

## UNIT -3 INTERROGATION AND COLLECTION OF EVIDENCE

### Structure

- 1.1 Introduction
- 1.2 Objectives
  - ★ *Oral Evidence*
- 1.3 Examination of Witnesses
  - Powers of Police Officer to require Attendance of Witnesses
  - Examination of Witnesses by the Police
  - Recording of Statements of Witnesses
  - Evidentiary value/Importance of the Statements made to the Police during Investigation
- 1.4 Recording of Statement of Witness u/s 164(5) of CrPC
- 1.5 Dying Declaration
  - Procedure in recording Dying Declaration
- 1.6 Interrogation of Accused Person
- 1.7 Powers of Police Officer to compel attendance of Accused
- 1.8 Confession
  - Procedures in recording of Confessional Statement
  - Evidentiary value of Confession
- 1.9 Extra-judicial Confession
- 1.10 Discovery of Facts u/s 27 of the Evidence Act
  - Procedure to be followed in recording the Information
  - Evidentiary value/Importance of Facts discovered u/s 27 of the Evidence Act
- 1.11 Test Identification Parade
  - Purpose of Test Identification Parade
  - Procedure to hold Test Identification Parade
  - Evidentiary value/Importance of Test Identification Parade

1.12 Accomplice

☆ *Documentary Evidence*

1.13 Collection of Documentary Evidence

1.14 Summary

1.15 Terminal Questions

1.16 Answers and Hints

1.17 Work Assignment

1.18 References and Suggested Readings

## **1.1 INTRODUCTION**

Collection of evidence is the essence of investigation. The evidence collected by the police must be relevant to the case under investigation. Since the Burdon of proof is upon the prosecution, it is the duty of the investigating police to search for relevant facts of a case and pool them together and submit to court in the form of charge sheet/final report and help the prosecution to prosecute the persons perpetrated crime. Interrogation of persons who are acquainted with facts and circumstances of a case is one of the ways of collection of evidence. Interrogation is both an art and science. It should be done in a very professional way. The term “evidence” refers to any fact which is relevant under law to prove or disprove the facts in issue before court. Sir James Stephen, the framer of the Indian Evidence Act, 1872, contemplated oral and documentary evidence as the main determining factors in proving or disproving facts in issue before adjudicating court. It is true, in criminal trials it is oral, documentary and material evidence that matter most. Therefore, it is an important duty cast upon the police to evince interest in collection of evidence to a crime in order to make up a strong case against accused.

## **1.2 OBJECTIVES**

Once you go through this unit, you should be able to:

- explain the meaning and nature of evidence;
- describe examination of witnesses and its evidentiary value;
- describe confession and extra-judicial confession and their evidentiary value;
- explain what is discovery of facts u/s 27 of the Evidence Act and its evidentiary value;

- describe the relevance, procedures and importance of test identification parade;
- explain the role and relevance of accomplice; and
- state nature and importance of documentary evidence.

### ☆ Oral Evidence

Oral evidence as defined under Section 3 of the Indian Evidence Act, 1872, refers to: “All statements which the court permits or requires to be made before it by witnesses, in relation to matters of facts under inquiry.” It includes evidence tendered by eye-witnesses and also circumstantial witnesses to a crime. It also includes evidence given by prosecution witnesses and defence witnesses as well. The Indian Evidence Act gives more weightage to oral evidence than to any other evidence. Oral evidence is very crucial in criminal trials. The availability, veracity and credibility of witnesses determine the fate of a case before court.

### **1.3 EXAMINATION OF WITNESSES**

Sections 160, 161 and 162 CrPC provide for summoning, examination and recording statements of witnesses to crime by the investigating police during investigation of crimes. The investigating police must follow the procedures laid down under these sections to meet the requirements of rules of evidence so that the evidence collected by them does not go waste and is properly appreciated by the trial courts. They should abjure unlawful methods of inducement, threat or promise to witnesses while examining them. Section 163 has prohibited such unlawful methods to be used by the police during investigation.

- **Powers of Police Officer to require Attendance of Witnesses**

According to Section 160(1), the police can by order require the attendance before himself of any person, provided the conditions listed out below are fulfilled:

- (a) The order requiring the attendance must be in writing;
- (b) The person is one who appears to be acquainted with the facts and circumstances of the case;
- (c) The person is within the limits of the police station of the investigating police officer or is within the limits of any adjoining police station.

However, no person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such child or woman resides. This provision is intended to give special protection to children and women against misuses and abuses by the police empowered under Section 160(1).

It is the legal duty of every person to attend if so required by the investigating police. If such person intentionally omits to attend, he is liable to be punished under Section 174 IPC. However, the investigating police officer has no authority to use force to compel attendance of such person nor does he have any power to arrest or detain such a person. It may also be noted that a Magistrate has no power to issue any process compelling a person to attend before a police officer.

Any State Government may, if it so desires, may make rules and provide for the payment by the police officer of the reasonable expenses of every person, attending under sub- section (1) of Section 160 CrPC at any place other than his residence.

