CHAPTER – X
EVALUATION OF THE WORK OF PROSECUTOR

Introduction:-

"Evaluation is the key to judge the work"

It is said that: Evaluation strengthens the memory as you lay burden upon it, because experience is the hard teacher it given the test first and lesson after words.

– Vernana Law.

While evaluating the work of Public Prosecutor and Assistant Public Prosecutor light must be thrown on what work is excepted from him? Whether he is performing his work in a real sense? What are the reasons for his failure? In fact the function which the prosecutor has to perform is of public nature and in the interest of justice before the Court.

When conducting the case before the Court first of all prosecutor has to see whether charge is proper or require enactment or amendment. In such situation if he feels, necessary, he must request or prefer application before the Court as is required. Thereafter he has to look after the service of summons through Court to prosecution witnesses. Whether their addresses are correct or even though served whether they are abusing the process of law. If so apply to the Court to take coercive steps to secure their presence to adduce evidence before the Court. After complete and careful study of the case prosecutor request the Court which witness he has to examined in the beginning.

Moreover he must look into the basic principle of criminal law in adversary system of criminal jurisprudence that guilty should not escape the punishment and innocent should not suffer, must be the paramount consideration. However he must place material evidence on record against the accuse is brought out in all its strength and honesty and not to conceal or
diminish the importance of interest of justice so also argue before the Court with all possible moderation and temperance.

What is the crucial work of the Prosecutor?

The material thing in criminal trial is the discovery of the truth so as to advance the cause of justice. However the tendency of the judges presiding over the trial to assume the role of referee or umpire is unfortunate. In fact he is the participant in the trial and should intelligently take active interest in the trial. While taking examination in chief putting question to the witnesses to ascertain the fact. However he must do so without unduly trespassing up on the functions of the prosecutor or defence counsel. If trespassing then it will be sheer denial of justice. Procedure established by the law must be followed by all the lovers of liberty and Judicial sentinels. That must be just, fair and reasonable procedure. In the landmark decision of Mrs. Maneka Gandhi V/s Union of India, Procedure must rule out anything reported in arbitrary way or open to suspicion or half barbaric. A valuable constitutional right of social justice which is a signature tune of our constitution can be canilised by civilized process. Procedure contemplated in article 21 must answer the colour of concept of reasonableness in conformity with the article 14. It must not be fanciful, arbitrarily or oppressive. They must follow the law of natural justice i.e. “Audi alterum partem”. A calm and detached atmosphere is the basic requirement. It should not be static but dynamic. Indeed it is a crowning glory of our Judicial system. The primary object is, there should be fair trial and not formal trial held in Madhav Hoskot V/s State of Maharashtra. So also there should be a speedy trial without being rushed one. Poor and less advantageous placed are entitled to the preferential consideration as held in Bihar Legal And Support Society New Delhi V/s Chief Justice of India. Moreover prosecutor has to prove its case beyond a reasonable doubt for which abundant caution need not require held in State of

379 A. I. R. 1978 Supreme Court, P. 597.
380 A. I. R. 1978 Supreme Court, P. 1554.
381 A. I. R. 1987 Supreme Court, P. 38.
Haryana V/s Bhagirath and others. Proper course is to apply broad general rule of construction i.e. sincere attempt should be made to reconcile the enactment clause proviso to avoid repugnancy. Fair trial means fair for accused so also for victim who is represented by the State. However where the falsehood and the truth intermingled as to make it impossible to separate it means where there are two views, one which is favourable to the accused has to be accepted held in Raghunath and Others V/s State of Haryana and Others.

Therefore it is necessary to see before ascertaining the work of prosecutor what is the fundamental principle of fair trial? It has a close linked with the basic and universally accepted human rights. However it cannot be measured in absolute terms. Except some exceptions laid down in the statute the primary burden to prove the case is on prosecution is bedrock of our systems from which no departure is possible. Therefore, it has been said that "a Criminal trial is not like a fairy tale, where one is free to give flight to one's imagination and fantasy." Coming to the conclusion about the guilt of the accused with the commission of an offence, the Court has to judge the evidence by yardstick of the probabilities, its intrinsic worth and animating spirit of witness. In every case, the final analysis would have to depend upon its own facts although the benefit of every reasonable doubt should be given to the accused and Court will take into consideration only ex-facies and trustworthy evidence. As held in State of Punjab V/s Jagirdar. However, by the provisions of the statute the onus shifts upon the accused when prosecution discharges its burden. However, the accused has to establish his plea, but the standard of proof is not the same as that of on the prosecution. No doubt, where the onus shifts on the accused and the evidence on this behalf about probabilities, on such plea he will be entitled for the benefit of doubt. Where on evaluation of the case Court reaches to the conclusion that no conviction of the accused is possible, the benefit of doubt must be

384 A. I. R. 2003 Supreme Court, P. 165.
385 A. I. R. 1973 Supreme Court, P. 2407.
extended to the co-accused though he has not challenge in appeal his conviction held in Suresh Choudhary Vs State of Bihar. It shows that how prosecutor has to work in a water tight compartment.

So also, in the prosecution facts can only be proved by substantially proving the very story, it alleges. It must stand on its own leg. It cannot take an advantage of weaknesses of the defence, nor the Court can of its own, make out a new case for the prosecution and convict the accused, as held in S. D. Scni Vs State of Gujarat.

Under Section 101 of the Evidence Act., the whole burden lies on the prosecution. In adversary system of criminal jurisprudence, the basic principles which has been laid down in Woolmington Vs Director Public Prosecutor. His Lordship Viscount Sunkey (Lord Chancellor) laid down that "throughout the web of English Criminal law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner’s guilt subject to what we have already said as to the defence of insanity and subject also to any statutory exceptions". The prosecution must prove the guilt of the accused. Doubt created by the evidence given by the prosecution as to whether the prisoner killed the deceased with malicious intention and if the prosecution has not made out the case, the prisoner is entitled to acquittal. No matter what the charge or where the trial is ? It is a part of the Common law of England and no attempt to whittle it down can be entertained. The accused in no case is called upon to prove his innocence or his plea beyond reasonable doubt. We have also adopted the age-old principals in administration of criminal justice.

