whilst he is in custody of police officer
(B) To his friend whilst is not in custody of police officer
(C) To doctor whilst he is in custody in of police officer
(D) To spiritual adviser under inducement for good of his soul

32. Extra judicial confession means a confession made-
(A) Before Magistrate in Court
(B) To police officer
(C) To doctor

(D) None of the above

33. A confession is admissible if it is made by accused to-
(A) A police officer
(B) A doctor whilst he is in custody of police officer
(C) His friend whilst he is in custody of a police officer
(D) A spiritual adviser under inducement for good of soul

34. Case of Kashmira Singh V/s. State of M.P. relates to-
(A) Dying declaration
(B) Privileged communication
(C) Confession to police officer
(D) Confession to co-accused

35. Character of a person for purpose of law of evidence is not relevant in one of following situations-
(A) Previous good character of accused in criminal cases
(B) Previous bad character in reply to evidence of good character in criminal cases
(C) Character as affecting amount of damages in civil cases
(D) Character to prove good conduct imputed in civil cases

36. Assertion (A): Extra judicial confession if voluntary, can be relied upon with other evidence.
Reason (R): Extra judicial confession if voluntary can be relied upon with other evidence
Code:
(A) Both (A) and (R) are true and (R) is correct explanation (A)
(B) Both (A) and (R) are true but (R) is not correct explanation of (A)
(C) (A) is true but (R) is false
(D) (A) is false but (R) is true

37. An admission under Section 17 of the Indian Evidence Act is-
(A) Only a oral statement
(B) Only a documentary evidence
(C) An oral, documentary or a statement contained in electronic from
(D) An oral or documentary statement

38. Assertion (A): In certain cases corroboration of confession is necessary.
Reason (R): In all cases an extra judicial confession must be corroborated.
Code:
(A) Both (A) and (R) are true and (R) is correct explanation (A)
(B) Both (A) and (R) are true but (R) is not correct explanation of (A)
(C) (A) is true but (R) is false
(D) (A) is false but (R) is true

39. Assertion (A): A dying declaration is admissible in evidence.
Reason (R): Its admissibility is founded upon principle of necessity.
Code:
(A) Both (A) and (R) are true and (R) is correct explanation of (A)
(B) Both (A) and (R) are true but (R) is not correct explanation of (A)
(C) (A) is true but (R) is false
(D) (A) is false but (R) is true

40. Admissions are-
(A) Not conclusive proof of matters admitted
(B) Conclusive proof of matters admitted
(C) Not to operate as estoppel
(D) Of no value

41 The question is whether A was poisoned by a certain poison then it is relevant that-
(A) Poison was harmful
(B) Poison fact that other persons who were poisoned by that poison exhibited certain symptoms which experts affirm or deny to be symptoms of that person
(C) Person was lawyer
(D) None of these

42 Section 51 of Indian Evidence Act-
(A) Grounds of opinion when relevant
(B) Opinion on relationship when relevant
(C) Character as affecting damages
(D) In criminal cases previous good character is relevant

43 Previous good character is relevant-
(A) In civil cases
(B) In criminal cases
(C) In particular cases
(D) None of these

44 What is relevant according to Section 9?
(A) Facts necessary to explain
(B) Which establish identity of a person whose identity is relevant
(C) Fix time or place

(D) All of these

45 Section 14 makes relevant facts which shows existence of-
(A) Facts showing existence of any state of mind
(B) Existence of course of business
(C) Facts which are cause
(D) All of these

46 Where question is as to existence of any right or custom facts are relevant ?
(A) Any transaction by which right or custom in question was created claimed codified, recognized, asserted, or denied
(B) Any transaction which was inconsistent its existence
(C) Particular instances in which right or custom was claimed recognized or exercised or in which its exercise was disputed asserted or departed form
(D) All of these

47 Alibi is governed by-
(A) Section 3 (B) Section 11
(C) Section 12 (D) Section 15

48 Previous conviction is relevant under Section –
(A) Explanation 1, Section 14 of Indian Evidence Act
(B) Explanation 1, Section 15 of Indian Evidence Act
(C) Explanation 2, Section 14 of Indian Evidence Act
(D) None of these

49 Confession made to police officer is not relevant-
(A) Under Section 23
(B) Under Section 25
(C) Under Section 36
(D) Under Section 42

50 Section 27 controls-
(A) Section 27 (B) Section 25
(C) Both (A) and (B) (D) Section 24

51 The Opinions of experts are relevant-
(A) Under Section 24
(B) Under Section 36
(C) Under Section 33
(D) Under Section 45

52 Confession caused by inducement, promise are-
(A) Relevant (B) Not relevant
(C) May be relevant (D) All of these

53 Relevancy of statements in maps, chart is provided-
(A) In Section 36 (B) In Section 39
(C) In Section 42 (D) In Section 45

54 Under Section 8 of Evidence Act-
(A) Preparation is relevant
(B) Conduct is relevant
(C) Motive is relevant
(D) All of these