- **Examination of Witnesses by the Police**

The object of Section 161 is to collect evidence which may later be produced at the trial. In case of trial before a court of session or in case of trial of a warrant- case, a charge may be framed against the accused on the basis of the statements recorded by the police under Section 161.

According to Section 161 (1), any person supposed to be acquainted with the facts and circumstances of the case can be orally examined-

- (a) by a police officer making an investigation of the case, or
- (b) on the requisition of such officer, by any police officer not below such rank as the State Government may by order prescribe in this behalf.

The words “any person” in Section 161 (1) include any person who may be accused of the crime subsequently. Where a person is being examined by a police officer under Section 161 (1), he is required to answer truly all questions put to him by such officer. He is, however, not bound to answer such questions which may have a tendency to expose him to a criminal charge or to a penalty or forfeiture under Section 161 (2). It is quite important for effective investigation that

every person questioned by the police officer must furnish, and must be under a legal duty to furnish, all information available with him to the police. Logically, the law must also require that the information is not false or misleading. If a person, being legally bound to answer truly all questions relating to such case refuses to answer any such question demanded of him, he shall be liable to be punished under Section 179 IPC. Further, if such a person gives an answer which is false and which he either knows or believes to be false or does not believe it to be true, he is liable to be punished under Section 193 IPC for giving false evidence.

However, 'compelled testimony' is prohibited under the section as the evidence procured is deemed to be under physical threats or violence or intimidating methods and the like.

The investigating police may reduce into writing any statement made to him in the course of the examination of a person, and if does so, he shall make a separate and true record of the statement of each such person whose statement he records under Section 161(3). He should dispense with recording of stereo-typed statements and also recording of statements in case diaries. This provision gives wide discretion to the investigating police to record or not to record, any statement made to him during investigation. This appears to be necessary. A police officer investigating crime has to question, and then to examine orally a large number of persons, many of whom may have no useful information to give, and much of the information may be found to be pointless at the end.

Section 161 (3) gives discretion to a police officer to reduce into writing any statement made to him during an investigation. If he exercises his discretion in favour of reducing the statement into writing, he is bound to make a separate and true record of the statement of each person whose statement he records and the matter does not rest with his sole discretion. This does not, however, mean that he should take down the statement verbatim, but it is essential that he should make a separate record of the statement of every witness and it is not sufficient for him to say that one witness corroborates the other.

The statement recorded should not be in the indirect form of speech. The writing, therefore, should be a record in the first person, of the whole of the account a witness gives.

The statements of witnesses during investigation should be recorded as promptly as possible. Unjustified and unexplained long delay on the part of the investigating police in recording a statement of a material witness during the investigation may render the evidence of such witness unreliable. The prompt recording of a statement under Section 161 of CrPC eliminates the possibility of a false account of the incident being given in the statement.

- **Recording of Statements of Witnesses**

Section 162(1) clearly enjoins that no statement made by any person to a police officer in the course of an investigation under Chapter XII of CrPC, shall, if reduced to writing, be signed by the person making it. The provision is intended as a statutory safeguard against improper police practices. Contravention of the provision will vitiate the value of the evidence given by the person making and signing a statement before the police during the investigation of a crime. However, the Supreme Court has clarified that if an investigating officer has by mistake obtained the signature of the accused on the seizure memo in violation of Section 162(1) it shall not vitiate the whole proceedings. It only amounts to an irregularity. However, the investigating police should be cautious and careful to ensure such irregularities are not occurred willfully.

Section 162 deals with the use of statements made to a police officer under Section 161. Under the Indian Evidence Act, a former statement made by a witness can be used to contradict him, to impeach his credit, to corroborate him, or to refresh hidden memory. But this section imposes an absolute bar on the use of the statements covered by it for any purpose except for the purpose provided therein, however garbed the use may be. But this section does not apply to extra-judicial confessions.

The intention behind the section is to protect the accused from being prejudicially affected by any dishonest or questionable methods adopted by an overzealous police officer, who may be inclined to miss-record the statements or bring pressure or influence on the witnesses. The object being achieved under sub-section (1), the proviso enables the accused and in some cases even prosecution bring out the contradiction between the statements made by the witnesses before the court and before the investigating officer. As held by the High Court of Nagpur in *Balram Tikaram v Emperor*, AIR 1945 Nag 1, the omission of the investigating officer to record the statements of the persons examined by him separately during investigation and destruction of



notes taken by him constitute a flagrant attempt to circumvent the law and thereby to defeat the right which the law bestows on a person under trial.

“Statement” in this section is the entirety of the facts stated by the witness to a police officer during investigation. All those facts, whenever and wherever stated, go to constitute his statement.

Every statement made to a person assisting the police during an investigation cannot be treated as a statement made to the police or to the Magistrate and as such excluded by Section 162 or Section 164 CrPC.

A report or statement recorded after the commencement of the investigation would be a statement under this section. The statement of the complainant recorded after the FIR is lodged would be a statement in the course of an investigation. Written statements of witnesses are also deemed to be statements given under Section 161 CrPC.