However, it has been also appreciated that witness speaking on oath is a truthful witness unless it is rebutted by the accused. So also it has been held in State of Uttar Pradesh Vs Anil Singh that all witnesses to the occurrence need not be examined, is not proper and it is also not proper to

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386 A. I. R. 2003 Supreme Court, P. 1981
387 A. I. R. 1991 Supreme Court, P. 917.
388 1935 A. C., P. 462.
reject the case for want of corroboration by independent witnesses, if the case made out is otherwise true and acceptable. It is well to remember that there is a tendency in our country to back a good case by false or exaggerated version. So also, witnesses add embroidery to the prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if there is a ring of truth in the main point. The case should not be rejected. It is also remembered that the Judges do not preside over the criminal trial merely to see that no innocent man shall be punished and also to see that guilty should not escape. Therefore, it is necessary to look into, what are the rights of the accused while he is facing the criminal trial. Public Prosecutor or Assistant Public Prosecutor has to take those rights into consideration while conducting the trial, else the prosecution has to suffer as hair splitting doubt will be in favour of accused.

**Difficulties faced by the prosecutor while conducting the trial:**

It is said that the police have to bring the offender to book by conducting the investigation. Law and procedure adopted by the State must be just, fair and reasonable as held in *Maneka Gandhi V/s Union of India* (Supra). The procedure adopted by the State and their Officers cannot on this count, for the decency of the State behavior, have recourse to the extra legal method for the sake of detection of crimes and criminals. Therefore detection of the stolen property is task before the police. The right of the accused are sacrosanct and he does not become a non-person as mentioned in our Constitution and in Criminal Procedure Code for impartial trial as reported in *State V/s Sarwan Singh*390, for fair trial. Moreover intention of the prosecutor must be the quest for truth therefore he must safeguard the legal rights of the accused at the time of trial.

The Court should remember Upanishada's mandate that Law is a King of King i.e. more powerful than the King on whose strength weak may prevail

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over strong quoted with approval in *Adamvasha Basha V/s State of Karnataka* 391

The Law passed by the Legislature must give effect to the principles embodied in the Universal Declaration of Human Rights under the Union Charter 1948. It cannot discriminate on the ground of religion, sex, castes etc. (Article 14, 15, 16 of the Constitution). The legislature cannot pass a law retrospectively in case of penal Legislation under article 20(1) nor can it pass a law authorizing punishment for the same offence twice under article 20(2) of the Constitution. Moreover, as per the Criminal Procedure Code, and other laws supra, following are the basic rights and privileges of an accused in Criminal Trial. That must be safeguarded by the Prosecutor else trial may vitiate. It is a protective umbrella for accused and the prosecutor should refrain from this acid test. Therefore light must be thrown on the protection of individual’s rights safeguarded by the constitution in view of fundamental rights. However, justice to the individual is the fundamental principal of criminal trial. Therefore prosecutor has to safeguard the fundamental rights of the accused as well as the victim must be protected. As the modern legal system is based on Human Rights. The whole legal system revolve around this principals. If the following legal aspect is protected properly will formed the basis of the fair trial.

**Right of the accused in criminal trial:**

We have given these rights with the case laws of High Courts and Supreme Court.

1) The law has maintained that the primary right of the accused is presumed to be innocent till the guilt is proved against him beyond the clouds of all reasonable doubts. It is even declared by Universal Declaration of Human Rights, 1948, as an advantageous condition available to accused in criminal trial. By facing this primary orduous

391 1975 Criminal Law Journal, P. 744 (Supreme Court).
difficulty prosecution has to proceed. e.g. when the evidence on both
the side are more or less equally balanced, the benefit of doubt goes to
the accused as held in State (Delhi Administration) V/s Guljari
Tondan.  

2) The right to interpretation of Penal Laws : While interpreting the
particular provision of the statute the help of preamble may be taken
only where there is an ambiguity in provisions as held in Kanchari V/s
State of Madras and it must change with the changing society as
held in Mahendra Jain V/s State of Utter Pradesh. Rule of Law must
run close to the rule of life and Court should read in an enactment held
by justice V.R.K. Iyer in State of Punjab and Others V/s Amarsingh and
Others.

3) The protection against the arbitrary arrest has been established by
article 21, 22(1) and (2) of the Constitution and sections 41, 42, 43, 50,
55, 57, 58, and 151 of the Criminal Procedure Code. It is a duty of a
police officer to communicate to the arrestee the particulars of the
offence else detention would be illegal Sheela Barse V/s State of
Maharashtra.

4) Right to Know the specific ground of arrest and the power of arrest
under Article -22(1) of Constitution and section 50 of the Code of
Criminal Procedure. The accused alleged on affidavit that he was not
communicated his ground of arrest, in such events arrest and detention
of that person is illegal as held in Ajitkumar V/s State of Assam.

5) Accused must get the copies of the police investigation under a charge
against him, under section 207,208 of Code of Criminal Procedure. It is
a mandatory provision. The right of the accused to get the copies of
statement of witnesses and documents submitted to the Court by the

392 1979 Criminal Law Journal, P. 1075 (Supreme Court).
393 A. I. R. 1960 Supreme Court, P. 1080.
396 A. I. R. 1983 Supreme Court, P. 383.
police under section 173 of the Code of Criminal Procedure. The copies of Audio Video Cassettes is justified as held in Sadhavi Rutambhara V/s State of Madhya Pradesh.  

6) Right of examination by Medical Practitioner under section 54 of the Code of Criminal Procedure in the allegation of custodial violence; The Magistrate must refer the accused for medical examination as held in A. K. Sahadeo and an other V/s... Ramesh Nanji Shaha and another.

7) Protection against the arbitrary searches of the premises of the accused : Section 93, 94, 97, 98, 100, 165, 166 of the Code of Criminal Procedure conducting a search without any offer for search by the searching officer is said to be illegal.

8) The right to produce before the Magistrate within 24 hours of the arrest under Article 22(2) of the Constitution, and sections 56 and 57 of Code of Criminal Procedure, excluding the journey time to reach the Court.

9) Right to consult or appoint the legal practitioner of his own choice on the arrest and in the Court of law for conducting the trial as decided in Hussainiara Khatoon V/s State of Bihar article 39(A) of the Constitution, and section 304 of the Code of Criminal Procedure object is to achieve fair trial even one who cannot engage a lawyer much less of his own choice as held in Tahasildar Singh V/s State of Madhya Pradesh and another.

10) The right not to prosecute more than once in the same offence under section 300 Code of Criminal Procedure and under article 20(2) of the Constitution.

