CHAPTER – 5
LEGAL REQUIREMENTS

Rights of the Accused Under Penal Code

The Criminal law is most obviously and directly concerned with shaping and controlling human conduct.

- Lon L. Fuller : The Morality of Law

1. Caution : Strictly speaking an accused has no rights under the Indian Penal Code except a very few which are in the form of exceptions. One of them is a right to private defence. But each one of its penal provisions is filled with components or say parts. If these ingredients or parts are absent, an accused can neither be tried nor be convicted. In order to get the desired success the prosecution has to prove these parts first and then the guilt of the accused. If the prosecution fails to do so, this itself becomes a ground to discharge the accused. Therefore, an attempt is made here to select these components or parts in respect of some of the penal provisions of the Code along with other surrounding circumstances which can lead to acquittal of the accused.

2. Preliminary : Along with other means law is also a means of securing the conditions of social life. Criminal law instead of compensation resorts to the use of punishment. It in fact begins where punishment is necessary in the interest of society. Crime gives birth to danger which can be removed only by punishment, so said (Julius Stone : Human law and Human Justice, Pp. 156, 157). Any conduct that endangers community’s safety, stability or comfort, gives birth to offences which are termed as crimes and the
procedure taken in courts regarding them is a criminal proceeding. Besides, there may be other factors that may help in producing the same affect. To cut the long story short offences may become crimes as a result of the combined effect of a number of different social forces (Kenny : out lines of Criminal Law, 19th Edn, P.2) Sir William Oldnall Russel (Crimes, 12th (J.W. Cecil Tumer), Indian Reprint) classifies crimes chiefly into these twelve categories:-

(1) Offence against the security of the state.
(2) Disturbances of the public peace.
(3) Offences against the due administration of justice.
(4) Offences with respect to public office.
(5) Offences against the person, status and reputation of individuals.
(6) Offences against property, public or private
(7) Nuisances and kindred offences.
(8) Offences with relation to trade.
(9) Criminal conspiracy.
(10) Offences relating to the rights and revenues of the crown.
(11) Offences against religion and public worship, and
(12) Offences relating to the law of nations.

3. Common Intention : The most important aspect of the criminal law says section 34, relates to common intention. In order to apply the said provision, two factors should be established by the prosecution; The first is common intention, and the second is participation of the accused in commission of the offence (See Akhlaq Vs. State of U.P.,)\(^1\).

\(^1\) JT 2007 (5) SC 170 : Cri. LJ 2277
4. Good faith acts (Sections 76 and 79) : If a person does any act, believing in good faith, he is not criminally liable (Karimullah Vs. Gulam Rasool,\(^2\)). Good faith is said to be the honest intention, free from any blemish of fraud or fraudulent design (Brijendra Singh Vs. State of U.P.)\(^3\). Section 79 also works on the same principles. Under this provision, if a person acts under a bona fide belief that, he was lawfully justified in doing an act, such a person upon proof cannot be criminally held liable (Dhara singh Vs. Emperor,)\(^4\).

5. Accidental Acts (Section 80) : No person can be criminally held liable for an act which arises out of an accident while doing a lawful act by legal means (Sukhdev Singh Vs. State,)\(^5\). If an accused in such a case proves the fact of accident, he would be set free from his liability. (See, K.M. Nanavati Vs. State,)\(^6\).

6. Preventive Act (Section 83) : Section 83 also says the same thing. Any act done in good faith for the purpose of preventing or avoiding other harm to person or property cannot be considered an offence.

Two ingredients of this provision are : (1) absence of criminal intention to cause harm, (ii) the act alleged should have been done in good faith (Bishambhar Vs. Roomal,)\(^7\).

- Acts of a person of unsound mind (Section 84) : According to section 84 a person whose mental incapacity arises from post-natal causes,
such as illness (fever or palsy), or accident, injury, or shock to the brain, that person cannot be criminally held responsible for acts done by him. A lunatic is one who is afflicted by mental disorder only at certain periods but also has intervals of reason. Idiocy is a question of fact. A person deaf and dumb from birth is in presumption of law an idiot (Sir William Oldnall Russel: Crimes, 12th Edn. Vil. 1 Pp.103,105). Madness is permanent lunancy and is an acquired insanity. Idiocy is the natural insanity (Bapu Vs. State of Rajasthan).8

It is to be proved that, (i) the accused was of an unsound mind, as described above, at the relevant point of time (ii) And because of this unsound mind, the accused was incapable of knowing the nature of the act or what he was doing, wrong or contrary to law (Venkatesh Vs. State)9.

7. Burden of proof: The Apex Court in Chhaganbhai Thakkar Vs. State of Gujarat10, has laid down the following propositions in regard to the burden of proof in the context of the plea of insanity:

(1) It is obligatory for the prosecution to prove that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests upon the prosecution from the beginning to the end of the trial.

(2) There is a refutable presumption that the accused was not insane, when he committed the crime in the sense laid down in Section 84. The accused may refute it by placing before the court all the relevant evidence which may be, oral, documentary or circumstantial, but the burden of

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8 (2007) 8 SCC 66
9 2005 AIR Kant. HCR 307 : ILR 2005 Kar 538
10 AIR 1964 SC 1563 : 1964 Cri. LJ 472
proof upon him is no higher than that which rests upon a party in civil proceedings.

(3) Even if the accused fails to establish conclusively that he was insane at the time when he committed the offence, the evidence put before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused. The court in that case would be entitled to acquit the accused on the ground that the general burden resting on the prosecution has not been discharged.

8. Plea of drunkenness (Sections 85 and 86): The defence of drunkenness can be advantageous when under the effect of intoxication the accused loses the requisite intention for the alleged offence, and the responsibility lies on the accused. Therefore, the propositions under Section 85 are:

(1) The insanity whether produced by drunkenness or otherwise, is a defence.

(2) The specific intent essential to constitute the crime should be taken into account with the other facts proved in order to determine whether or not the accused had this intent.

(3) The evidence of drunkenness in capable to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave to some violent passion, does not refute the presumption (Bablu Vs. State of Rajasthan,)^{11}.

^{11} AIR 2007 SC 697 : 2007 Cri.LJ 1160
9. **Right to private defence**: Under Section 96, IPC anything done in the exercise of the right of private defence is not an offence. This provision does not define the expression right of private defence. It merely shows that whatever is done in exercise of the right of private defence, is not an offence. Section 97 deals with the subject matter of private defence. Section 99 lays down the limits of this right. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under section 96 and 98 and 100 to 106 is controlled by Section 99 of the code. Section 102 and 105 deal with commencement and continuance of the right.

In the heat of excitement and disturbed balance of mind it is often difficult to expect the parties to preserve composure and use force exactly equivalent to the danger during assault (2005) 9 Scale 204. Also see, **Nagarathinam Vs. State**\(^\text{12}\).

10. **When the right is available**: The plea of private defence comprises the body or property (i) of the person exercising the right, or (ii) of any other person. The right may be exercised in the case of any offence against the body and in the case of offences of theft, robbery, mischief or criminal trespass and attempts at such offences relating to property (**Shajahan Vs. State of Kerala,**)\(^\text{13}\).

11. **Nature of the right**: The right of private defence is a defensive right (**Dharam Vs. State of Haryana,**)\(^\text{14}\). Since it serves a social purpose, it is very valuable and so should not be explained narrowly (**Vidhya Singh Vs.**

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12 Air 2006 SC 1736 : 2006 Cri.LJ 2120
13 2007 Cri.LJ 2291 : 2007 (2) Crimes 344 SC
State of M.P.)\textsuperscript{15}. All circumstances are required to be viewed with pragmatism and any hyper technical approach should be avoided (2005) 9 scale 204 : Buta Singh Vs. State of Punjab\textsuperscript{16}.