The statements of witnesses incorporated in panchnamas, which were signed by them, do not lead to their evidence in the court being excluded from consideration as violative of the provision of Section 162. However, asking the persons examined under Section 161 to sign their statements, may sometimes diminish the value of the testimony of the witnesses before the court. The signature of a witness on his statement under Section 162 CrPC does not make it inadmissible in evidence. Signature of the accused on the seizure memo when obtained by the investigating officer in ignorance of the provision of Section 162 CrPC, as held by the Apex Court, would not vitiate the evidence regarding the recovery.

- **Evidentiary value/Importance of the Statements made to the Police during Investigation**

A statement recorded by police officer during investigation is neither given on oath nor is it tested by cross-examination. According to the law of evidence such statement is not evidence of the facts stated therein and therefore it is not considered as substantive evidence. It is considered no evidence to initiate criminal cases under Sections 194 and 195 of IPC. But if the person making the statement is called as a witness at the time of trial, his former statement, according to the normal rules of evidence could be used for corroborating his testimony in court or for

showing how his former statement was inconsistent with his deposition in court with a view to discredit him.

Under the proviso to Section 162 CrPC, the statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated under Section 145 of the Evidence Act and for no other purpose. They cannot be used for the purpose of seeking corroboration of assurance for the testimony of the witness in the court. If any part of the previous statement is used for contradiction, any part of the statement can be used in the re-examination of the witness for the only purpose of explaining any matter referred to in his cross-examination.

Section 162 implicitly prohibits the use of the statements made to the police during the course of the investigation for the purpose of corroboration. That is based on the assumption that the police cannot be trusted for recording the statements correctly and that the statements cannot be relied on by the prosecution for the corroboration of their witnesses as the statements recorded might be of a self-serving nature. The object of the section is to protect the accused both against over-zealous police officers and untruthful witness.

With regard to panchayatnamas it has been held that there is no provision under the Indian Evidence Act by which such documents can be used as substantive evidence. If they are prepared at the time, they can be used by the witnesses for the purpose of refreshing their memories in the witness-box under Section 159 of the Evidence Act, but in themselves they are not evidence.

Statement made during an inquest under Section 174 falls under this section. The inquest statements, being within the bar of Section 162 of the Code, cannot be used as substantive evidence.

Sub-section (2) of this section excludes from its operation a statement falling within the provisions of Section 32 (1) the Evidence Act, and a statement falling under the provision of Section 27 of the Evidence Act. The statements are not void as offending Article 14 of the Constitution.

Please answer the following Self-Assessment Questions.



**Self-Assessment Question 1***Spend 10 minutes*

- 1) What is evidence and what are its kinds?
- 2) Under Sections----- of CrPC the police are empowered to summon, examine and record statements of witnesses.
- 3) Explain the procedures involved in summoning, examining, and recording of witnesses by the investigating police.
- 4) Describe briefly the evidentiary value attached to the statements of witnesses u/s 161 CrPC.

**1.4 RECORDING OF STATEMENT OF WITNESS U/S 164(5) OF CRPC**

If an investigating police officer during investigation of a crime convinced for some reason that recording of statement of witness to the crime by a competent Magistrate is essential, he can proceed under sub-section (5) of Section 164 of CrPC by arranging the witness to appear before such Magistrate and to get his statement recorded. The Magistrate may record the statement of such witness on oath or affirmation and shall obtain the signature or the thumb impression of the witness, as the case may be. The investigating police officer may choose to get witnesses examined by a competent Magistrate when they are unreliable and evasive.

Please answer the following Self-Assessment Question.

**Self-Assessment Question 2***Spend 3 minutes*

- 1) Explain briefly the procedures involved in recording statement of witness u/s 164 (5) of CrPC by a Magistrate.

**1.5 DYING DECLARATION**

Statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes

into question, is admissible in evidence under clause(1) of the Section 32 of the Evidence Act. Such statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question. The person who made such statement but survives after, then it cannot be considered as the dying declaration. Some times dying declaration becomes an FIR if that is recorded before registration by the police.

As far as possible the dying declaration should be duly corroborated and proved. At times, such a dying declaration which is truthful and beyond suspicion that can be relied upon solely without corroboration. If the maker of dying declaration survives, the statement of dying declaration is admissible under Section 157 of the Evidence Act. Dying declaration should be accepted as a whole not by part during the trial.

#### **a. Procedure in Recording Dying Declaration**

It is always advisable for the police to have dying declaration recorded by an Executive Magistrate. It strengthens the prosecution case leaving no room for doubt. The Executive Magistrate while recording the dying declaration should have a medical officer with him to certify that the maker is in good state of health to give his statement and also to have it before two or more independent witnesses. If the police cannot get an Executive Magistrate without delay then there is nothing wrong in recording of the dying declaration by a gazetted police officer in the presence of two or more independent witnesses. Even if this is not possible, the police officer himself can record the dying declaration in the presence of a medical officer and two or more independent witnesses. After recording of the dying declaration the doctor, the scribe, the police officer should endorse and sign at the bottom of the dying declaration. If such dying declaration is reasonably trust worthy. It should be corroborated by other evidence. History of the patient recorded in the Medico-Legal-Register cannot be considered as the dying declaration unless it is corroborated by other evidence and is justified beyond reasonable doubt. Once the dying declaration is recorded, the signature of the maker should be obtained on it. If it is not possible due to his physical incapability, the dying declaration without signature is also admissible in evidence. If the maker of the dying declaration is illiterate his left hand thumb