When the trial of an offence under Terrorist And Disruptive Activities (prevention) Act 1985 along with Indian Penal Code, offence

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400 1979 Criminal Law Journal. P. 1045 (Supreme Court).
was conducted, subsequent trial for the offences under Terrorist And Disruptive Activities based on the same facts is barred as reported in State of Tamil Nadu V/s. Nalini and others.\textsuperscript{402}

11) Accuse has a right of trial in open Court under section 327 of Code of the Criminal Procedure and fair trial and sit in the Court hall, i.e. fair and reasonable opportunity to the disputant to place before the Court their respective defence. So also, the accused can transfer his case to secure fair and impartial trial, if he suspects on reasonable ground. In the case where matrimonial dispute between husband and wife-when relationship of both family bitters, no senior lawyer agreed to argue bail application of accused (husband), as complainant's brother and father were advocates. Case transferred from Buland Shahar to Ghaziabad held in Gulshan Malik V/s State of Uttar Pradesh and another.\textsuperscript{403}

12) The right to insist that the evidence should be recorded in presence of the accused (Under section 273 and 244 of the Code of Criminal Procedure) except in some special cases under section 205, 317, 299 of Criminal Procedure Code, at any stage of trial. Evidence recorded prior to accused's appearance. Witness capable of re-examination. Evidence is inadmissible even with accused consent. Charge/s based on such evidence are not maintainable as held in Balkisan V/s State of Rajasthan.\textsuperscript{404}

13) Right to cross examination of prosecution witness under section 138 of the Evidence Act after examination- in chief and put a leading question under section 141, 142 of the said Act with the permission of the Court. In Criminal Trial Cross Examination is a powerful and valuable weapon for the purpose of testing the veracity, accuracy and completeness e.g. opponent declining to avail himself of opportunity to put his case in cross examination. Evidence tendered on that issue ought to be accepted, as held in Sarwan Singh V/s State of Panjab.\textsuperscript{405}

\textsuperscript{402} 1999 Criminal Law Journal, P. 3124 (Supreme Court).
\textsuperscript{403} 2002 Criminal Law Journal, P. 668 (Allahabad).
\textsuperscript{404} 1998 Criminal Law Journal, P. 2425.
\textsuperscript{405} 2003 Criminal Law Journal, P. 21 Synopsis B (Supreme Court).
examination should not be deferred for more than 2 or 3 days. After Examination in chief, cross examination after one year is improper held in *Ambika Prasad V/s State*.\(^{406}\)

14) Right to produce evidence in defence when the accused is permitted to disprove the prosecution case is a straight Jacket. The refusal without justification by Magistrate to issue process to the witness named by the accused persons has been held enough to vitiate the trial as held in *Shridhar Pilley V/s P. J. Alexander*.\(^{407}\)

15) Right not to be compelled to be a witness against himself under Constitution Article, 20(3) and section 315 of the Code of Criminal Procedure as held in *Nandini Satpati V/s P. L. Dani*.\(^{408}\) So also in landmark decision of Supreme Court of America in *Miranda V/s Arizona*.\(^{409}\) Which established strict guidelines governing L. J. Earl Warren stated that the suspect is subject to psychologically intimidating factors during interrogation which are likely to overbear his will and compel him to confess so also in India. In *R. B. Shaha V/s D. K. Guha*.\(^{410}\) That a person against whom First Information Report is lodged alleging offences against him under foreign Exchange Regulation Act 1973, being an accused that a person against whom First Information Report lodged is entitled to the protection under article 20(3) of our constitution.

16) Right to bail under section 436, 437, 438, 439 Code of Criminal Procedure, if rejected, can prefer an application to the Hon'ble High Court.

17) Right to keep silence under article 20(3) of the Constitution and 315 Code of Criminal Procedure

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\(^{406}\) 2000 Criminal Law Journal, P. 810

\(^{407}\) 1992riminal Law Journal, P. 3433 (Supreme Court).

\(^{408}\) 1978 Criminal Law Journal, P. 968 (Supreme Court).


\(^{410}\) A. I. R. 1973 Supreme Court, P. 1196.
18) Right not to suffer imprisonment more than prescribed by law. Under article 20(1) constitution.

19) Right of the accused with reference to the limitation by taking cognizance of an offence. It has been held in Keshao Laxman Pangare V/s State of Maharashtra. That under section 468 (2) and 470 Indian Penal Code offences are punishable for the term exceeding three years, no period of limitation. Time of obtaining sanction is excluded.

20) Right of an accused to get investigation completed within six months in summons cases.

21) Right of an accused to be heard on the point of sentence in Sessions. Triable cases under section 235 (2) and in warrant triable cases in Court of Judicial Magistrates First Class under section 248(2) Criminal Procedure Code. When at no point of time accused was given any opportunity to place before the Court relevant material having a bearing on question of incarceration as contemplated under section 235 (2) of the Code of Criminal Procedure. Trial Judge simply orally heard the State Counsel and Counsel for the accused on this question. It does not amount to sufficient compliance of mandatory provisions of section 235(2). Death sentence converted to Life imprisonment held in Anil V/s State of Uttar Pradesh it is not mere formality. It determined correct sentence to be imposed. It satisfies the rule of natural justice and held the Court to choose the sentence to be awarded. Statutory provision must be followed as held Ramdeo Chavhan @ Rainath Chavhan V/s State of Assam.

22) Right to get set off under section 428 of the Code of Criminal Procedure, suffering imprisonment as held in State of Maharashtra V/s Najakatali.

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411 AIR 1999 Supreme Court P 3846
413 2001 (2) Bombay Criminal Cases, P. 689
414 2001 Criminal Law Journal, P. 2588 (Supreme Court).
23) Right to speedy trial and attendance of a person confined to prison should be brought before the Criminal Court under section 267 of the Code of Criminal Procedure. In Criminal proceedings initiated against public servant under Prevention Of Corruption Act 1988, long pendency of proceeding for 20 years. Direction by Court to conclude trial within 6 months, as held in Ramdeo Chauhan V/s State of Assam.\textsuperscript{415}

24) Right to receive legal aid in Smt. Akhtarbai V/s State of Madhya Pradesh\textsuperscript{416} held that prolonged delay in disposal of trial and appeal for no fault of accused confer right upon him to apply for bail under article 21 of the Constitution.

24A) It is a right of an accused demanding expulsion of Police Officer or witness not yet under examination from the Court room when evidence is going on\textsuperscript{417}.

25) Right to get an opportunity of explaining the evidence appeared against him in the Court under section 313 of the Code of Criminal Procedure. The Apex Court held that if the accused is not questioned on his motive for the Crime, it may cause prejudice to him and thus vitiate the trial. It has been held in Mohansingh V/s Prem Singh and another\textsuperscript{418}. Justice Dharmadhikari held that statement made by the accused under section 313 can lend credence to evidence led by prosecution. But cannot be made sole basis for conviction.

