

**432.** (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his advocate shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

**433.** When an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion:

Procedure where Judges of Court of appeal are equally divided.

Provided that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, so requires, the appeal shall be re-heard and decided by a larger Bench of Judges.

**434.** Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the cases provided for in section 418, section 419, sub-section (4) of section 425 or Chapter XXXII:

Finality of judgments and orders on appeal.

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits,—

(a) an appeal against acquittal under section 419, arising out of the same case; or

(b) an appeal for the enhancement of sentence under section 418, arising out of the same case.

**435.** (1) Every appeal under section 418 or section 419 shall finally abate on the death of the accused.

Abatement of appeals.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

*Explanation.*—In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister.

## CHAPTER XXXII

### REFERENCE AND REVISION

**436.** (1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Reference to High Court.