sue, widespread distrust in Courts, and general atmospheres that seemed to reinforce these misgivings rather than counteract them[24].

5. Fair admission

In fair and honest admission, the observation cited in Section 4 are universal and find firm stay in Indian scenario too. Keeping in view of the reasonably developed system of medicine, hospital managements and functional overview medical institutions and professionals by statutory bodies, and particularly backed by cogent judicial pronouncements which balance the interests of the service providers and service receivers *i.e.*, doctors and patients objectively and in the interest of society and State, remedial tools in civil, criminal and consumer regimes, it cannot be accepted that an aggrieved family member of an ill-fated patient be excused for his emotive outburst and violence against the medical staff. Attention on the following aspects is a need of the time:-

(i) The provisions of the statutes like The Maharashtra Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2009, and Andhra Pradesh statute of 2008 should be strictly implemented.

(ii) The penal provisions must be more severe, that the sentence extending upto 7 years and the fine upto Rs.One lakh should find place in the Statutes, and award of punitive damages for property damaged by the accused/assailants.

(iii) There must be a State regulation directing fixing of C.C. cameras in all blocks of hospitals to watch the performance of the hospital staff and to identify the miscreants in case of any attack.

(iv) A time-bound disposal of the grievances shall be guaranteed legally in all spheres of dispute resolution.

Idealism of Medical Service is not to be represented in the form of professional mendicancy.

"Always laugh when you can. It is cheap medicine."— Lord *Byron*

DISCOVERY OF TRUTH IS ONLY BY EVIDENCE

By

—R. VENKATESWARA SHARMA, M.A., LL.M.,
Addl. Junior Civil Judge, Nidadavole

Evidence includes everything that is used to determine or demonstrate the truth of an assertion. Giving or procuring evidence is the process of using those things that are either (a) presumed to be true, or (b) which were proved by evidence, to demonstrate an assertion's truth. Evidence is the currency by which one fulfills the burden of proof.

In law, the production and presentation of evidence depends first on establishing on whom the burden of proof lays. Admissible evidence is that which a Court receives and considers for the purposes of deciding a particular case. Two primary burden-of-proof considerations exist in law. The first is on whom the burden rests. In many, especially Western, Courts, the burden of proof is placed on the prosecution. The second consideration is the degree of certitude proof must reach, depending on both the quantity

24. *Nathan Cortez*, A Medical Malpractice Model for Developing Countries, (2011) https://drexel.edu/~/media/Files/law/law%20review/...2011/Cortez.ashx?

and quality of evidence. These degrees are different for criminal and civil cases, the former requiring evidence beyond reasonable, the latter considering only which side has the preponderance of evidence, or whether the proposition is more likely true or false. The decision maker, often a jury, but sometimes a Judge, decides whether the burden of proof has been fulfilled. After deciding who will carry the burden of proof, evidence is first gathered and then presented before the Court.

Evidence

The word 'Evidence' has been derived from the Latin word 'evidere' which implies to show distinctly, to make clear to view or sight, to discover clearly, to make plainly certain, to certain, to ascertain, to prove.

According to *Sir Blackstone*, 'Evidence' signifies that which demonstrates, makes clear or ascertain the truth of the facts or points in issue either on one side or the other.

According to *Sir Taylor,* Law of Evidence means through argument to prove or disprove any matter of fact. The truth of which is submitted to judicial investigation.

Section 3 of The Indian Evidence Act as in the case reported *Ratanlal* & *Dhirajlal*[1], defines evidence in the following words-

Evidence means and includes-

(1) All the statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry; such statements are called Oral evidence;

(2) All the documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence;

The definition of Evidence given in this Act is very narrow because in this evidence comes before the Court by two means only-

(1) The statement of witnesses.

(2) Documents including electronic records.

But in them those things have not been included on which a Judge or a Penal authority depends for this position.

The Hon'ble *Supreme Court* of India in *Sivrajbhan v. Harchandgir*, AIR 1954 SC 564, held "*The word evidence in connection with Law, all valid meanings, includes all except agreement which prove disprove any fact or matter whose truthfulness is presented for Judicial Investigation. At this stage it will be proper to keep in mind that where a party and the other party don't get the opportunity to cross-examine his statements to ascertain the truth then in such a condition this party's statement is not Evidence.*"

Different Forms of Evidence

(a) *Oral Evidence*–Section 60 of the Indian Evidence Act, 1872 prescribed the provision of recording oral evidence, it was held in *Ratanlal* & *Dhirajlal*[2]. All those statements which the Court permits or expects the witnesses to make in his presence regarding the truth of the facts are called Oral Evidence. Oral Evidence is that evidence which the witness has personally seen or heard. Oral evidence must always be direct or positive. Evidence is direct when it goes straight to establish the main fact in issue as was held in the case of *Dr. J.J. Irani @ Jamshed J. Irani v. State of Jharkhand and another*, 2006 (4) JCR 117 (Jhr.). When there is no infirmity in the oral evidence, the same can be acted upon, In view of the decision of Hon'ble Supreme Court in the case of *Shankar Ragho Bhagane v. State of Maharashtra*, 2008 (3) SCJ 727.