26) Prosecution has to find out the way for fair trial. Fair trial means there must be a natural justice with the accused so also with the prosecution. "Fairness is what justice really is" Poter Steward. Therefore, the natural justice means innate quality of being fair, i.e., common sense of justice.

\textsuperscript{415} 2001 Criminal Law Journal, P. 2902 (Supreme Court).
\textsuperscript{416} 2001 Criminal Law Journal, P. 1729 (Supreme Court).
\textsuperscript{418} 2003 Criminal Law Journal, P. 11 (Supreme Court).
of what is right and wrong\textsuperscript{419}. The Hon'ble justice Mr. Bhagavati said that "Therefore, the soul of natural justice is “fair play in action” as held in \textit{Maneka Gandhi V/s Union of India} (supra). Any order passed in violation of principles of natural justice is null and void\textsuperscript{420}. Moreover, if an accused is unable to engage a lawyer and secure legal services on account of the poverty, indigence or incommunicado situation, to have free legal services provided to him by the State, means provide a lawyer to him, is a constitutional mandate under article 22(1)\textsuperscript{421}.

It has also been said that the principles of natural justice are easy to proclaim but their precise extent is far less easy to define as is said by His Lordship Evershed M. R., as held in \textit{Abbott V/s Sullivan}\textsuperscript{422}. So also the principles of \textit{audi alteram partem} is the principle of fair play deeply rooted in the mind of the modern English-man because judges behaviour in the Court must be like the Caesar’s wife, should be above suspicion\textsuperscript{423}.

27) Right of not to attend Court under petty Offences, punishable up to three years, if investigation cannot be completed within three years vide limitation for taking cognizance of certain offences mentioned in section 467 to 473 of the Code of Criminal Procedure.

28) Right to prefer or move at least in one Higher Court in the case of conviction or refusal of bail.

29) Right of child or young offender under 21 years of age not to be sentenced to death (Under section 22 of the Juvenile Justice Act, 1986). This law throws a cloak of protection and isolate them from criminal offender.

\textsuperscript{419} Tapajug Choudhary – Penumbra of Natural Justice (Eastern Law House, New Delhi Publication 2\textsuperscript{nd} edition, 2001) P. 1.
\textsuperscript{420} Ibid. P. 111.
\textsuperscript{421} Ibid. P. 206
\textsuperscript{422} 1852 – 1 K. B. P. 19.
\textsuperscript{423} 44 H. H. Marshall – Natural Justice (Sweet and Maxwell Ltd., Landon Publication 1959) P. 25.
Reasons for failure of the work of Prosecutor

Moreover, in the above said rights, some of the directions must be observed while conducting the prosecution, given under section 461 of the Code of Criminal Procedure i.e. irregularities vitiate the proceedings. If any Magistrate not being empowered by law in this behalf does any of the following things that vitiates the trial, some are important.

A) Attaches and sells property under section 83, i.e. if the accused is absconding and property is attached.

B) Issue search warrant for documents, parcels or other things in the custody of the telegraph Authority.

C) Take cognizance of an offence under clause C of sub-section 1 of section 190 of the Code of Criminal Procedure.

D) Tries the offender summarily.

E) Passes the sentence under section 325 of Code of Criminal Procedure on proceedings recorded by another Magistrate.

F) Decides an appeal.

G) Call for proceedings under section 379 of the Code of Criminal Procedure i.e on appeal to High Court acquittal order reverse and convicted accused or

H) Revises an order passed under section 446, of the Code of Criminal Procedure (procedure when bond has been forfeited) his proceeding shall be void.

Right which cannot be claimed by an accused in criminal trial Prosecutor has to keep in mind that following rights cannot be claimed by the accused. On the basis of various decisions, the accused cannot claim the following protections:-

1) To be tried by particular Court.
2) Commitment of cross case to the Court of Sessions when the cross or connected cases are not triable by the Court of Sessions.

3) To claim joint trial with co-accused.

4) It is the right of the prosecution to decline to array a person as an accused and instead examine him as a witness for the prosecution, as held in A. R. Antulay V/s. R. S. Nayak.\textsuperscript{424}

Moreover, the prosecutor is given some rights and duties for fair trial and those are mentioned in Chapter IV of this thesis. It is therefore, submitted that while evaluating the work of prosecutor he has to do a tedious and complicated job with a calm and peaceful mind, so that he should not abuse the process of law and his work should not suffer for the cause in administration of fair Criminal Justice.

However, prosecutor has to search, way out from the primary presumption even though ordinary presumption is in favour of prosecution.

\textbf{Primary and ordinary presumptions:}

In the present circumstances the primary presumption is the age old maxim i.e. “let the hundred guilty persons be acquitted but not a single innocent be convicted is a practice and given trial to the benefit of doubt. However the General presumption in Criminal law is that a witness on oath is speaking the truth, unless and until he is shown to be untruthful by lowering down his credibility in the particular way. Witnesses are presumed to act with full sense of responsibility. The ordinary presumption is that a witness speaking under an oath is truthful unless he is shown to be untruthful or unreliable as held in the \textit{State of Punjab V/s Harisingh}.\textsuperscript{425} The law does not demand that one should act on certainties alone as held in \textit{Tahsildarsingh V/s State of Uttar Pradesh}.\textsuperscript{426} If a witness adducing evidence some times his memory may not serve him or may play false about exact words used on that

\textsuperscript{424} Tyagi S. P. – Criminal Trial (Vishod Publishing House, New Delhi, Publication, 3rd edition 2004) P.101

\textsuperscript{425} 1974 Criminal Law Journal, P. 822 (Supreme Court).

\textsuperscript{426} 1959 Criminal Law Journal, P. 1231 (Supreme Court).
occasion. A witness will react in his own way as held in *Krushna Narayan V/s State of Maharashtra* 427. But as the primary presumption has higher value than the ordinary artificial presumption and the primary presumption prevails over the ordinary presumption.

Therefore, proof beyond reasonable doubt is necessary. However in criminal trial perfect proof is not necessary. If the case is proved too perfectly, it is argued that it is an artificial. If a case has some flaws they are inevitable because human beings are prone to err. It is argued that it is too imperfect. One wonders whether the meticulous hypersensitivity to eliminate a rare innocent from being punished. Many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty men cannot get away with it because the truth suffers some infirmity when projected through human processes as laid down by justice V. R. K. lyer in *Indersingh and another V/s State of Delhi Administration* 428.

Even though ordinary presumption is helpful to the prosecution but primary presumption is in favour of the accused as laid down supra. Therefore it is necessary to throw light on appreciation of evidence by the Court and prosecutor must be very cautious and careful while taking examination-in-chief and watch minutely the cross-examination by defence.