12. When the right commences : The right of private defence starts as soon as reasonable fear of danger to the body arises from an attempt or threat, although the offence may not have been committed and lasts so long as the reasonable fear of danger continues (Shajahan Vs. State of Kerala)\textsuperscript{17}. As soon as the cause for reasonable fear disappears and the threat has either been destroyed or diverted, there can be no occasion to exercise the right of private defence (Jai Dev Vs. State of Punjab)\textsuperscript{18}.

13. Burden of proof : When a plea of private defence is taken, the burden of proof lies on the accused (see, Jesu Asir Singh Vs. State)\textsuperscript{19}, but not beyond reasonable doubt. It is enough for him to show as in a civil case that the excessive weight of probabilities is in favour of his pleas (Shajahan Vs. State of Kerala)\textsuperscript{20}.

14. End of general exceptions : With the right of private defence, the general exception under IPC comes to an end, however it is helpful in notifying the ingredients and definitions of some of the offences as under this code. Hence, a further attempt is made to select such ingredients and

\textsuperscript{15} AIR 1971 SC 1857  
\textsuperscript{16} AIR 1991 SC 1316 : 1991 AIR SCW 1022  
\textsuperscript{17} 2007 Cri. LJ 2291 : 2007 (2) Crimes 344 SC  
\textsuperscript{18} AIR 1963 SC 612  
\textsuperscript{19} AIR 2007 SC 3015 : 2007 Cri.LJ 4310  
\textsuperscript{20} 2007 Cri. LJ 2291 : 2007 (2) Crimes 344 SC
definitions, as have been noticed already. If they are absent an accused person charged for a particular offence, is set free of his liability.

15. Abetment of suicide: The offence of instigating to commit suicide depends on the intention of the abettor. A person cannot be held responsible under Section 107 of the Code unless there is an intention on the part of the victim to commit suicide (Lateefmiyan Vs. State of Karnataka)\(^{21}\).

16. Criminal conspiracy (Section 120 A): According to Section 120 a criminal conspiracy consists both in the intention of two or more and in the agreement of two or more in doing an unlawful act or in doing a lawful act by an unlawful means (Sir William Oldnal Russel: Crimes 12\(^{th}\) Edn. Vol. 1 P. 102).

The prosecution must prove the ingredients of the offence of conspiracy. (Abdulla Vs. State)\(^{22}\).

The unlawful combination is the essential ingredient of criminal conspiracy. (K. Hasim Vs. State)\(^{23}\).

17. Offence of waging war (Section 121): The Patna High Court in Jubba Mallah Vs. Emperor\(^{24}\) has pronounced the following formal statements respecting section 121 of the code:

(1) To constitute an offence under this provision, no definite number of person of persons is necessary.

(2) Quoanimo is the essential criterion.

\(^{21}\) AIR 2007 (1) Kar R 504; ILR 2005 Kar 105
\(^{22}\) AIR 1980 SC 499; 1980 Cri. LJ 220
\(^{23}\) AIR 2005 SC 128
\(^{24}\) AIR 1944 pat 58
(3) Gathering should be to strike directly against the authority of Government.

18. Unlawful assembly : (Amar Singh Vs. State)\(^{25}\). Such an assembly cannot be termed as unlawful, if the persons therein do not have a common object to do any one of the acts contemplated under section 141 (Aravindhan Vs. State)\(^{26}\). If a person is simply present in an unlawful assembly, it would not render him liable. It is just possible that he may be there out of innocence.

19. Roiting (Section 146) : Rioting is a noise and violent disturbance of the peace by three or more persons who assemble together of their own authority, with an intention of assisting one another against anyone who opposes them in the execution of some private enterprise and afterwards actually execute the enterprise in a violent and turbulent manner (Sir William Oldnall Russel : Crimes, 12\(^{th}\) Edn. Vol 1, P. 243).

The essential ingredients of Section 146 are : (1) There must be an unlawful assembly, (2) Force or violence must have been used by such assembly in pursuance of the common object (Chiramel Varied Kutty Vs. State)\(^{27}\).

20. Rioting armed with deadly weapon (Section 148) : The essential ingredients of Section 148 are :

(1) There must be an unlawful assembly using force or violence,

\(^{25}\) AIR 1987 SC 826 : 1987 Cri. LJ 706
\(^{26}\) 1983 Cri. LJ 1259 (Ker)
\(^{27}\) AIR 1953 Tra-co-257
(2) The accused must be a member of such an assembly,
(3) The accused must be armed with a deadly weapon or weapons
(Harun Tirkey Vs. State)²⁸.

21. Every member of unlawful assembly to be guilty (Section 149) :
Essential ingredients of Section 149 are :
(a) There must be common object.
(b) The members must be aware of the common object and must agree.
(c) There must be some present and immediate purpose of carrying out
   the common object (Nagappa Vs. State)²⁹.

22. Promoting enmity on grounds of religion etc. (Section 153-A) :
Ingredients of Section 153A are :
(a) Causation of enmity,
(b) Intention to promote enmity or hatred,
(c) The class of readers of writing is intended,
(d) The consequences of such writing,
(e) The writing is extended to cause hatred,
(f) The mischief must be read as a whole (State Vs. Shrikanth Shastri)³⁰.

23. Liability of land owner (Section 154) : To make out an offence under
Section 154 the following are essential:
   1. Unlawful assembly,

²⁸ 1968 Cri. LJ 1251 (Ori)
²⁹ 2006 (5) AIR Kar R 703)
³⁰ 1987 Cri. LJ 1583 (Del)
2. The accused must be the owner of the land on which such unlawful assembly has gathered or riot is committed,
3. Such owner or his agent must have knowledge of the offence being committed or reason to believe that an offence is likely to be committed.
4. There must be failure on the part of the accused to intimate the police.
5. There must be failure of the owner accused to lawfully prevent the committing of the offence (Nripendra Bhushan Roy Vs. Govind Bandhu Majumdar)\(^{31}\).

23. **Committing affray (Section 160)**: To constitute an offence under Section 160, three ingredients must be satisfied:
   1. The fighting must be between two or more persons,
   2. Fighting must take place in a public place, and
   3. Such fighting must also result in disturbance of public peace. In the absence of these ingredients, neither there can be an affray nor the accused facing trial can be held liable (Pushpa Vs. Ravi)\(^{32}\).

24. **Offence of accepting gratification (Sections 161 and 165)**: The ingredients of Section 161 are:
   (a) Acceptance of gratification,
   (b) Inducement (Chaturdas Bhagwandas Patel Vs. State of Gujarat, AIR 1976 SC 1497. Also see, State of Maharashtra Vs. Rashid Babubhai Mulani)\(^{33}\).

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\(^{31}\) AIR 1924 Cal 1018
\(^{32}\) 2007 Cri. LJ 4747 (Mad)
Ingredients of Section 165 are:

(i) The accused should be a public servant,
(ii) He should accept a valuable thing,
(iii) The valuable thing must be without consideration or for a consideration which he knows to be inadequate,
(iv) The valuable thing should proceed from a person who is concerned with any proceeding or business,
(v) Such proceeding or business must be transacted by a public servant,
(vi) Such proceeding or business should have a nexus with the official duty.
(vii) These ingredients must be within the knowledge of the accused person (Sirajuddin Vs. Government of Madras)\textsuperscript{34}.