impression should be taken on the declaration. It is also preferred to record the dying declaration in question and answer form, instead of narrative with out any leading questions. As far as possible the dying declaration should be in the language of the injured. In fact, the use of signs or gestures by the maker is allowed at certain circumstances. If the maker dies while giving the dying declaration the police should not try to take the thumb impression of the dead and they should record the same and the signatures of the witnesses should be obtained on it. This is admissible in evidence. Though oral dying declaration made before the witnesses is also admissible under Section 32 of the Evidence Act, it is not appreciated by the court on the same standard as that of the recorded dying declaration by following all the formalities. Hence, it should be avoided. The dying declaration should include as far as possible the names of the accused and of the eyewitnesses. Even if it is not there in the dying declaration it can be covered up during the investigation. It should be succinct, straight and clear with out any unnecessary narration.

Please answer the following Self-Assessment Questions.

**Self-Assessment Question 3**

*Spend 5 minutes*

- 1) Under Section ----- of the Indian Evidence Act dying declaration is recorded.
- 2) What is dying declaration? How should it be recorded?

## **1.6 INTERROGATION OF ACCUSED PERSON**

*“The examination of an accused person is the most difficult of all tasks for an investigator who appreciates its value...He who knows men, who is gifted with a good memory and presence of mind, who takes pleasure in his work and zealously abandons himself to it, who is always scrupulous bound by the rules laid down in law, and who sees always in the accused a fallen brother or one wrongfully suspected, he will question well. But an officer who is wanting in a single one of the qualifications will never do any good.”- Dr. Hans Gross: Criminal Investigation.*

## **1.7 POWERS OF POLICE OFFICER TO COMPEL ATTENDANCE OF ACCUSED**

Investigation into a crime often includes examination of number of persons including the suspects and the accused. The words “any person” under Section 160 will, therefore, include a suspect or an accused. The police officer is empowered to require the personal attendance of a suspect or an accused to the crime during the investigation subject to the conditions laid down under Section 160(1). This view has been clearly up held by the Supreme Court in *Nandini Satpathy v PL Dani*, AIR 1978 SC 1025, 1978 Cri. LJ 968, holding that a police officer is entitled to question the accused and the accused is bound to answer all questions except those which would incriminate him.

However, the police should not contravene the prohibitions laid down under Section 163 of CrPC that at no point of time shall police officer who interrogate such accused offer or make, or cause to be offered or made, any such inducement, threat or promise extract information.

However, the police officer has no authority to call on the accused to produce any documents before him. A notice to produce a document under Section 91 Cr PC cannot be issued to an accused person as the Article 20(3) of the Constitution gives protection to an accused against self-incrimination. Summons for production of documents under Section 91 of the CrPC cannot be issued to a person against whom complaint is pending before the Magistrate and inquiry under Section 202 of the CrPC is being conducted. Such a person, even if not already summoned by the Magistrate, is an accused person. The accused person, even after his remand to judicial custody, subject to his right to silence, can be questioned by the police with the permission of the Magistrate in any place and manner which do not amount to custody in the police.

When a police officer considers that the case against an accused person has been proved, he should, before arresting him, always give him an opportunity to explain the facts in evidence against him, should he wish to do so. It is then open to the police officer to put him such questions as he considers necessary for the purpose of establishing him to explain or elucidate any circumstances that may have been ascertained in the course of investigation. Interrogation of an accused person could also be done in the presence of his advocate. There is nothing that prohibits taking vedigraph during the interrogation of an accused person. This is particularly

necessary in lengthy or complicated cases so that details may not be forgotten or overlooked in the course of enquiries for their verification. The replies may disclose the line of defence of the accused person and may also at times indicate sources from which independent evidence may be available. If the accused proceeds to make a defence with the object of explaining his position, further questions may be put to him to elucidate that explanation. But the questioning should not be persistent or take the form of cross-examination nor should the accused be pestered to answer questions or make any statement if he is unwilling to do so. Failure to do this frequently results in the prosecution of weak cases which break down in court when the accused tenders his explanation of the facts alleged against him. The practice of resorting to persuasion, tricky or oppression to induce an accused to confess or make any statement and use of third degree methods is prohibited. There is no legal embargo on the investigating police to obtain the accused specimen signatures, finger prints, photograph and vedigraph, blood samples for investigation. Under Section 311A the Magistrate of first class is empowered to direct any person including an accused to his specimen signatures or handwriting for the purpose of investigation.

Please answer the following Self-Assessment Questions.

**Self-Assessment Question 4**

*Spend 3 minutes*

- 1) Can the police summon documents from an accused u/s 91 CrPC?
- 2) Briefly explain as to how the police should interrogate an accused? What are the do's and don'ts.

## **1.8 CONFESSION**

The term “confession” has not been defined under the Evidence Act. Confession is a statement made by the accused, who must either admit in terms the offence or at any rate substantiate all the facts which constitute offence. Confession, a term used in criminal law, is a species of “admission” as defined in Section 17 of the Evidence Act. An admission is a statement, oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact.