**Appreciation of evidence:**

Prosecutor has to observe the inclination or weighing of opinion of the Court, in which style or way the Court appreciate evidence so as to satisfy the Court not to consider minor lacunas in the investigation or minor omissions and contradictions to see that justice must be done.

1) **Appreciation of link (circumstantial) evidence:**

In such cases, whole of the chain of evidence is so far complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and show that in all human probability the act must

427 A. I. R. 1973 Supreme Court, P. 2751.
428 1978 Criminal Law Journal, P. 766 (Supreme Court).
have been done by the accused, it must be conclusive by nature and tendency. They should be such so as to exclude every hypothesis but one purpose to be proved. Circumstances are wholly inconsistent with the accused. In a case where the accused came with his wife from Bombay to Delhi, stayed in a guest house, on next day accused left guest house locking deceased wife in room and did not return thereafter. Accused telephonically inform relatives of the deceased wife after two days that she died in bus accident and was buried in Nizamuddin. Wife found dead due to strangulation in room of guest house. Accused arrested on next day and keys of the room was recovered from the accused. Ticket from Delhi to Bombay recovered from him. Aforesaid circumstances coupled with evidence of relatives of deceased wife as to the date of departure of the accused with his wife from Bombay to Delhi and telephonic massage after two days that his wife died in bus accident form complete chain of events which point out the guilt of the husband; link of the chain proved. Accused was convicted as held in the case of Alamgir V/s State (NCT Delhi). Therefore it is the prosecution who should link the chain. If any of the link in chain missed the case does not stand in the Court of law. Moreover, the Court while appreciating the evidence should not lose sight of the realities of life and should not take unrealistic approach by sitting in ivory tower.

2) Dying declaration:

It is an important document based on the maxim that a man will not tell a lie at the time of his death. i.e. nemo moriturus Praesumitur mentire. In fact it should be written by the author of it, this is far better; else it can be recorded by the Honorary Judicial Magistrate. However, if it is not permissible by the time, then it can be recorded by the doctor and if not possible, then by police. It should probably be in the form of questions and answers and should clearly indicate the name of the accused with the relevant details of incident. No suspicion features which affect the prosecution case as analysed in Sharmogham V/s State of Tamil Nadu. It is admitted in evidence as it is

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429 2003 Criminal Law Journal, P. 436 (Supreme Court).
430 2003 Criminal Law Journal, P. 438 (Supreme Court).
principle of necessity not tested through the cross examination by the accused. If any of the suspicion arise against the prosecution in such event benefit of doubt goes to the accused, result the case in acquittal.

The English law is somewhat different where the statement directly related to the cause of death is admissible. But not second part of section 32(1) of Evidence Act, viz. the circumstances of transaction which resulted in his death in cases in which the cause of that person's death comes into question is not to be found in English Law.\textsuperscript{431} Moreover, para no. 115 of the Bombay Police Manual, it has been mentioned that a victim must be in a fit state of mind to make the statement. Therefore, his medical examination is necessary. It stands on the same footing as another piece of evidence. Court can convict the accused on the sole testimony of Dying Declaration if it appears to be truthful. Therefore prosecutors must look into it.

3) Identification of the accused by the witness or victim before the Magistrate:

He must be examined to prove the test of identification parade as held in \textit{Thambi Nasir V/s State}\textsuperscript{432} that in all six accused had been put up for identification parade and only four dummies has been used to stand along with the accused, but not of similar heights or features as that of accused, evidence was discarded on account of legal infirmities. The identification parade conducted during the course of investigation is a part of investigation.

The primary object of enabling the witness is to identify persons concerned in the offence who were not previously known to them. So also, the Investigator should seek to establish as many mark as possible that may serve circumstantially to check the testimonial assertions, steps should be taken before hand to reduce the chances of testimonial error with regards to the identity of both things and persons. In addition to the name of the accused is not mentioned in the First Information Report and the prosecution

\textsuperscript{432} R. Nagarainam – Criminal Procedure Code Principles and Precedents (Published for Bar Council of India Trust © 1990 by Tata M. C. Grav Hill Publishing Company New Delhi 1990) P. 91.
contended that he was not known to the persons who witnessed the occurrence. It is necessary for the prosecution to make what led to identify and arrest of the offender for the evaluation of the circumstances of having identified at the test.\textsuperscript{433}

4) Evidence of search and seizure:

It is a settled law that illegality committed in the investigation does not render the seizure inadmissible. The manner in which the contraband is recovered is important and if otherwise proved, then manner of seizure is immaterial\textsuperscript{434}. One copy of seizure must be given to the person from whom the property has been seized is mandatory. In Narcotic Drugs And Psychotropic Substances Act of 1985 officer concerned has duty to intimate the person to be searched about his right decided in Bharatbhai Bhagawanjibhai V/s State of Gujrat\textsuperscript{435}.

5) Recovery under section 27 of the evidence act:

It should be a statement in the language of the accused recorded by the Investigation Officers before the panchas related to the object of discovery at the instance of accused, in presence of the panchas and sealed, then and there else its evidentiary value will be deteriorated as held in Tukaram Kamble V/s State of Maharashtra\textsuperscript{436}.

6) Injuries on the person of accused:

Even failure by prosecution to explain the injuries on the persons of an accused is of no consequences but evidence of prosecution implicating the accused must be clear, cogent and creditworthy as held in Ramavatara and other V/s State of Uttar Pradesh\textsuperscript{437}.


\textsuperscript{435} 2003 (1) Crimes, P. 57 (Supreme Court).

\textsuperscript{436} 2000 Criminal Law Journal, P. 1506 (Bombay).

\textsuperscript{437} 2003 Criminal Law Journal, P. 480 (Supreme Court).
7) Statement of the accused under section 313 of Code of Criminal Procedure:

The statement of the accused can lend credence to the evidence led by the prosecution but it cannot be made sole basis of conviction as held in Mohansingh V/s Prem Singh. This section 313 (1)(b) to question the accused generally after the witnesses for the prosecution have been examined and before the accused is called upon for his defence if any. That in turn to arise when charge has been framed. This provision is one intended to secure to accused an opportunity to explain the evidence appeared against him. Therefore this provision intended to benefit the accused and not to operate to his detriment this is mandatory but not exhaustive.

This provision is for the benefit the Court also in reaching the final conclusion. However in K. Anbazhagal V/s Superintendent of Police and others Synopsis E it has been mention that in warrant triable cases dispensing with the personal appearance and permission to answer questionnaire through counsel not proper procedure. Conduct of Public Prosecutor in not apposing such frivolous application – Deprecated. Therefore prosecutor must be very careful and catious in giving his say. It is a ticklish and delicate work necessary for the fair trial, which is a backbone of criminal trial.