25. Public servant unlawfully engaging in trade (Section 168): To bring home an offence under section 168, the prosecution should prove:

(a) That the accused is a public servant,
(b) That he is as such prohibited to engage himself in any trade,
(c) That the accused as a public servant indeed has engaged himself in trade (State of Gujarat Vs. Mukesh Kumar)\textsuperscript{35}.

26. Personating a public servant (Section 170): The prosecution should prove:

(1) That the accused had pretended that he holds an office as a public servant which in fact he does not hold,

\textsuperscript{33} AIR 2006 SC 825 : 2006 Cri LJ 794
\textsuperscript{34} AIR 1968 Mad 117 : 1968 Cri. 493 (Mad)
\textsuperscript{35} AIR 1980 SC 1167 : 1980 Cri.LJ 919
(2) That in such an assumed capacity or under the colour of such an office, he did or attempted to do an act (Biswanath Mukherjee Vs. State, AIR 1967 Cal 602: 1967 Cri. LJ 1627 (cal)).

27. Causing disappearance of evidence of offence etc. (Section 201) : The essential ingredients of section 201 are;

(1) Commission of offence,
(2) Knowledge of commission of offence,
(3) Causing of disappearance of evidence respecting the offence,
(4) Giving false information in relation to an offence,
(5) Causing disappearance of evidence or giving false information with an intention to screen the offender (Vijaya Vs. State of Maharashtra)\(^3^6\).

28. False charge of offence (Section 211) : For making out an offence under Section 211, the prosecution must establish:

(1) That the accused instituted or caused to be instituted a criminal proceeding.
(2) That such proceedings have been falsely instituted,
(3) That the proceedings have been instituted with an intention of causing injury (Hari Das Vs. State of West Bengal)\(^3^7\).

29. Culpable homicide and murder (Section 299 to 300) : In the scheme of the IPC culpable homicide is genus and murder its species. All murder is culpable homicide but not vice versa. Speaking generally, culpable homicide without special characteristics of murder is culpable homicide not amounting

\(^3^6\) AIR 2003 SC 3787
\(^3^7\) AIR 1964 SC 1773
to murder. In order to fix punishment, IPC recognizes three degrees of culpable homicide. Its first degree is defined as murder under section 300. Its second degree is punishable under the first part of Section 304 and its third degree is punishable under second part of Section 304. Since its academic distinction between murder and culpable homicide has always troubled courts, the safest way to interpret it and apply it seems to keep focus on the key words used in various clauses of sections 299 and 300.

30. Ingredients of clause ‘Thirdly’ of Section 300: Ingredients of clause ‘Thirdly’ of Section 300 deal with four types of injury. First, the prosecution must ascertain quite objectively that a bodily injury is present. Secondly, the nature of the injury must be proved. Thirdly, an intention to inflict that particular bodily injury must be proved. In other words it must be proved that it was not accidental or unintentional And fourthly, it must be proved that the injury as described above is sufficient to cause death in the ordinary course of nature (Virsa Singh Vs. State of Punjab)\(^\text{38}\).

31. Dowry death (Section 304 B): Here the Ingredients are:
   
   (1) Death of wife within seven years of marriage,
   
   (2) Death caused under abnormal circumstances
   
   (3) Wife was subjected to cruelty or harassment in connection with any demand for dowry by husband or any of his relatives (Kishore Kumar Vs. State\(^\text{39}; State Vs. Satya Narain Tiwari)\(^\text{40}\).

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38 AIR 1958 SC 465
39 1993 Cri. LJ 253 (Del)
40 2005 Cri. LJ 3684 (All)
31. Rape (Section 375): The essential ingredients of offence under section 375 are:

(a) The assault must be on a woman.
(b) The accused must have used criminal force on her.
(c) The criminal force must have been used on the woman intending thereby to outrage her modesty (Ramkripal Vs. State of M.P.)\(^\text{41}\). A woman cannot be an offender under this provision (AIR 2006 SC 2639).

➢ Rights Of The Accused Under Law Of Evidence

It is important to note that the provisions regarding arrest cannot be by-passed by alleging that there was no arrest but only an informal detention. Informal detention or restraint of any kind by the police is not authorized by law. One of the basic tenets of our legal system is the benefit of the presumption of innocence of the accused till he is found guilty at the end of a trial on legal evidence. In a democratic society even the rights of the accused are sacrosanct, though accused of an offence, he does not become a non-person. Rights of the accused include the rights of the accused at the time of arrest, at the time of search and seizure, during the process of trial and the like.

In the leading case of Kishore Singh Ravinder Dev Vs. State of Rajasthan, it was said that the laws of India i.e. constitutional, Evidentiary and procedural have made elaborate provisions for safeguarding the rights of accused with the view to protect his (accused) dignity as a human being and giving him benefits of a just, fair and impartial trial. However in another

\(^{41}\) 2007 AIR SCW 2198: 2007 Cri. LJ 2302
leading case of Maneka Gandhi Vs. Union of India it was interpreted that the procedure adopted by the state must, therefore, be just, fair and reasonable.

In the opinion of Prof. Kenny (outline of criminal law) “Be it remembered that most of our rules of evidence have been framed for the protection of persons against the danger of being convicted by mistake for the offence not committed by them.”

In civil as well as criminal procedure the following points are important:- That the proofs brought to notice must be relevant to the issue, that the best evidence must be given, that secondary evidence will be used where the best and most direct is available, that hearsay is not in general admissible as evidence, because, the individual’s words are neither sworn nor cross examined; that the court must explain written documents.

The ordinary rules of evidence observed at a trial are:- that the law takes for granted the innocence of an accused; that it regards the evidence of partners in crime with suspicion, that a confession, i.e. whether made in court during of legal proceedings, or made elsewhere is admissible provided that, it was voluntary and given in its entirety; that a dying declaration may be received where death of the deceased is the subject of the charge and the circumstances of the death form the dying declaration.

- **Rights of the accused:** Indian Evidence Act, 1872 is a complete code of the law relating to evidence and it applies to all judicial proceedings. Here an attempt has been made to present some of the principles of the law of evidence in the context of the subject matter of this thesis.

In Criminal cases, the following rules should strictly be adhered to:
(1) The burden to prove everything essential to the charge in question lies on the prosecution.

(2) The evidence given by the prosecution should exclude every reasonable doubt about the guilt of the accused.

(3) In case of any doubt it is better to acquit the accused than to convict him.

(4) The theory of guilt must be consistent with all the facts proved in the case (Data Xiva Vs. State)\textsuperscript{42}.

- **Credibility of defence evidence:** Credibility of brought prosecution and defense must be maintained without any differentiation (Munshi Prasad Vs. State)\textsuperscript{43}.

- **Suspicion:** A suspicion however strong, it may be, cannot be substituted for legal proof (Ashish Batham Vs. State)\textsuperscript{44}. Suspicion cannot partake the character of proof (Sunil Kumar Thakur Vs. State)\textsuperscript{45}.

- **Best Evidence Rule:** The rule of giving best evidence says that so long as the superior and higher evidence is available, or can be given, there is no scope for any inferior evidence (J. Yashoda Vs. K. Shobha Rani)\textsuperscript{46}.

- **Right to silence:** Since the accused has a constitutional right to remain silent he need not plead anything in his defence, if the material on record justifies an inference in his favour. Under such circumstance the court

\textsuperscript{42} AIR 1967 Goa 4 (FB)  
\textsuperscript{43} 2001 Cri. LJ 4708 (SC)  
\textsuperscript{44} 2002 Cri. LJ 4676 (SC)  
\textsuperscript{45} 2005 (2) Kar. LJ 306  
\textsuperscript{46} AIR 2007 SC 1721 : JT 2007 (6) SC 64
is bound to acquit him (Corporation of Calcutta Vs. Calcutta Whole Sale Consumers Co operative Society)\textsuperscript{47} and (Krishna Janardhan Bhat Vs. Dattatraya G. Hegde)\textsuperscript{48}.