55 Mode of proof of a custom is contained in-
(A) Section 48 of Evidence Act
(B) Section 60 of Evidence Act
(C) Section 39 of Evidence Act
(D) All of these

56 Persons who can make admissions are mentioned in ?
(A) Section 18 of Evidence Act
(B) Section 15 of Evidence Act
(C) Section 21 of Evidence Act
(D) Section 24 of Evidence Act

57 Under Section 21 of Evidence Act-
(A) Admission by persons expressly referred to by party to suit
(B) Proof of admissions against making them and by or on their behalf
(C) Admission by party to proceeding
(D) Facts bearing on question whether act was accidental or intentional

58 Admissions-
(A) Must be in writing
(B) Must be oral
(C) None of these
(D) Both of these

59 Necessity rule as to admissibility of evidence is contained in-
(A) Section 33 (B) Section 32
(C) Section 31 (D) Section 30

60 Section 13 applies to-
(A) Corporal rights
(B) In corporal rights
(C) (A) and (B) both
(D) None of these

61 Admission can be made by-
(A) Suitors in representative character
(B) Person from whom interest derived

(C) Both (A) and (B)
(D) None of these

62 According to Section 40-
(A) Previous judgement relevant to bar second trial or suit
(B) Opinion of experts
(C) Fraud in obtaining judgement or incompetency of Court may be proved
(D) Relevancy of certain judgements in probate etc.

63 According to which section statement as to fact to public nature contained in notifications are relevant ?
(A) Section 33 (B) Section 35
(C) Section 36 (D) Section 37

64 Dying declaration is relevant only when-
(A) Maker of statement is dead
(B) Maker of statement cannot be found
(C) Both (A) and (B)
(D) None of these

65 In which of these expert opinion is relevant ?
(A) Foreign law (B) Finger prints
(C) Art (D) All of these

66 Which of the following is not relevant under Section 8 of Indian Evidence Act?
(A) Intention (B) Occasion
(C) Preparation (D) Previous Conduct

67 Which of the following facts is relevant under Section 10 of Evidence Act?
(A) Those facts which are introductory in Nature
(B) Those facts which help to certain identification and article of a person
(C) Those facts which depict relation between parties
(D) Those facts from which inference of conspiracy can be traced

68 Which one cannot make admission?
(A) Agent of parties
(B) Person from whom parties have derived interest
(C) Admission by co defendant
(D) Those people who have been made umpires by parties of case

69 Which of the following is not a police officer according to Section 27 of Act?
(A) Police patel
(B) Chowkidar
(C) Excise officer
(D) Member of Railway protection force

70 Which one of the following confessions is not admissible?
(A) When made before Magistrate
(B) When made before magistrate due to force of family
(C) When made before magistrate in presence of police
(D) When made to doctor in presence of police

71 Which one of the following Sections of Evidence Act defines admission ?
(A) Section 16 (B) Section 17
(C) Section 20 (D) None of these

72 Which of the following does not find a mention as showing state of mind under Section 14 of Evidence Act?
(A) Intention (B) Knowledge
(C) Motive (D) Good faith

73 Which one of the following is not essential condition for admissibility of dying declaration ?
(A) Death of person making dying declaration
(B) Statement must be as to cause of his death
(C) Person making statement was under expectation of death at time he made statement
(D) Statement is as to any of circumstances of transaction which resulted into his death

74 Under which of the following provisions of Evidence Act word forming part of same transaction occurs ?
(A) Under Section 5 (B) Under Section 6
(C) Under Section 7 (D) Under Section 8

75 A 's death is caused due to negligent driving of B In suit for damage against B which of the following fact is not relevant ?
(A) Fact that A was an young man of 30 years
(B) Fact that A was an young man with good physique
(C) Fact that A has qualified in P.C.S. (J)
(D) Fact that B was in habit of driving negligently

76 Which of the following statement is not correct?

(A) No fact of which the Court will take notice need be proved
(B) The Facts admitted need not be proved
(C) All the facts and contents of documents
(D) Oral evidence must be direct

77 Section 56 of Indian Evidence Act-
(A) Facts of which the Court must take judicial notice
(B) Fact judicially noticeable need not be proved
(C) In criminal cases previous good character relevant
(D) All of these

78 Section 57 of Indian Evidence Act-
(A) Facts of which the Court must take judicial notice
(B) Fact judicially noticeable need not be proved
(C) In criminal cases previous good character relevant
(D) All of these

79 Fact admitted need not be proved is according to-
(A) Section 55 (B) Section 56
(C) Section 57 (D) Section 58

80 Under Section 57(1) of Indian Evidence Act, Court shall take judicial notice of-
(A) All laws in force in India
(B) All laws including foreign laws
(C) All Indian and Asian laws
(D) All Indian and British laws upto 1950

81 Which fact need not to be proved?
(A) Fact which Court will take judicial notice
(B) For which no evidence is given
(C) Hearsay evidence
(D) All of these

82 Court will take judicial notice of the following –
(A) All laws in force in the territory of India
(B) The accession to office names, titles, functions and signatures of the persons filling for the time being any public office in any state if the fact of their appointment to such office is notified in any official gazette