Proof necessary must be searched for conviction:

Even if the accused is presumed to be not knowing anything (innocent) and Prosecutor has to face so many odds in the trial but on the other hand the requirement of the Society should be shielded from the misadventure of such criminals. For the appreciation of the evidence the Court has to consider the qualification of the prosecution witnesses as i) wholly reliable, ii) wholly not

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441 2004 Criminal Law Journal, P. 583 (Supreme Court).
reliable, iii) neither wholly reliable nor wholly unreliable. Therefore, in the first
category, solitary evidence is sufficient to bring home the guilt of the accused.
In the second category, the Court has no difficulty, however, in the third
category, the Court has to circumspect and to look for corroboration in material
particular. By reliable testimony direct or circumstantial before
acting upon the testimony of a single eyewitness held in Lalli Manghi V/s
State of Jharkhand. Therefore, it is the utmost duty of the Public Prosecutor
that before examining a witness, if he is not conversant with the Court's
evidence, the case comes for evidence after four five years and if the witness
wants certain instructions, then it is the duty of the prosecutor to instruct the
witness. The Court may consider that witness adducing the evidence before
the Court of law and therefore, discrepancies may appear as they are not
tutored.

The law Court is not an unnatural world as held in Kisanal V/s State of
Haryana. The exaggerated devotion to the rule of benefit of cloud of doubts
must not nurture fanciful doubt and thereby destroy the social defence.
Justice cannot be made sterile. Ex-facie and trustworthy evidence should not
be rejected as held in the State of Punjab V/s Halagirsingh because
miscarriage of justice may arise from the acquittals of the guilty. The doubt
must not be vacillating which cannot reach on firm conclusion. Too frequent
acquittals of the guilty may lead to the ferocious penal law eventually eroding
the Judicial protection of the guiltless. The prosecutor should be very
cautious while taking examination in chief and in the cross examination by
adverse party. So also the Court should also play a role of the prosecutor in
the interest of quest for justice. The Court can put any question to witness at
any point of time to elicit the truth if he so deserve. This is clear from the
words relevant or irrelevant in section 165 of the Evidence Act. Neither of the

442 Rao and Rao – Criminal Trial (N. N. Tripathi Pvt. Ltd., Bombay. Publication, 3nd revised edition,
1973) P. 912.
445 A. I. R. 1973 Supreme Court, P. 249.
parties have any right to raise objection to any such question as held in the case Manish Dixit V/s State of Rajasthan 446.

Where there is defective investigation, non-examination of the witness from the locality and no specific finding about the factum of possession over the land in dispute, no reliable evidence as per above case, and therefore, the accused is acquitted. In such cases, the prosecution need not have to press before the Court for conviction because there is no substance.

In the case of Sarwansingh V/s State of Punjab 447. The Apex Court held that there is a difference between "may be true and must be true" this distance may be covered by the prosecutor by legal, reliable and unimpeachable evidence before conviction. However, distance is not so great and not the journey so weary. The high degree of probability that a prudent man under a given similar circumstances, to act upon the assumption that what he saw or heard from the information he gets is true in law.

Therefore, the statute may permit the artificial presumption of fact under section 114(a) of the Evidence Act, i.e. a possession of a stolen goods soon after the theft is as a thief or receiver of the stolen property is permissible and presume, it is not to be drawn, it can been only rebutted by adducing satisfactory evidence else accused has to suffer. The same is in Prevention of Corruption Act, 1988; the Court shall presume that the accused is guilty unless the contrary is proved by the accused, then only he cannot be convicted. So also under section 105 of the Evidence Act, that the Court shall presume in the absence of certain circumstances, bringing the case of the accused is within any general or special exception or proviso under the penal law the burden is on the accused to rebut it but the presumption on which the accused has to prove that he is innocent, is not so heavier burden as on the prosecution as held in Rex V/s Carrbridge 448. It is enough for the accused to make out a truth of his defence in all reasonable probability though not clearly beyond suspicion. The Court is bound to acquit the accused, even with the aid

446 A. I. R. 2001 Supreme Court, P. 93.
447 1957 Criminal Law Journal, P. 1014 (Supreme Court).
448 (1943) K. B. P. 617.
of the primary presumption, the accused is acquitted. In the conflicting presumptions i.e. one is artificial created by the statute against the accused and the other primary presumption is in favour of the accused, in such events the primary presumption in favour of the accused must prevail as it is backed by initial presumption of innocence of the accused, e.g. the prisoner was found in possession of the rice not thrashed in usual way, moreover, he had no paddy land, he failed to account for possession satisfactorily, it was held that supposing the rice have been stolen but it was stolen from elsewhere, Therefore, the accused is acquitted. 7 Madras S.C. Rep. App.19) In this case, the evidence falls short for degree of proof required for conviction. It shows that Prosecutor has to travel from a water tight compartment while conducting the case.

**Speedy trial:**

In the interest of the prosecution and the defence, the speedy trial is necessary. The Judge has to deliver justice without fear, favour or ill will and make every effort to separate the chaff from the grain. If the defence counsel needs adjournments on this or that count, merely to harass the witnesses, it cannot amount to a fair trial. The basic principle of speedy trial laid down in Prem Surana V/s. Additional Munsif and Judicial Magistrate. That the Court has a duty to see whether prolongation was on account of any delaying tactics adopted by accused or some other factors (relevant) contributing to delay; Viz. number of witness examined, volume of documents produced, and nature and complexity of offence. Each case has to be judged on its own background, that the Court is not an Arbitrator of wisdom or philosophy of the law. It is an arbitrator merely of the Constitution.

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449 (1943) K. B. P. 617.
451 2002 Criminal Law Journal, P. 4092 (Supreme Court).
View of the public prosecutor to prosecute and not to persecute:

While conducting the case prosecutor should not forget that he has been appointed to secure justice and not for only obtained convictions. Therefore he must work as an genuine prosecutor and not as a persecutor.