- **Facts in FIR**: Statement of facts as given in the FIR cannot be treated as evidence against the accused if they are removed by the maker or other eye witnesses (Ramdas Vs. State)\textsuperscript{49}.

- **Conduct of Third Person**: The conduct of a third person is not relevant unless it has a direct nexus in proving the guilt (Vikramjit Singh@ Vicky Vs. State of Punjab)\textsuperscript{50}.

- **Hostility of prosecution witness**: If prosecution witnesses turn hostile, it speaks about their dishonesty. However, that itself is not a ground nor it is sufficient to prove the crime or the guilt of the accused (Vikramjit Singh@ Vicky Vs. State of Punjab)\textsuperscript{51}.

- **Failure to explain injuries to the accused**: Injuries of serious nature cannot be self inflicted by the accused. Therefore, failure of the prosecution to explain such injuries would be fatal to its case (Raj Pal Vs. State of Haryana, 2007)\textsuperscript{52}.

- **Injuries to Witness**: Where a witness claims that he received injuries at the occurrence, but not if they are supported by medical evidence,

\textsuperscript{47} AIR 1970 Cal 120
\textsuperscript{48} 2008 AIR SCW 738
\textsuperscript{49} (2007)2 SCC 170
\textsuperscript{50} (2007) 1 SCC (Cri.)732 : 2007 Cri. LJ 1000
\textsuperscript{51} (2007) 1 SCC (Cri.)732 : 2007 Cri. LJ 1000
\textsuperscript{52} AIR SCW 2643 : 2007 Cri. LJ 2926
evidence of such a witness cannot be relied upon to convict the accused (Abdul Rahiman Patel Vs. State of Maharashtra)\(^{53}\).

- **Answers in cross Examination**: Questions put and answers elicited in cross examination do not always be determine the guilt of the accused (Jesu Asir Singh Vs. State)\(^{54}\).

- **Evidence as to Conspiracy**: In the absence of any prima facie evidence if the person was a party to the conspiracy, the acts and statements of such a person cannot be used against his co conspirators (Jayendra Saraswathi Swamigal vs. State of Tamil Nadu)\(^{55}\).

- **Proof of Charge**: In order to record conviction, charge must be proved by the prosecution beyond reasonable doubt (Commissioner of Police VS. Narender Singh)\(^{56}\).

- **Discrepancies**: Material discrepancies in the evidence of a witness are fatal (Kullesh Mondal Vs. State of West Bengal)\(^{57}\).

- **Conduct of the accused**: If conduct of the accused has to be taken as relevant, it should have connection with the crime (Vikramjit Singh’s case).

- **Proof of Motive**: Proof of motive by itself is not sufficient to hold the accused guilty (Ramesh Baburao Vs. State of Maharashtra)\(^{58}\).

\(^{53}\) (2007) 3 SCC (Cri.)323 : 2007 (3) Crimes 206  
\(^{54}\) AIR 2007 SC 3015 : 2007 (3) Crimes 333  
\(^{55}\) AIR 2005 SC 716 : 2005 (1) Crimes 113  
\(^{57}\) (2007) 8 SCC 578 : 2007 (3) Crimes 382  
\(^{58}\)
- **Strict Rules of Admissibility**: Where the strict rules of admissibility of evidence operate in an unfair manner against the accused, the court can use its discretion to disallow the evidence if it is found ingenuine (*R.M. Malkani Vs. State of Maharashtra*)\(^{59}\).

- **Inquest Report**: Statements recorded under Section 174, Cr.PC. by themselves cannot be treated as evidence (*Surjan Vs. State of Rajasthan*)\(^{60}\).

- **Incorrect Theories**: Where the theories of both prosecution and the defence are not found to be correct, the accused are entitled to be acquitted (*State of U.P. Vs. Bhagat Singh*)\(^{61}\).

- **Medical History**: Medical history by itself is not a solid piece of evidence (*Sujit Gulab Sohatre vs. State of Maharashtra*)\(^{62}\).

- **Electronic Records**: Electronic records are admissible in evidence (*State of Maharashtra Vs. Praful B. Desai*)\(^{63}\).

- **Evidence of Tracker Dog**: The evidence of tracker dogs is not similar to the type of evidence given by scientific experts in the form of

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58 2007 AIR SCW 6475 : 2007 (4) Crimes 140
60 AIR 1956 SC 425 : 1956 Cri. LJ 815
61 1999 Cri. LJ 233 (all)
62 1997 Cri. LJ 454 (Bom)
63 2003 Cri. LJ 2033 (SC)
chemical reactions, blood tests and the action of bacilli etc. The weaknesses of the evidence of tracker dogs are:

(1) The possibility of error on the part of the dog or its master.

(2) The possibility of misunderstanding between the dog and its master.

(3) The possibility of a misinterpretation or wrong inference from the behavior of the dog.

(4) From a scientific point of view, there is little knowledge and much uncertainty regarding the exact faculties which enable these dogs to track and identify criminals (Gade Lakshmi Mangraju Vs. state of A.P.)⁶⁴.

Though the services of a sniffer dog may be used for the purpose of investigation, its faculties cannot be taken as evidence for the purpose of establishing the guilt of an accused (Dinesh Borthakur Vs. State of Haryana)⁶⁵.

- **Test Identification Parade (TIP):** The motive of holding test identification parade is meant to help the police to make sure that their investigation is proceeding in the proper direction. This identification does not have the value of an evidence. The evidence that has got a firm basis is identification in the court (State of Karnataka VS. Joseph Rodrigues)⁶⁶.

- **Identification by voice:** Identification by voice alone is not safe and cannot relied upon (State of U.P. Vs. Manohar lal)⁶⁷.

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⁶⁴ AIR 2001 SC 2677
⁶⁵ (2008) 5 SCC 697
⁶⁶ 2006 (5) AIR Kar R 724 : ILR 2006 Kar 3538
⁶⁷ AIR 1981 SC 2073 : 1981 Cri. LJ 1701
- **Identification by Photographs**: Where the photographs are shown in advance for the purpose of identification, the identification would be corrupted (*State of M.P. Vs. Chamru@ Bhagwandas*)\(^{68}\).

- **Prohibition Against Demonstration**: An accused person cannot be asked to wear recovered clothes etc. for the purpose of identification (*Pritam Singh Vs. State of Punjab*)\(^{69}\).

- **Number of Dummies**: The number of dummies per accused should be 1:4 or 1:6 (*Thambi Nasir Vs. State*)\(^{70}\).

- **Comparison of Face**: It is beyond the ability of a court to find the comparison between the face of the accused and the details given in the FIR (*Pritam Singh Vs. State of Punjab*)\(^{71}\).

- **Right of the Accused**: Though an accused cannot claim identification as a matter of right, the court should grant his request if made (*Jadunath Singh Vs. State of U.P.*)\(^{72}\).

- **Identification by sniffer dogs**: Identification by sniffer dogs is a weak evidence (*Gade Lakshmi Mangraju, Vs. State of A.P.*)\(^{73}\).

\(^{68}\) AIR 2007 SC 2400 : 2007 Cri.LJ 3509

\(^{69}\) AIR 1956 SC 415 : 1956 Cri. LJ 805

\(^{70}\) 2003 Cri. LJ 493 (Bom)

\(^{71}\) AIR 1956 Cri. LJ 305

\(^{72}\) AIR 1971 SC 363 : 1971 Cri. LJ 305

\(^{73}\) AIR 2001 SC 2677
- **Presence of Police**: If police are present at the time of identification, it is vitiated *(Panchu Gopal Das Vs. State)*\(^{74}\).