83 Of which of following facts the Court will not take Judicial notice?
(A) Common Law of Britain
(B) Law of State of Indian
(C) Division of time
(D) Local General customs and traditions of India

84 Which is not main principle that underlies law of evidence?
(A) The evidence must be confined to matter in issue
(B) Hearsay evidence must not be admitted
(C) Hearsay evidence must be admitted
(D) The best evidence must be given in all cases

85 Section 59 of Indian Evidence Act is-
(A) Proof of facts by oral evidence
(B) Secondary evidence
(C) Oral evidence must be direct
(D) Proof of contents of documents

86 Section 60 of Indian Evidence Act is-
(A) Proof of facts by oral evidence
(B) Secondary evidence
(C) Oral evidence must be direct
(D) Proof of contents of documents

87 Oral evidence must in all cases whatever be direct that is to say-
(A) If it refers to a fact which could, be seen it must be the evidence of witness who says he saw it
(B) If it refers to a fact which could be heard, it must be the evidence of witness who says he heard it
(C) If it refers to a fact which could be perceived by any other sense or in any other manner it must be evidence of a witness who says he perceived it by that sense
(D) All of these

88 Which of following is not a hearsay evidence?
(A) Statement of police that on basis of inquiry conducted by him that accused was not at home on night of incident
(B) Report of newspaper
(C) Report prepared on basis of information provided by officer
(D) Statement of witness to prove relationship between persons

89 'Civil death' may be presumed, if it is proved that one has not been heard of for-
(A) 10 years
(B) 20 years
(C) 12 years

(D) 7 years

90 Execution of document may be presumed if the document is to be old-
(A) Ten years
(B) Twenty years
(C) Thirty years
(D) Forty years

91 What type of secondary evidence relating to public documents may be given ?
(A) Oral evidence about contents
(B) Certified copy of the document
(C) Photo-state copy
(D) Written admission

92 When a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is-
(A) Secondary evidence of the contents of the rest
(B) Primary evidence of the contents of the rest
(C) Direct evidence of the contents of the rest
(D) Documentary evidence of the contents of the rest

93 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) 'A' may prove a statement y 'B' that the deed is genuine, and 'B' may prove a statement by 'A' that the deed is forged
(B) 'A' may prove a statement by 'B' that the deed is forged, and 'N' may prove a statement by 'A' that the deed is genuine
(C) 'A' may prove a statement by himself that the deed is genuine
(D) 'B' may prove a statement by himself that the deed is forged

94 Which one of the following is not a public document ?
(A) An unregistered family settlement
(B) A registered sale deed
(C) Judgement of the High Court
(D) Judgement of a Civil Judge

95 Document produced for inspection of Court includes-
1. A written document
2. A caricature
3. An electronic record
4. An inscription on stone
Select the correct answer using codes given below –
Codes :
(A) 1 and 4 (B) 1, 2 and 4
(C) 1, 2, 3 and 4 (D) 1, 2, and 3

96 When a party refuges to produce a document which he had noticed to produce?
(A) He cannot use the document as evidence without consent of opposite party or order of Court
(B) Objection of opposite party is worthless
(C) Order of Court not necessary
(D) Document will be deemed to be an admitted document

97 A document is said to be in handwriting of A that document is produced from proper custody if document is purporting or proved to be years old, Court may presume that it is in A's handwriting-
(A) Thirty (B) Fifteen
(C) Twenty (D) Twelve

98 Public document under Indian Evidence Act can be proved by-
(A) Certified copy
(B) Oral evidence
(C) Writer of certified copy
(D) Any of above

99 When it is not necessary to call certifying writer of the document to prove the document ?
(A) When the document is not a will
(B) When the document is 30 years old
(C) (A) and (B) are correct
(D) (A) and (B) are wrong

100 Under which of the following Sections of Indian Evidence Act contents of electronic records may be proved?
(A) Section 65 A (B) Section 65 B
(C) Section 66 (D) Section 67

ANSWER KEY

1.B	25.D	49.B	73.C	97.A
2.D	26.D	50.C	74.B	98.A
3.A	27.C	51.D	75.C	99.C
4.D	28.A	52.B	76.C	100.B
5.D	29.B	53.A	77.B	
6.A	30.C	54.D	78.A	
7.B	31.C	55.A	79.D	
8.C	32.B	56.A	80.A	
9.A	33.D	57.B	81.A	
10.B	34.D	58.D	82.D	
11.C	35.D	59.B	83.D	
12.D	36.A	60.C	84.C	
13.A	37.C	61.C	85.A	
14.C	38.B	62.D	86.C	
15.C	39.A	63.D	87.D	
16.C	40.A	64.C	88.C	
17.A	41.B	65.D	89.D	
18.D	42.A	66.B	90.C	
19.C	43.B	67.D	91.B	
20.C	44.D	68.C	92.B	
21.D	45.A	69.C	93.A	
22.A	46.D	70.D	94.A	
23.C	47.B	71.B	95.C	
24.A	48.C	72.C	96.A	