Every confession must necessarily be an admission, but, every admission does not necessarily be a confession. As held by the Privy Council in *Pakala Narayana Swami v. Emperor*, AIR 1939 PC 47, confession is considered highly reliable evidence because no rational person would make an admission against his interest unless prompted by his conscience to tell the truth.

Section 164 of CrPC provides for confession of an accused to a crime before a competent Magistrate. The section emphasizes that:

1. a confession shall not be made to a police officer;
2. if a person in police custody desires to make a confession, he must do so in the presence of a Magistrate;
3. the magistrate shall not record it unless he is, upon inquiry from the person making, satisfied that it is voluntary;
4. when the magistrate records it, he shall record it in the manner provided for in section 164; and
5. only when so recorded the confession will become relevant and admissible in evidence.

The Section 164 applies only to statements recorded during investigation or at any time thereafter but before the commencement of the trial. The police have to bear in mind when an accused wanted to confess his guilt and avail the provisions of the section promptly during investigation before filing of charge sheet and not after the commencement of trial of the case.

- **Procedures in Recording of Confessional Statement**

The Magistrate should ensure while recording of confession that the following conditions and circumstances are fulfilled and prevailed:

1. Fidelity or faithful reproduction of the statement;
2. Spontaneity of the making thereof;
3. Awareness in the accused's mind of the risk that he incurs in case he makes a confessional statement in relation to the charge in which he has been arraigned, and lastly;



4. A sense of safety from the risk, physical or mental, if any, consequent upon his refusal to make one;
5. The accused should be allowed with sufficient time for reflection;
6. Every question and every answer must be recorded in full and preferably in the
7. language of the accused;
8. The signature or thumb mark of the accused must be affixed; and
9. The Magistrate must make a memorandum at the foot of the confession.

- **Evidentiary value of Confession**

Confessional statement is not substantive evidence. It can only be used for the purpose of corroboration under Section 157 or contradiction under section 145 of the Evidence Act. But it can constitute the basis of a complaint under Section 340 and a conviction under Section 193 of the IPC. In so far as retracted confession is concerned, it will be open to the court to convict an accused on his confession itself though he has retracted the confession at a later stage. Nevertheless, as per law, the courts usually require some corroboration before convicting the accused person on a statement. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires corroboration that the retraction was an afterthought and that the earlier statement was true. However, this is not a rule of law, but is only rule of prudence.

Confession of a co-accused is strictly not evidence against the other co-accused against whom it can be taken into consideration under Section 30 of the Evidence Act. If it is inculpatory then the court may consider such confession as a piece of evidence. Therefore, a conviction based solely on the confession of a co-accused would be bad in law. When there is evidence in the case, the confession of the co-accused can be taken into consideration along with the other evidence to convict the accused, who did not make the confession.

Please answer the following Self-Assessment Questions.

**Self-Assessment Question 5***Spend 5 minutes*

- 1) What is confession? What are the procedures to be followed by a Magistrate while recording it?
- 2) What is the evidentiary value attached to confessional statement?

**1.9 EXTRA-JUDICIAL CONFESSION**

Extra-judicial-confession is that which is made by the accused elsewhere than before a Magistrate, or in court. It embraces not only express confession of crime, but also those admissions and acts of the accused from which his guilt may be implied. Extra-judicial confession can form the basis of a conviction. By way of abundant caution, however, the court may look for some corroboration. Extra-judicial confession cannot *ipso facto* be termed to be tainted. An extra-judicial confession, if made voluntarily and proved can be relied upon by the courts. If extra-judicial confession is clear, unambiguous and in unequivocal terms, it should be believed and acted upon without agitation. There should not be any undue delay in recording of extra-judicial confession.

Please answer the following Self-Assessment Question.

**Self-Assessment Question 6***Spend 3 minutes*

- 1) What is extra-judicial confession? Has it got any evidentiary value?

**1.10 DISCOVERY OF FACTS U/S 27 OF THE EVIDENCE ACT**

The Section 27 of the Evidence Act is an exception to the provisions enacted in Sections 25 and 26 of the Evidence Act, 1872, which lay down that no confession made to a police officer shall be proved as against a person accused of an offence and that no confession made by any person while he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. However, the section provides for any fact is discovered in consequence of the information received from a person accused of any offence, in the custody of a police officer, that part of the information as relates distinctly to the fact thereby recovered can be proved whether it amounts to a confession or not.

This provision contains an investigatory mechanism permitting eventual proof of information received from an accused person while in police custody only when it is assured by the fact that it led to discovery. Two things are necessary to satisfy the requirements of the provision. First, there must be a statement containing an information from a person in the police custody accused of an offence and second, as the direct consequence thereof, a distinct recovery of fact should eventually be shown to have followed. The facts recovered would be the material facts such as objects which can be physically comprehended or perceived. When such objective facts are recovered pursuant to the information contained in the statement, such information is admissible in evidence against the accused who, while in police custody, disclosed that information.