- **Delay**: whether delay in holding test identification parade is fatal or not, depends on facts and circumstances of each case. Thus, two and a half month’s delay is considered to be illegal *(State of A.P. Vs. Dr. M.V. Ramana Reddy)*\(^{75}\).

- **Failure to identify in court**: When a witness is able to identify the suspect in identification parade, but fails to do so in the court, his evidence cannot be considered dependable *(Vijayan@Rajan Vs. State of Kerala)*\(^{76}\).

- **Burden on Prosecution**: If the suspect or the accused makes an allegation that he was shown to the witness before holding the identification parade, then the prosecution should disprove that allegation.

- **Excessive facial make up**: Where the suspect and other participants are paraded with excessive facial make up, the whole exercise is vitiated *(AIR 1992 SC 601)*.

- **Prominent Marks**: If the accused or the suspect has some prominent marks on his face, then the persons having similar marks have to be mixed *(Rajesh Govind Jagesh Vs. State of Maharastra)*\(^{77}\).

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\(^{74}\) AIR 1968 Cal 38 : 1968 Cri. LJ 40  
\(^{75}\) AIR 1991 SC 1938  
\(^{76}\) 1999 Cri. LJ 1638 (SC)  
\(^{77}\) (1999)8SCC 428
- **Material Details:** If the witness who had taken part in the parade fails to narrate the part played by the accused, his evidence is not dependable (Budhsen Vs. State of U.P.)\(^78\).

- **Deposition as to identification:** The identifying witness should depose before court of his identification of the accused, and if he fails to do so identification parade is vitiated (Caetano Piedade Fernandes Vs. Union Territory of Goa)\(^79\).

- **Multiple Suspects:** If the offence is said to have been committed by a large number of persons, the accused must be identified at least by two witnesses, or else, the benefit of doubt should be given to the accused (2001 cri. LJ 4693: Masalti Vs. State of U.P.)\(^80\).

- **Vague Identification:** If the identification is vague regarding the manner in which occurrence had taken place and conduct of prosecution witnesses not leading to an inference that the accused has been properly identified, the conviction is not sustainable and the accused is atleast entitled to the benefit of doubt (Ravi@ Ravichandran Vs. State)\(^81\).

- **Duty of the Executive Officer:** It is the duty of the Executive Officer to ask the witness as to whether he had any opportunity to see the suspect or his photograph prior to identification parade (2007 Cri. LJ (NOC)99 (Bom))

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\(^78\) (1970)2 SCC 128
\(^79\) AIR 1977 SC 135
\(^80\) AIR 1965 SC 202
\(^81\) AIR 2007 SC 1729 : 2007 Cri. LJ 2740
• **Keeping all Suspects:** Keeping all the suspects accused in one parade requires the evidence regarding the parade to be rejected (*Nathu Keru Bhatre Vs. Maharashtra*)\(^82\).

• **Conviction:** Conviction based solely on the identification cannot be upheld (*Pradip Chakma Vs. State of Tripura*)\(^83\).

❖ **Admissions and Confessions:** An admission is defined by Section 17 of the Evidence Act. The said provision reads thus:

**Section 17- Admission defined:** “An admission is a statement, oral or documentary or contained in an electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, under the circumstances, hereinafter mentioned.”

✓ **Stray sentence:** An aimlessly spoken sentence elicited in cross examination cannot be treated as an admission (*Puttanna shetty Vs. Smt. Padma Shetty*)\(^84\).

✓ **Consideration of entire admission:** An admission unless it is separable, has to be taken as a whole or not at all. If a statement is not capable of dissection because that particular part is too closely connected with the other part, then it must be treated as a whole to ascertain what the party has conceded against himself. Equally, it is not open to the court to dissect a statement and pick up a part which is incriminating and reject a

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\(^{82}\) 2007 Cri LJ 3849 (Bom)
\(^{83}\) 2007 Cri. LJ 2785 (Bom)
\(^{84}\) 2007 (3) Kar. LJ 28
part which is exculpatory (K.S. Venkatesh Vs. N.G. Lakshminarayana)\textsuperscript{85}.

\checkmark **Clarity of admission**: Clarity of admission is an important factor. A statement in order to be treated as an admission, should be clear literally speaking not suffering from the defect of vagueness (Ramaji Vs. Manohar)\textsuperscript{86}.

\checkmark **Admission of agent**: In criminal cases, in order to rely fully on an admission made by an agent, the agency should strictly be proved (Kedar Nath Bajoria Vs. State of W.B.)\textsuperscript{87}.

\checkmark **Admission of Counsel**: In criminal cases, which are totally different from civil cases an admission made by the defence counsel will not take the case of the prosecution any further. Such admission would in no way lessen the burden of the prosecution to prove the guilt of the accused. (S.C. Mitter Vs. State)\textsuperscript{88}.

\checkmark **Admission of the accused**: An admission made by the accused in one case is not relevant in another case against him (Jag Narian Vs. Ram Dularay)\textsuperscript{89}

\checkmark **Judicial Confessions**: A confession in which the accused acknowledges his guilt, is a form of confession which is one made in a court during the

\textsuperscript{85} AIR 2007 NOC 2282 (Kar) : ILR 2007 Kar 2894
\textsuperscript{86} AIR 1961 Bom 169
\textsuperscript{87} AIR 1954 SC 660 : 1954 Cri.LJ 1679
\textsuperscript{88} AIR 1950 Cal 435
\textsuperscript{89} AIR 1979 All 71
judicial proceedings. It should receive corroboration, if retracted in material particulars (*Shankar Vs. State of Tamil Nadu*)90.

(1) **Probative Value**: A confession alone may not form a basis for conviction. The evidence should be appreciated first and then it has to be seen that if the confession is taken into account whether conviction can be made on its basis (*ChandraKanth Chimanlal Desai Vs. State*)91.

- **Extra Judicial confessions**: An extra Judicial confession is made to any person quite different from one made before a court (*Bala majhi Vs. State*)92.

(1) **Essential difference between Sections 25 and 26 of Evidence Act**: Though section 25 and 26 of evidence act seek to achieve the same purpose yet they operate in somewhat two different fields. Section 25 raises prohibition as regards proof of confession before a police officer. The same need not be in police custody. Whereas, section 26 raises a bar regarding the admissibility of such confession if made before a person in the custody of a police officer although such a confession might have been made before a person who was not a police officer. The policy underlying sections 25 and 26 is to make it a an essential rule of law that confessions whenever and wherever made to police or while in the custody of the police to any person except presence of a Magistrate, shall be presumed to have been obtained under the circumstances mentioned in provided by Section 27 of the act.

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90 1994 Cri.LJ 3071  
91 1992 AIR SCW 2028  
92 1951 Ori 168
(2) **Proof**: The responsibility of proving a confession lies completely on the prosecution (*Mainnindra Chandra Dey Vs. Customs, Excise and Gold (Control) Appellate Tribunal*)\(^93\).

(3) **Probative Value**: Whether an extra judicial confession may or may not be a weak evidence, depends on facts and circumstances of each (*Sivakumar Vs. State*)\(^94\).

(4) **Confession made in confusion**: An extra judicial confession made in a confused state of mind cannot be relied upon (*Ramesh Timmanna Sargankallawaddor Vs. The State of Karnataka*)\(^95\).

(5) **Contradiction between witnesses**: Contradiction in evidence of witnesses cannot be relied upon (*Lakshmi Kirsani Vs. State*)\(^96\).