In respect of withdrawal from the prosecution, it is the discretion of the prosecutor incharge of the case and is a judicial function of the Court. Section 321 of the Code of Criminal Procedure, says that the decision of the Public Prosecutor must be independent, uninfluenced from Higher Authority. He must be satisfied to withdraw the case as held in Subhashchandra V/s State.\textsuperscript{452} Government may suggest the Public Prosecutor /Assistant Public Prosecutor but cannot compel him for the same. The paramount consideration is the administration of the Justice as held in the case of State of Orissa V/s Chandrika Mahapatra.\textsuperscript{453} Therefore prosecutor has to study the case in detail to look into it whether withdrawal is worth. It should not be for the improper, oblique motive for ulterior consideration. Insufficient evidence is not a ground for withdrawal, but the application on the basis of Government order, does not meet requirements under section 321 of the Code of Criminal Procedure as held in Abdul Karim V/s State of Karnataka.\textsuperscript{454} Moreover, in the case of Shionandan Paswan V/s State of Bihar.\textsuperscript{455} The Apex Court viewed that it is not necessary for the Court to assess the evidence to discover whether the case ends in conviction or in acquittal, but the Court has to look into the application that whether this application has been made in good faith in the interest of public policy and justice.

To avoid unfair method by the prosecutor:

While conducting the case, prosecutor must consider that for search of truth, unfair practice must be avoided.

\textsuperscript{452} 1980 Criminal Law Journal, P. 324
\textsuperscript{453} A. I. R. 1977 Supreme Court, P. 903.
\textsuperscript{454} 2001 Criminal Law Journal, P. 148 (Supreme Court).
\textsuperscript{455} 1987 Criminal Law Journal, P. 793 (Supreme Court).
If a Prosecutor asked leave before charge to withdraw the case against one accused, even though there is overwhelming evidence against him, the Court has granted the permission and discharge the accused and make him a witness in the same case, to adduce the evidence against the other accused is not proper because of the conditional pardon; he gave evidence knowing that if he will speak the truth, also suffers subsequent prosecution for the same offence, as section 321 does not control section 306 of Code of Criminal Procedure. In such cases, the witness will not give truthful evidence. He has a greatest possible temptation to improve the evidence.

It is also the duty of the police and prosecutor that they cannot be permitted to take the evidence of the accused against the co-accused by splitting up the cases against them. That the above foul tactics must be abolished by the prosecutor.\textsuperscript{456}

Right of an audience of private counsel for complainant in the state case:

In the Court of Judicial Magistrate First Class, the private counsel is appointed by the reporter or victim but under section 302 of the Criminal Procedure Code, if he conducts the case, in such event he will be after conviction against the accused, but if the prosecutor takes interest, in that case he will only assist the Court to come to justice and the purpose of the prosecution will not be defeated. The dichotomy under section 301 is between conduction the prosecution and acting under the directions of the Public Prosecutor, hence, conducting the prosecution means taking charge of the entire proceeding free from any guidance and control by any one else.

In short, in Criminal trials in which the accused dose not invoke his aid any of the exceptions embodied in Criminal Statute in justification or mitigation of the act or omissions for which he is charged. The Court keeps the case for evidence of the prosecution and thereafter defence if any. The Public

Prosecutor has to work in tight position as no leading question can be asked to persuade the witness. The Court will first have to consider whether or not the guilt of the accused has been established beyond the reasonable doubt by the prosecution evidence. If reasonable doubt is there in such event, the matter will be closed. However, on the other hand if the Court is of the opinion that the prosecution discharged the onus, then turned to the defence evidence if any in order that whether the defence does or does not rebut the prosecution evidence and it may either negativate to the guilt of the accused or held him guilty or held him doubtful without opening his mouth, the accused has to thank himself for it. However, if the defence evidence in rebuttal, the evidence has to be weighted but not in golden scale but before there can be a conviction, there must be a preponderance of weight on the side of the prosecution. High degree of assurance is necessary and persuasion of the guilt out amount to moral certainty and convince the mind of the Tribunal/Court as a reasonable man beyond reasonable shadow of doubt, afterwards only, there can be a proof sufficiently made out for conviction.

From the above said discussion while evaluating the work of Public Prosecutor / Assistant Public Prosecutor, anybody can draw the conclusion that the work of the prosecutor is tremendously difficult, complicated and also hard nut against the accused to crack.

Now the job of the prosecutor is not restricted to bringing home the guilt to the accused but to help the Court to reach the real justice to the accuse as well as to the prosecution. "Quest for truth" is in the moto. The prosecutor has to conduct the cases of the (prosecution) State fairly and impartially. Therefore the position of the prosecutor in the administration of criminal justice system is pivotal / key position\(^{557}\).

\(^{557}\)Ibid. P. 318.
Reasons for failure of the work of prosecutor:

In this system of criminal trial before the Court balance of convenience is in favour of accused. Accused has given much more protection to safeguard his rights.

Punctuality in attending the trial before the Court:

It is necessary that prosecutor must be punctual in the Court so that Court work should not hamper, observed by Karnataka High Court i.e. State by K. R. Pet-town police V/s Rame Gowada and other. Responsibility of conduction of trial is on the prosecutor. But presiding Judge is not a dispassionate spectator. As in the interest of justice law has thrust on trial Court to pay a supervisory role. He can pass an appropriate order, where the prosecutors are negligent or corrupt or even both. If material evidence i.e., Doctor, Investigating Officer are not examined by Public Prosecutor, it is either out of negligence or for ulterior reasons. The law compel the attendance of prosecution witnesses and take action against prosecutor’s misbehaviour and remind the presiding officers of all the trial Courts to take serious note of our observation as state of affairs which is highly unsatisfactory. Contempt proceeding started against Public Prosecutor on the strength of Court order dated 11.4.2002.

Moreover, the position in Balima Bibee V/s State and others, a case of Orissa High Court that application of prosecution rejected for a mere absence of Assistant Public Prosecutor- it is not proper. Further principle of natural justice demands that accused should be given an opportunity of hearing.

So also in Bombay High Court case, Jayant V/s I. G. P. (C. B. I.) Nagpur where the special Public Prosecutor was absent on large number of occasions when matter came up before the Court, no charge framed accused was attending the Court. In proceeding also mentioned that delay ordinarily

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prejudice prosecution. As the burden of proving the guilt of the accused lies on prosecution, non-availability of witnesses, disappearance of evidence by laps of time, work against the interest of prosecution as delay defeats equity as equity aids the vigilant and not the indolent.

Treatment to the prosecution witnesses:

The way in which the defence counsel behave with the witness at the time of his cross-examination must be deprecated. Cockburn the Lord Chief Justice of England lamented that "we deeply deplore that members of the bar so unnecessarily put the question which affecting the private life of prosecution witnesses. we have watched closely the administration justice of France, Germany, Holland, Belgium, Italy and little in Spain, Canada and United State of America, however in no place we have seen witnesses so bad geared, brow beaten and every way so brutally maltreated as in England. It is a national disgust. Instead of aiding the ends of justice, man and women of all ranks shrink with terror from the subjecting themselves to the wanton insult and bulling misnamed. In fact the cross-examination is intended to the great social objective[461].