- **Procedure to be followed in Recording Information**

Statement made by an accused person, which may be proved under Section 27 of the Evidence Act, should be clearly and carefully recorded by the investigating police. The statements should be recorded in the first person, that is to say, as far as possible in the actual words of the accused. Judicial opinion is now strongly set against the use of force or third-degree methods, for recovery under Section 27. The protection afforded by Article 20(3) of the Constitution against testimonial compulsion will not apply in such a case.

- **Evidentiary Value/Importance of Facts discovered u/s 27 of the Indian Evidence Act**

Evidence to be admissible under this section, the accused should be in the police custody and should have been committed an offence. Further it is also necessary that there must be witnesses to recovery mahazar and must state categorically that the accused himself stated where the facts are concealed and should himself show such place and remove them from the concealed place. Mere solitary recovery of articles of crime is not enough. It should also be supported by other evidence. There should not be inordinate and unexplainable delay in recovery of facts to the crime, if so it loses its evidentiary value. Any recovery effected without recording the statement of the accused is unacceptable under the law. There should be a statement of the accused containing all necessary details linking to the crime. It is also necessary for the investigating officer to summon respectable and independent witnesses for recovery procedure. Otherwise, recovery loses its evidentiary value. The statement of accused recorded by the investigating police officer is wholly inadmissible except to the limited extent permitted by the Section 27 of

the Evidence Act. Therefore, any confession by the accused to the police except to the extent provided in Section 27 of the Evidence Act cannot be brought in evidence against him.

Please answer the following Self-Assessment Questions.

**Self-Assessment Question 7**

*Spend 5 minutes*

- 1) Under Section -----of the Indian Evidence Act provision for discovery of facts is made.
- 2) What is meant by discovery of facts u/s 27 of the Indian Evidence Act? What are the procedures laid down for the police under the section to be followed while discovery of facts?
- 3) What is the evidentiary value attached to discovery of facts under the section?

### **1.11 TEST IDENTIFICATION PARADE**

During the investigation of a crime the police agency is required to hold identification parade for the purpose of enabling the witness to identify the person alleged to have committed the offence particularly when such a person was not previously known to the witness or the informant.

Section 54A CrPC makes provision for identification of person arrested. The section provides that where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the court having jurisdiction, may on the request of the officer- in- charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the court may deem fit.

The whole idea of a test identification parade is that witnesses, who claim to have seen the culprits at the time of the occurrence, are to identify them from the midst of other persons without any aid or any other source. The identification test is usually adopted during the investigation of a crime by the police, when the witnesses are interrogated for the first time and state that they had seen some persons committing the crime, but do not know their names and

would be able to identify them, if they would see them again. The identification test is a check upon their veracity. These proceedings are in the nature of tests and the courts regard them as record of facts which establish the identity of any thing or person.

- **Purpose of Test Identification**

The purpose of identification test is to test the memory and veracity of a witness, who claims to identify an accused person as the participant or one of the participants, in a crime. It may be quite easy for a witness to identify an accused in the dock and say that he was the person who had committed or had participated in the commission of the crime. Therefore, for the purpose of testing the memory and veracity of the witnesses, identification parades are held in jail and the witnesses are asked to pick out the culprits from the group of persons in which suspects as well as other persons are mixed. First, is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second, is to satisfy the investigating police officer that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved.

- **Procedure to hold Test Identification Parade**

Proper identification would depend on numerous factors, such as one's power of observation, distance, time and light, etc. The result would also be affected if the identification was held long after the incident but in case of arrest on the spot, the identification would be directed mainly to test the credibility of the witness who actually helped or effected arrest. If the accused refuses to participate in identification parade then adverse presumption could be drawn.

Every test identification of suspects should be held with only one suspect mixed up with nine or ten innocent persons, the innocent persons being changed every time a fresh suspect is put up for identification. If any of the suspects is possessed of a scar, a mole, a pierced nose, pierced ears, a blinded eye, a split lip or any other distinctive mark efforts should be made to conceal it by pasting slips of papers of suitable size over it, similar slip being pasted at corresponding places on the faces of a number of other under trials standing in different places in the parade.

- **Evidentiary value/Importance of Test Identification parade**

The evidence forthcoming from test identification parade is held admissible under Section 9 of the Indian Evidence Act. The fact if proved, can be used for purposes of corroboration under Section 157 or for contradiction under Section 145 or for impeachment of the credit of the identifier under Section 155 of the Evidence Act. Apart from the investigation utilizing these tests for checking up their own evidence and affording the courts later on to rely upon them as corroborative evidence, the accused may, in certain cases, demand the holding thereof.

Please answer the following Self-Assessment Questions.

**Self-Assessment Question 8**

*Spend 5 minutes*

- 1) When is the purpose of test identification parade?
- 2) What are the procedures to be followed by a Magistrate while arranging test identification parade?
- 3) Briefly state the evidentiary value attached to test identification parade.