(6) **Confession made to a stranger**: An extra judicial confession made to an altogether stranger cannot be relied upon (*Khemsingh Vs. State of Himachal Pradesh*)\(^97\).

(7) **Retracted confession**: Retracted or say withdrawn confession cannot form the sole basis for conviction (*Sarwan Singh Vs. State of Punjab*)\(^98\).

✓ **Circumstantial Evidence**: It has been consistently held that where a case rests completely on circumstantial evidence, the inference of guilt can be justified only when all the accusative facts and circumstances are found

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\(^93\) 1992 Cri. LJ 1190 (cal)
\(^94\) AIR 2006 SC 653 : 2006 Cri. LJ 536
\(^95\) 1991 Cri. LJ 1793 : ILR 1991 kar 615
\(^96\) 2001 Cri. LJ 3648 (Ori)
\(^97\) 1992 Cri. LJ 3848(HP)
\(^98\) AIR 1957 SC 637 : 1957 Cri. LJ 1014
to be inconsistent with the innocence of the accused or guilt of any other person (Manjunath Chennabasappa Madalli Vs. State of Karnataka)\(^99\).

(1) **Tests to be satisfied**: When a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

(i) The circumstances from which an inference of guilt is sought to be drawn, must be convincingly and firmly established.

(ii) Those circumstances should be of a definite tendency. They should point towards guilt of the accused without any error.

(iii) The circumstances, taken as a whole should form a chain so complete that there is no escape from the conclusion and that within all human probability, the crime was committed by the accused and none else.

(iv) The circumstantial evidence in order to sustain conviction must be complete and should point towards no other explanation than the guilt of the accused, and such evidence should not only be consistent with the guilt of the accused but should also be inconsistent with his innocence (Padala Veera Reddy Vs. State of A.P.)\(^100\).

(2) **Conditions precedent for conviction**: The conditions precedent before conviction could be based on circumstantial evidence that are to be fully established, are:

(i) The circumstances from which the conclusion of guilt is to be drawn must be fully established.

\(^{99}\) AIR 2007 SC 2080: 2007 Cri. LJ 2964  
\(^{100}\) AIR 1990 SC 79: 1990 Cri. LJ 605
(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, not with any other hypothesis.

(iii) The circumstances must have a conclusive nature and tendency.

(iv) They should exclude every other possible hypothesis except the one that has been proved.

(v) The chain of evidence must be so complete that it should not leave any reasonable ground for the conclusion consistent with the innocence of the accused. It must show that in all human probability the act must have been done by the accused. (Sharad Birdhichand Gupta Vs. State of Maharashtra)\(^{101}\).

(3) **Evaluation of circumstantial evidence:** Great care must be taken in evaluating circumstantial evidence. If the evidence relied on is capable of two inferences, one which is in favour of the accused must be accepted (State of U.P. Vs. Ashok Kuanr Srivastava)\(^{102}\).

(4) **Right of the accused:** They accused is entitled to be acquitted if the chain of circumstances is not complete or if the circumstances relied upon are not proved beyond reasonable doubt or if the circumstantial evidence is reasonably capable of two inferences and if there is reasonable doubt as to the guilt of the accused.

(5) **Hearsay evidence:** They word hearsay is a compound noun of two words – hear and say. For all legal purposes the meaning is brought out by placing the emphasis on say rather than hear.

\(^{101}\) AIR 1984 SC 1622 : 1984 Cri. LJ 1738
\(^{102}\) AIR 1992 SC 840 : 1992 Cri. LJ 1104
(1) **Testimony of I.O.** : The testimony of I.O. not disclosing source of secret information cannot be made basis to prove circumstances against the accused (*Prakash Vs. State*)\(^{103}\).

(2) **Description based on information** : An officer’s description of anything based on information is an example of hearsay evidence (*Samant N. Balakrishna Vs. George Fernandez*)\(^{104}\).

(3) **Evidence of witnesses who reached scene of occurrence**: The evidence of witnesses who had reached the scene of occurrence but had not seen the occurrence and were simply told of what had happened, is hearsay evidence (*Kashmira Singh Vs. State*)\(^{105}\).

(4) **Evidence of police officer** : Evidence of a police officer regarding the information, which he had received from some person about the movement of the accused, is hearsay evidence (*Bhugdomal Vs. State*)\(^{106}\).

(6) **Dying Declaration** : Section 32 of the Indian Evidence Act is relevant here and the same is extracted below: Section 32- cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant: statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable.

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103 2007 Cri. LJ (NOC) 320 (del)
104 AIR 1969 SC 1201
105 AIR 1965, J&K 37
106 AIR 1983 SC 906
(7) **Contradictions in case of multiple dying declarations:** If there are more than one dying declarations and are contradictory to one another, as for example, (a) The deceased in one dying declaration stated that she had caught fire while she was pumping the stove and the accused tried to save, (b) But in another one she had stated that she set herself ablaze being angry with the accused, the accused is entitled to the benefit of doubt (2007 Cri. LJ 1801 (SC)).

1. **Statement as to abuse:** The statement of a person who is dead is relevant and admissible in evidence only if it relates to his/her cause of death or in other circumstances enumerated under Section 32 (*Inderpal Vs. State of M.P.*)\(^{107}\).

2. **Suicide Tendency:** The deceased involved her step mother-in-law in her dying declarations. But her step mother-in-law lived separately. The deceased had tried to commit suicide twice. Hence the possibility of committing suicide or a third person committing the offence cannot be ruled out. As the husband was against his step mother, the possibility of the deceased being tutored by her husband cannot also be ruled out. Hence, the accused is entitled to acquittal (*Sau. Sangeeta S. Zade Vs. State of Maharashtra*)\(^{108}\).

3. **Photostat copy of dying declaration:** If no evidence is placed for taking secondary evidence, a Photostat copy of the dying declaration cannot be relied upon (*Smt. Rajantabai S. Parihar Vs. State of M.P.*)\(^{109}\).

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\(^{107}\) (2001)10 SCC 736 : 2002 Cri. LJ 926  
\(^{108}\) 2007 Cri. LJ 529 (Bom.)  
\(^{109}\) 2007 Cri. LJ 2495 (MP)
4. **Certificate as to fitness**: In the absence of a certificate to show that the deceased was fit to make a statement, the dying declaration cannot be relied upon (*State of Bihar Vs. Hare Ram Prasad*)\(^{110}\).

5. **Suicide Note**: In the instant case two persons were involved in the transaction that might have resulted in their death. One of the persons on whose behalf the suicide note was written was alive. This note cannot be termed as a dying declaration (2007 Cri. LJ 2983 (Raj)).

(8) **Expert Evidence**: If a person giving an opinion is (*Raj Kishore Vs. State*)\(^{111}\), not proved to be an expert on the given subject, his opinion cannot be considered (*Mahmood Vs. State of U.P.*)\(^{112}\). In order to accept his evidence, the expert should be examined so also be cross examined (*Balkrishna Das Agrawal Vs. Radha Devi*)\(^{113}\).

8.1 **Opinion as to age**: If a doctor’s opinion regarding age is only based on physical features it cannot be relied upon (*Mohd. Syed Vs. Yeoh Odi Gark*)\(^{114}\).

8.2 **Duty to show the weapon**: It is the duty of the prosecution and also the court to show the weapon used in the offence, if it is available, to the medical expert and get his opinion as to whether the injuries to the victim could have been caused by that weapon or not (*Kartare Vs. State of U.P.*)\(^{115}\).