My personal observation as Assistant Public Prosecutor and Additional Public Prosecutor as under -

I was appointed as Assistant Public Prosecutor in 1976 and retired as Assistant Director of Public Prosecution on 30.7.2000. Therefore we had an opportunity to work as Additional Public Prosecutor in sessions Court and also scrutinizing the cases of serious offences investigated by the Police. Therefore what difficulties generally prosecutors are facing summarized as under:

Public Prosecutors are appointed by the State Government, therefore they are under political pressure of ruling party Government in the State No.

independent accommodation, nor sufficient stationery supplied nor office staff and furniture are provided. No remuneration at proper time to Public Prosecutor or Additional Public Prosecutor appointed by the Government which can hamper their work. So also as police are over burdened. Defects in investigation is the common problem with all the category of prosecutors.

Specially, Assistant Public Prosecutor has to face the following difficulties as follows: 1) No law library or Law Journals to read latest position of Law. 2) No separate office accommodation in Court compound, inadequate office staff and stationery. Apart from these major difficulties in day to day working, prosecutor has to face following difficulties:-

1) Opinions in serious and technical offences are not sought, resulting in short-coming in investigation; hence case ends in acquittal.

2) Because of the lack of legal knowledge amongst police, while making scrutiny by the prosecutor of the case complete case papers of investigation are not sent to prosecutors.

3) Police officer need case papers of scrutiny to be sent back urgently on the pretext of their being wanted by higher police officer or for the reason of limitations; therefore proper scrutiny cannot be performed. Moreover, due to grammatical mistakes in regional language, sound cases get spoiled.

4) Even written instructions given by Assistant Public Prosecutor or Additional Public Prosecutor in scrutiny report are not followed by police officer serupulously.

5) Where identification of accused before Executive Magistrate is necessary, police are found calling prosecution witnesses in Police Station and taking their statements in this respect, therefore Public Prosecutor / Assistant Public Prosecutor is left with no point to argue on identification.
6) In serious offences, statement of witnesses are not recorded under section 164 of the Code, which causes hardships to the prosecutor when they recite from their statement to police to prove the guilt against the accused. Because of the technical flaws, a good case for prosecution ends in acquittal i.e. benefit of doubt given to the accused.

7) Summons and warrants are not returned in time, therefore, further action against witnesses cannot be decided. Police as given the secondary importance to the service of summons or bailable warrant issued by the Court.

8) It, generally happened that property seized by police are not produced in the Court even latter issued by the prosecutor when case is at the stage of evidence. Some time identical or similar property is produced in place of original seized property that put prosecutor in troubled water.

9) There is a general trend of hostility among the prosecution witnesses *inter alia*. As victim has no right to help the prosecution, therefore evidence of defence witnesses called by the accused go unchallenged which causes set back to the prosecution case.

10) Investigation officer do not remain present even in serious and technical offences which causes hardship to the prosecutor.

11) Police usually use stock witnesses in the cases of serious offences and in warrant trial cases resulting in acquittals.

12) While preparing charge sheet, name of the witnesses and their addresses not written perfectly and correctly with their location in addresses.

13) Some time vital document are not produced in the Court alongwith the case diary e.g. identification parade document, dying declaration, Medical report, confession of prosecution witnesses etc. and / or in some important cases copies not given to the accused even in serious
offences cases. Therefore as per Audi alteram partem causing loss to the prosecution. However primary burden of proof saddle on prosecution.

14) Some police officers knowingly and willfully avoid to attend the Court for adducing evidence before the Court, which generate an anger in the mind of Judicial Magistrate First Class /Judge therefore, prosecution has to suffer.

15) Generally change in ink or over writing causes damage to the prosecution case as no satisfactory explanation given.

16) As the case tried by competent Court, generally after 3 to 4 year, therefore in serious offences, statement of eye prosecution witnesses or confession of accused is necessary under section 164 of the Criminal Procedure Code. This is lacking of it causing irreparable laws to the prosecution.

17) While demanding police custody of the accused case diary is not shown to the prosecutor by police well in advance so prosecutor becomes unable to explain the Court the reason for grant of police custody or some time investigation officer remains absent.

18) Delay in investigation without any plausible reasons, put prosecutor in difficulty to explain to the Court for causing delay unless and until it has been explained to prosecutor by concerned police officer. At least it must be explained in the concerned document e.g. statement of witnesses etc.

19) **Difficulties in Court**:

i) While granting adjournment to the accused when prosecution witnesses are present, Court should obtain say from concerned prosecutor and even if adjournment granted for an unavoidable reason
then Court should saddle heavier cost on concern party and grant adjournment for a few days.

ii) Judges should not make escape goat to the prosecutor for improving their own image before advocates.

To avoid all these difficulties there should be co-ordination among police and prosecutor so that trial can run smoothly. Unless proper assistance is received from police, prosecutors will not be in position to satisfy the quarries made by presiding officer. At least police and prosecutor must in league. If the Government is pleased enough to improve the investigation, to reduce the crime, in such event investigation, police should be separated from the law and order police so as to expedite the investigation without loss of time, to stop the miscarriage of justice.

Conclusion

In respect of chapter No.10 to bring about as a result while evaluating the work of the Prosecutors they must follow the rules and norms of Criminal Justice System. The burden is on the party who alleges i.e. on Prosecution and i.e. accuse benefit of doubt is in favour of accused. Therefore Prosecutor must have a detail knowledge of law and have a tact in tackling the witness that whether he is more talkative or whether rely on his statement to the police. In all trial must be fair and impartial. So also rights has be given to the accused by the Criminal Procedure Code or by the Constitution of India should not be infringed. Rights of accused while facing trial have been mentioned in this chapter and what are the reasons for failure of work of the Prosecutor. No doubt primary presumption is in favour of accused. Therefore, Prosecutor must know the method of appreciation of evidence adopted by the Court and what type of evidence Court prefer necessary for conviction must be search out by the Prosecutor. He should avoid unfair method to convict the accused. If the victim or reporter is represented by private counsel attention must be given to him. Regularity and punctuality in attending the Court must be maintained. Moreover researcher was an Assistant Public Prosecutor, promoted as Additional Public Prosecutor
therefore conducted cases in the Court of Magistrates and Sessions and Additional Sessions Court. Therefore he has mentioned the difficulties while conducting the case. However it throws light on the work of the Prosecutor as strenuous even though pivotal.