## **1.12 ACCOMPLICE**

An accomplice is a person who along with one or more others has involved directly or indirectly in commission of offences and whom the police for some reason do not arrest but call as a witness for the prosecution. If he is a person induced by the police to take part in the crime for the purpose of collecting evidence against others, he is called a trap-witness. If he arrested thereafter he is given a pardon, he is referred to as an approver. Section 306 of CrPC speaks about accomplice and pardon given to such accomplice and the powers and procedures to be followed by courts in respect of an accomplice.

Section 133 of the Indian evidence Act speaks about the admissibility of evidence of an accomplice. The section 133 reads as: “An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.” However, it is dangerous to proceed upon convicting the accused on the sole testimony of an accomplice. The appreciation of an accomplice’s evidence by court has to satisfy a double test. His evidence must show that he is a



reliable witness which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the accomplice's evidence must receive sufficient corroboration as laid down in *Sarwan Singh v. State of Punjab*, AIR 1957 SC 657.

The police are empowered to make use of provisions of Section 306 of CrPC during investigation of crime to identify the person accused of crime along with one or more accused and consider such an accused person for some reasons to be an accomplice and proceed further. However, reasons so considered by the police must be justifiable in the interest of rendering justice to the deserved.

Please answer the following Self-Assessment Question.

**Self-Assessment Question 9**

*Spend 3 minutes*

1) Who is an accomplice? What extent his statement is relevant in evidence?

☆ ***DOCUMENTARY EVIDENCE***

**1.13 COLLECTION OF DOCUMENTARY EVIDENCE**

The need and necessity of documentary evidence depends upon the nature of offence committed. Documentary evidence is necessary in all most all criminal cases. It is very essential in investigation of cases of fraud, forgery, cheating, money laundering, criminal breach of trust, cyber crimes etc. Under the Evidence Act, documentary evidence could be gathered by the police both in primary and secondary form depending upon its availability and accessibility at the time of investigation.

Under Section 91 CrPC, whenever any officer- in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purpose of investigation under CrPC by such officer, he may issue a written order to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the order. The person receiving such an order is legally bound to produce it unless the document requisitioned comes within the purview

of Section 123 or Section 124 of the Evidence Act or the Bankers' Books Evidence Act, 1891 or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority. Failure to produce the document or thing is punishable under Section 175 of IPC.

If any such postal or telegraph document, parcel or thing, wanted for any investigation the investigating police officer may request commissioner of police or District Superintendent as the case may be to cause search to be made for and detain such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or court under sub-section (1) of Section 92 CrPC.

If the document or other thing is in the possession of the accused, an order for its production shall not be issued, as it contravenes clause (3) of Article of the Constitution of India. It should be seized either from him or through a search.

If the person who is in possession of any document required for investigation and has refused to produce at the instance of investigating police officer, the latter can obtain search warrant under Section 93 or 94, as the case may be, from the jurisdictional Magistrate search person or place following the procedures laid down under Section 100 of CrPC.

Wherever the documents are to be submitted to courts to consider them as evidence, all such documents are to be seized as per the procedure laid down under Section 100 of CrPC. If the documents collected and seized required to be sent to forensic expert for question documentation examination the investigating police must follow the procedure laid down. Investigating police must possess working knowledge of laws and procedures to collect, prepare, pack and parcel the disputed documents for Forensic Science Laboratory for expert's opinion.

In examination of questioned documents, identification of hand writing, evaluation of typed script, examination of writing materials, matching of seals, stamps and torn edges, reconstruction of burned documents, study of secret writings and evaluation of altered documents form the most important aspect of investigation.

In partly genuine document, falsification may be looked in to carefully by following items of erasures with chemicals, erasures by mechanical means, additions, obliterations, removal of portion of text or destruction of the base.

The investigating police must follow three stages in collection of questioned documents for investigation. They are:

1. **Disputed writings:** In this stage the investigating police will have to seize the disputed writings under a panchanama for investigation.
2. **Request writings:** In this stage the investigating police will have to collect writings from the culprit before panchas and obtain the signatures of the panchas on the sheets of request writings. The minimum number of request writings should not be less than six.
3. **Admitted writings:** In this stage the investigating police will have to obtain the earlier writings of the culprit.

After completion of collection of questioned documents, the investigating police should send them to Forensic Science Laboratory for expert's opinion. The investigating police should also ensure the safety and intactness of the articles during transit to the Forensic Science Laboratory.

On completion of investigation, if *prime facie* case is made out against the accused the police have to submit *charge sheet* to the court. If no case is made out against the accused, the police have to submit *final report* in the form of 'B' or 'C' to the court vide Section 173 (2). On submission of charge sheet the Magistrate will takes cognizance of the case under Section 190(1) (b) CrPC.

Please answer the following Self-Assessment Questions.



**Self-Assessment Question 10***Spend 7 minutes*

- 1) Under Section -----of CrPC the investigating police can summon documents for investigation.
- 2) What are the procedures to be followed by the investigating police while summon documents from Post and Telegraph department?
- 3) What are the procedures to be followed by the police investigating while sending documents for Forensic Science Laboratory for expert opinion?