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\(^{110}\) 2007 Cri. LJ 96 (Pat.)
\(^{111}\) AIR 1969 Cal 321
\(^{112}\) AIR 1976 SC 69
\(^{113}\) AIR 1989 All 133
\(^{114}\) AIR 1916 PC 242
\(^{115}\) AIR 1976 SC 2423: 1976 Cri. LJ 1883
8.3 **Time of Death:** Rigor mortis is something which depends on the climatic conditions. If the occurrence has taken place in summer, it occurs faster. If the doctor is of the opinion that rigor mortis would take place in 6 to 8 hours after the death and fixes a time of death which is contrary to the evidence given by the witnesses, his evidence is liable to be discarded (*Balasaheb Ramchandra Gharpankar Vs. State of Maharashtra*)\(^{116}\).

8.4 **Alternative Possibility:** A medical opinion suggesting an alternative possibility cannot be considered as conclusive (*Atami Laxamn Vs. State*)\(^{117}\).

8.5 **Non Examination of ballistic expert:** A gun was alleged to have been fixed at the complainant. Barrels of the gun were found with carbon. But, there was no evidence on record as to how many hours before the gun was shot. (*Ali Mohmad Siddique Baloch Vs. State of Gujarat*)\(^{118}\).

8.6 **Request for expert opinion:** Where the accused does not accept the signature and gives an application seeking reference to a handwriting expert for comparison with his admitted signature, the court should grant his request (*P.R. Ramakrishnan Vs. P. Govindarajan*)\(^{119}\).

8.7 **Suicide note:** Where the parents of the deceased have deposed that the handwriting of the suicide note is not the handwriting of their

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\(^{116}\) 2007 Cri. LJ (NOC) 158 (Bom) : 2007 (1) AIR Bom. R 519

\(^{117}\) 2007 Cri. LJ 1036 : 2007(1) Crimes 435 (Chh.)

\(^{118}\) 2007 Cri.LJ 4269

\(^{119}\) 2007 Cri. LJ 1897 : 2007 (1) Mad LJ (Cri) 1297 (Mad)
daughter, the opinion of a handwriting expert is necessary (Satish Nirankari Vs. State of Rajasthan)\textsuperscript{120}.

9. **Burden of Proof**: The expression burden of proof is tricky because it has been interpreted by courts and writers variously. To be exact the burden of proof denotes the duty of establishing with all force the truth of the operative facts upon which the issue at hand is made to turn by substantive law. The expression is sometimes used to mean the burden of going forward with the evidence. It often means that a party has the burden of countering with evidence a Prima facie case made against that party. \textsuperscript{121}

9.1 **Burden on prosecution**: Section 106 of the Evidence Act is an exception to section 101 which lays down the general rule about the burden of proof. But in a criminal case, the burden remains on the prosecution to prove its case beyond reasonable doubt (Shambhu Nath Vs. State of Ajmer)\textsuperscript{122}. Section 106 does not put any burden upon the accused. However, he is expected to throw light on all facts within his knowledge and support any theory or hypothesis compatible with his innocence (Deonandan Vs. State)\textsuperscript{123}. It is only when prosecution has made out a prima facie case, the question arises of considering fact of which burden of proof may lie upon the accused (Sawal Vs. State)\textsuperscript{124}.

\textsuperscript{120} 2007 Cri. LJ 2983 (Raj.)
\textsuperscript{121} (William D. Hawkland : Unifrom Commercial Code Series, cited in Balck’s Law Dicitionary, 8\textsuperscript{th} Edn. P.209).
\textsuperscript{122} AIR 1956 SC 404 : 1956 Cri. LJ 794
\textsuperscript{123} AIR 1955 SC 801 : 1955 Cri. LJ 1647
\textsuperscript{124} 1974 SC 778 : 1974 Cri. LJ 664
9.2 Prohibition of taking advantage: The prosecution cannot take undue advantage of the defence put forth by the accused (Mahender Singh Dhaiya Vs. State)\textsuperscript{125}.

9.3 Defence Case: If the case forwarded by the defence is unreasonable or improbable, that would not absolve the prosecution of its burden to prove its case beyond reasonable doubt (Rajendra Singh Vs. State)\textsuperscript{126}.

9.4 Burden on the accused: Though the burden on the accused is not obligatory yet he has to come forward with a probable version and the rest lies on the prosecution (Gurcharan Singh Vs. State)\textsuperscript{127}.

9.5 Proof of intention: Proof of intention lies on the prosecution (Ram Kumar Vs. State)\textsuperscript{128}.

9.6 Burden of proof to claim exception: If an accused has to prove that his case falls within the area of a general exception, his burden gets discharged as soon as he proves the preponderance of probability. His burden, therefore in such a case is different from that of the prosecution. (Jai Lal Vs. Delhi Administration)\textsuperscript{129}.

10. Presumption: A presumption which is a legal or factual assumption drawn from the existence of certain facts, has probative value If available and raised under stature (M.S. Narayana Menon Vs. State of Kerala)\textsuperscript{130}. A presumption is a legal inference or assumption that a fact exists, based on the known or proven existence of some other fact.

\begin{itemize}
    \item \textsuperscript{125} 2003 Cri. LJ 1908 (Del)
    \item \textsuperscript{126} 1984 Cri. LJ 1164 (All)
    \item \textsuperscript{127} 1993 Cri. LJ 1622 (Del)
    \item \textsuperscript{128} AIR 1970 Raj 60
    \item \textsuperscript{129} AIR 1969 SC 15
    \item \textsuperscript{130} (2006) 6 SCC 39
\end{itemize}

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or group of facts. Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or Persuasion to the opposing party, who can attempt to overcome the presumption\textsuperscript{131}.

10.1. Presumption of innocence: The fundamental presumption of law is that every person is presumed to be innocent unless and until proved guilty. The burden to rebut this presumption entirely lies on the prosecution. Under Criminal law, if the prosecution fails to rebut this presumption, the accused is entitled to be acquitted.

10.2. Presumption of dowry death: If the prosecution fails to prove whether the death was suicidal, homicidal or accidental, and the evidence of the witnesses fails to prove that the deceased was subjected to cruelty or harassment soon before her death, no presumption under Section 113-B of the Evidence Act can be drawn [Shanthakumar Vs. Deputy Superintendent of police.]\textsuperscript{132}.

10.3. Presumption in favor of the accused: In a case of attempt to murder, if there is charge that the accused used to extort money from the shopkeepers and the prosecution failed to examine any of the shopkeepers, a presumption in favour of the accused can be drawn [Vinod Kumar Sinha vs. State of Bihar]\textsuperscript{133}.

10.4. Recovery of articles: If the accused is in possession of the property belonging to the deceased there may be presumption of theft. But, such presumption alone cannot be a sufficient proof for conviction when on same evidence other persons had been given the benefit of doubt [Hatti Singh Vs. State of Haryana]\textsuperscript{134}.

10.5. Presumption against prosecution: If the prosecution fails to produce some material which is within its command, it is presumed that it has

\textsuperscript{131} (Black’s Law Dictionary, 8\textsuperscript{th} Edn. P. 1223)
\textsuperscript{132} 2007 Cri. LJ (NOC) 356: 2007 (2) Mad. LJ (Cri) 1009 (Mad)
\textsuperscript{133} 2007 Cri. LJ 3984 (Jhar): 2007 (3) AIR Jhar R 116
\textsuperscript{134} 2007 AIR SCW 2609: 2007 Cri. LJ 2726
no case and so, the accused is entitled to acquittal. However, this principle applies to the accused as well.

➢ **Right to Bail**

Arrest means apprehension of a person by legal authority so as to cause deprivation of his personal liberty. Thus after arrest a person’s liberty is under the control of arrester. Arrest is an important tool for bringing an accused person before the court as well as to prevent a crime or prevent a person suspected of doing crime from running away from the law. Cr.P.C. contemplates two types of arrests: an arrest that is made for the execution of a warrant issued by a magistrate and an arrest that is made without any warrant but in accordance with some legal provision that permits arrest.

Cr.P.C. gives wide powers to the police for arresting a person. Such powers without appropriate safeguards for the arrested person will be harmful for the society. To ensure that this power is not used arbitrarily several restrictions have been put on it, which indirectly, can be seen as recognition of this rights of a person from being arrested. Further, once arrested, a person is already at the disadvantage because of his lack of freedom and he cannot take appropriate step to defend himself. Thus several provisions are given in Cr.P.C., that give specific rights to an arrested person. These rights can be described as follows:

1. **What is Bail?:** Bail means the security taken from an accused person to appear before the court on a pri-fixed date.

1.2. **Consideration for grant of bail:** If the court is satisfied, after considering the relevant factors before it, that the accused has his roots in the community and is not likely to abscond, it can safely release the accused on his personal bond *[Hussainara Khatoon (I) Vs. Home Secretary]*. The court however, is not required to go into the detailed examination of evidence and exhaustive exploitation of the merits of the case. The court

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135 AIR 1979 SC 1360 : 1979 Cri. LJ 1030
before granting the bail in non-bailable offences, is to take into consideration the following:-

(1) The nature and seriousness of offence,

(2) Character of evidence,

(3) Circumstances which are peculiar to the accused,

(4) A reasonable possibility of the presence of the accused not being secured at trial,

(5) A reasonable apprehension of witnesses being tempered with,

(6) The larger interest of the public or the State and


1.3. Roots of the accused in the community: In order to ascertain the applicant’s roots in the community and no chance of his absconding, the following factors have to be considered:

(1) The length of his residence in the community,
(2) His employment status, history and his financial condition,
(3) His family ties and relationship,
(4) His reputation and character,
(5) His prior record, if any,
(6) The identity of responsible members of the community who would attest for his reliability,
(7) The nature of the offence, and

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136 AIR 2001 SC 1444: (2001) 4 SCC 118
(8) Other factors [Hussainara Khatoon’s case].

2. **Anticipatory bail**: An anticipatory bail is a bail granted on an application by a person on an apprehension of arrest in regard to the commission of a non-bailable offence *[Narinderjit Singh Sahni Vs. Union of India]*\(^{137}\).

2.1. **Unnecessary restriction**: The court should not support the imposition of unnecessary restrictions on the scope of Section 438 of the Code of Criminal Procedure, especially when no such restrictions have been imposed by the legislature. This provision has been made keeping in mind the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence on the date of his application for anticipatory bail, unnecessary constraints and conditions can make the provisions constitutionally vulnerable and can go against the right of personal freedom. The beneficent provisions contained in Section 430 must be saved, not jettisoned *[Gurbaksh Singh Sibbia Vs. State of Punjab]*\(^{138}\).

2.2. **Ground of false investigation**: The ground that the earlier investigation was faulty, cannot be used against the accused. Grant of anticipatory bail is held to be, therefore, proper *[Mahant Chand Nath Yogi Vs. State]*\(^{139}\).

2.3. **Anticipatory bail in an offence under Section 304-B, IPC**: Anticipatory bail in an offence under Section 304-B can be granted *[Manoj Agarwal Vs. State]*\(^{140}\).

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\(^{137}\) AIR 2001 SC 3810: (2002) 2 SCC 210  
\(^{138}\) AIR 1980 SC 1632: 1990 Cri. LJ 1125  
\(^{139}\) 2003 Cri. LJ 76 (SC)  
\(^{140}\) 2003 Cri. LJ 3519 (Chh)
2.4. **Rejection of application by Sessions Court:** If an application for grant of anticipatory bail is rejected by the Sessions Court, the High Court can entertain it [Devit Das Raghu NaikVs. State of Maharashtra]^{141}. In other words, the applicant is not barred from approaching the High Court.

2.5. **Sexual offence:** Where the girl was enticed and became pregnant, but the accused married the girl, anticipatory bail can be granted [Arun Kumar BasantaraVs. State]^{142}. In the instant case, the prosecutrix who was aged about twenty years consented for sex on the promise of marriage. She alleged thereafter that the accused has refused to marry her. The accused was granted anticipatory bail [Shiv DayalVs. State]^{143}.

2.6 **Offence under Organized Crime Law:** Where the accused is in custody for beyond the period of maximum sentence prescribed under the organized crime law, bail is liable to be granted [GokulbhagajiPatil Vs. State of Maharashtra]^{144}.

2.7 **Failure to respond to summons:** Failure of the accused to respond to summons or non-bailable warrant, itself is not sufficient to remand him to custody as a preventive measure [2007 Cri. LJ (NOC) 291 (ker): 2007 (2) Ker. LT 280]

2.8 **Delayed retention of under-trial:** It would be unjust to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Hence these questions—can the court ever compensate him for his incarceration which is found to be

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141 1989 Cri. LJ 252
142 1990 Cri. LJ 1998 (Raj)
143 2000 (4) Crimes 7 (MP)
144 (2007) 2 SSC 475 : 2007 Cri. LJ 776

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unjustified? What confidence would such administration of justice inspire in the mind of the public? What would acquittal fetch to such a person who had already served out his term of imprisonment or at any rate a major part of it?. The court should, therefore in such cases ordinarily, unless there are urgent grounds for action otherwise, release the accused on bail (Kashmira Singh Vs. State of Punjab)\textsuperscript{145}.

2.9 Indefeasible right to bail: Section 167 of the Code of Criminal Procedure clearly lays down that where investigation cannot be completed within twenty-four hours and the accused is under arrest with police, he has to be produced before Magistrate for further detention if necessary. This is a beneficial provision to safeguard the citizen’s liberty so that police cannot illegally detain any citizen. Section 167 (2) says that if the accused is produced before the Magistrate and if he is satisfied looking to accusation, then he can give a remand to the police for investigation not exceeding fifteen days on the whole. But the proviso further gives a discretion to the Magistrate that he can authorize detention of the accused otherwise than the police custody beyond the period accused in police custody for a total period of ninety days for the offences punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and no custody for a total period of sixty days when the investigation relates to any other offence and on expiry of the period of ninety days or sixty days as the case may be, he shall be released on bail. [State of West Bengal Vs. Dinesh Dalmia]\textsuperscript{146}.

\textsuperscript{145} AIR 1997 SC 2147: 1977 Cri. LJ 1746
\textsuperscript{146} AIR 2007 SC 1801 : 2007 Cri. LJ 2757
3. **Cancellation of bail:** Where threatening of witnesses is alleged, but not proved by the prosecution, bail cannot be cancelled [Kanwaljit Singh Vs. CBI]^{147}.

3.1. **Cancellation of bail granted under Section 167:** Once the accused has been released on bail, his liberty cannot be interfered with lightly. He cannot be taken back into custody unless there are special reasons. Since Section 167 does not empower cancellation of the bail, the power to cancel the bail can only be traced to Section 437 (5) or 439 (2) of the Code [Aslam Babulal Desai Vs. State of Maharashtra]^{148}. Also see, [Bashir Vs. State of Haryana]^{149}; [Raghubir Singh Vs. State of Bihar]^{150}.

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^{147} 2003 Cri. LJ 1584 (P & H)
^{148} AIR 1993 SC 1: 1992 Cri. LJ 3712
^{149} AIR 1978 SC 55: 1978 Cri. LJ 173
^{150} AIR 1987 SC 149: 1987 Cri. LJ 157