**1.14 SUMMARY**

- Evidence is a means through which existence or non-existence of the facts in issue could be proved or disproved in a criminal case. In criminal cases it is the fundamental duty of the investigating police to collect relevant evidence from various sources and submit in the form of charge sheet to the court for trial. Generally, evidence is gathered in the form of statements of witnesses, documents and materials. This is known as best evidence rule in the language of law. Every trial court has to appreciate the evidence furnished by the prosecution and the defence on the touch-stone of rules of evidence to arrive at logical conclusion of the case in issue before the court.
- In criminal trials, oral evidence is given a very important place and position. The statements of eye-witnesses, circumstantial witnesses, accused persons, confession, extra-judicial confession, dying declaration of a person and statement of accomplice etc., form an important hub of oral evidence.
- Sections 160, 161 and 162 of CrPC provide for examination and recording of the statements of witnesses by the investigating police during the investigation of a crime. Persons who are acquainted with the facts and circumstances of the case are supposed to state before the police. Section 160 CrPC empowers the investigating police to summon persons, who are acquainted with the facts and circumstances of a case. In case of child and woman to be examined they are to be examined in their own place of stay. Vide Section 161 CrPC the

investigating police can examine the persons acquainted with the facts and circumstances of the case. The accused to a crime can also be examined under this Section, but the investigating police are bared from compelling the accused to give statement against himself. The compelled testimony is prohibited. The statements of the witnesses should be recorded separately as they state without any interpolations. They should not in stereo-type form. Section 162 prohibits the investigating police to obtain signatures of the witnesses on their statements. If a witness refuses to attend for examination he can be prosecuted under Section 174 IPC.

- The investigating police can to interrogate the accused person and record his statement. However, they are prohibited from use of any force, threat or make promise to the accused collect information. The investigating police cannot compel an accused to produce documents. If they want them for investigation the same may be obtained by search and seizure from the possession and place of the accused. If an accused wants to confess to the crime, he is entitled to do so under Section 164 CrPC before a competent Magistrate and not before the investigating police. Extra-judicial confession made before any person other than a Magistrate is also a good piece of evidence.
- Vide Section 27 of the evidence Act, the investigating police are empowered to recover the facts to the crime on the information of the accused though the information is confessional one. It is a good piece of evidence in criminal case. When the investigating police find that the witnesses have seen the accused for the first time while committing the crime, then they can arrange for test identification parade vide Section 54A CrPC read with Section 9 of the Evidence Act. If the witnesses identify the accused it will be a good piece of corroborative evidence for the prosecution. An accomplice is a person who along with one or more others has involved directly or indirectly in commission of offences and whom the police for some reason do not arrest but call as a witness for the prosecution. His evidence is also admissible in evidence and will also strengthen the prosecution case.
- Documentary evidence is necessary in all most all criminal cases. It is very essential in investigation of cases of fraud, forgery, cheating, money laundering, criminal breach of trust,

cyber crimes etc. It could be gathered by the investigating police both in primary and secondary form depending upon its availability and accessibility at the time of investigation. Under Section 91 CrPC the investigating police are empowered to summon documents for the investigation with certain exceptions and limitations. Under Sections 93 and 94 CrPC the investigating police can obtain search warrant from a competent Magistrate and search and seize the documents required for investigation.

- If the case is made out on investigation, the police shall file *charge sheet* to the court. If no case is made out against the accused, the police shall submit *final report* -in the form of 'B' or 'C'- to the court vide Section 173 (2).

### **1.15 TERMINAL QUESTIONS**

- 1) What is evidence? List out different kinds of oral evidence.
- 2) Discuss the powers and limitations in examination of witnesses.
- 3) Explain the powers and limitations of the police in interrogation of an accused.
- 4) Explain the powers and limitations of the police in collecting evidence from confession, extra-judicial confession, and discovery of facts, test identification parade and accomplice.
- 5) Explain briefly the process of collection of documentary evidence.

### **1.16 ANSWERS AND HINTS**

#### **Self-Assessment Questions**

- 1) (i) means to prove or disprove a fact in issue (ii) oral and documentary etc.
- 2) Sections 160 to 162 CrPC.
- 3) Sections 163 and 91 CrPC and Article 20(3) Constitution.
- 4) Sections 164, 54A, 306 CrPC, sections 29, 27 and 9 of the Evidence Act.
- 5) Sections 91, 92, 93 and 94 CrPC.

#### **Terminal Questions**

- 1) Refer to section 1.1 of the unit.
- 2) Refer to section 1.3 of the unit.
- 3) Refer to sections 1.6 & 1.7 of the unit.



4) Refer to sections 1.8 to 1.12 of the unit.

5) Refer to section 1.13 of the unit.

### **1.17 WORK ASSIGNMENT**

The readers are advised to visit the nearest police station and request the officer-in-charge of the police station to allow them to see the Property Register, Mahazar Formats and other documents relating to Examination of Witnesses, Confessions, Discovery of facts u/s 27 of the Evidence Act, Test Identification Parade, Accomplice, and what is the process involved in sending up of the seized articles and documents to FSL for opinion, Charge- sheet, Final Report and so on. They may also interact with the police at the police station so that they can get their doubts clarified which will in turn broaden their outlook and understanding of the topic.

### **1.18 REFERENCES AND SUGGESTED READINGS**

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