(b) *Documentary Evidence*–Section 3 of The Indian Evidence Act says that all those

1. Lexis Nexis Butterworths Wadhwa, 21st Edition, Nagpur

2. Lexis Nexis Butterworths Wadhwa, 21st Edition, Nagpur

documents which are presented in the Court for inspection such documents are called documentary evidences (*Ratanlal* & *Dhirajlal*[3]). In a case like this it is the documentary evidence that would show the actual attitude of the parties and their consciousness regarding the custom is more important than any oral evidence as was held in *Harihar Prasad Singh and others v. Balmiki Prasad Singh and others*, 1975 (2) SCR 932.

Section 62 speaks about primary evidence and Section 63 deals with Secondary evidence. In the case of *Benga Behra and another v. Braja Kishore Nanda and others*, 2008 (4) ALT 55 (DNSC), the Hon'ble Supreme Court has observed that, loss of original will not satisfactorily proved and no information lodged about the missing document before any authority, secondary evidence cannot be taken into consideration.

Section 65-A deals with special provisions, as to evidence relating to Electronic Records. In the case of *Bodala Muralikrishna v. Smt. Bodala Prathima*, 2007 (1) ALT 237, the Hon'ble apex Court held that, recording of evidence through Video Conference can be permitted, provided necessary precautions are taken as to identity of witness and accuracy of equipment. Section 65-B speaks with admissibility of Electronic Records. Sections 85-A to C deals with presumptions of Electronic Records, Section 86 of Evidence Act speaks about presumption as to certified copies of foreign judicial records, Section 87 of the Act regarding presumption as to books, maps and charges, Section 88 presumption as to telegraphic message, Section 88-A presumption as to electronic message, where in all these cases the Court may presume, but in case of presumption as to due execution covered by Section 89 of the Act the Court shall presume about the contents of documents called for, which have not been produced. Section 90-A speaks about presumption, as to electronic records of five years old.

(c) *Primary Evidence*-Section 62 of The Indian Evidence Act says Primary Evidence is the Top-Most class of evidences. It is that proof which in any possible condition gives the vital hint in a disputed fact and establishes through documentary evidence on the production of an original document for inspection by the Court. It means the document itself produced for the inspection of the Court. In *Lucas v. Williams*, 1892 Q.B. 116, http://www.legalindia.in/wp-admin/post-new.php - _ftn7 Privy Council held "Primary Evidence is evidence which the law requires to be given first and secondary evidence is the evidence which may be given in the absence of that better evidence when a proper explanation of its absence has been given." (*Ratanlal & Dhirajlal*[4])

(d) *Secondary Evidence*–Section 63 says Secondary Evidence is the inferior evidence. It is evidence that occupies a secondary position. It is such evidence that on the presentation of which it is felt that superior evidence yet remains to be produced. It is the evidence which is produced in the absence of the primary evidence therefore it is known as secondary evidence. If in place of primary evidence secondary evidence is admitted without any objection at the proper time then the parties are precluded from raising the question that the document has not been proved by primary evidence but by secondary evidence. But where there is no secondary evidence as contemplated by Section 66 of the Evidence Act then the document cannot be said to have been proved either by primary evidence or by secondary evidence." As was held in the case of *Kalyan Singh, London Trained v. Smt. Chhoti and others*, AIR 1990 SC 396,

IT IS SETTLED that certified copies of public documents could be received in

3. Lexis Nexis Butterworths Wadhwa, 21st Edition, Nagpur

4. Lexis Nexis Butterworths Wadhwa, 21st Edition, Nagpur

evidence without their being marked for proof of the same as was held in the case of *R. Markandan (D) etc. and another v. State by Inspector of Police, SPE/CBI/ACP, Chennai*, 2012 (2) LW (Cri.) 39 at Page 46.

Difference between Primary Evidence and Secondary Evidence

Primary Evidence	Secondary Evidence
1. Primary evidence is original document. Which is presented to the Court for its inspection.	1. Secondary evidence is the document which is not original document but those documents which are mentioned in Section 68.
2. Primary evidence is the best evidence in all circumstances.	2. Secondary evidence is not best evidence but is evidence of secondary nature and is admitted in exceptional circumstances mentioned in Section 63.
3. Giving primary evidence is general rule.	3. Giving secondary evidence is exception to the general rule.
4. No notice is required before giving primary evidence	4. Notice is required to be given before giving secondary evidence.
5. The value of primary evidence is highest.	5. The value of secondary evidence is not as that of primary evidence.

(e) *Real Evidence*–Real Evidence means real or material evidence. Real evidence of a fact is brought to the knowledge of the Court by inspection of a physical object and not by information derived from a witness or a document. Personal evidence is that which is afforded by human agents, either in way of disclosure or by voluntary sign. For example, Contempt of Court, conduct of the witness, behavior of the parties, the local inspection by the Court. It can also be called as the most satisfactory witness.

(f) *Hearsay Evidence*–Hearsay Evidence is very weak evidence. It is only the reported evidence of a witness which he has not seen either heard. Sometime it implies the saying of something which a person has heard others say. In *Lim Yam Yong v. Lam Choon & Co.*, 6 ALL 509 (FB). The Hon'ble Bombay High Court adjudged "Hearsay Evidence which ought to have been rejected as irrelevant does not become admissible as against a party merely because his council fails to take objection when the evidence is tendered." So finally we can assert that Hearsay Evidence is that evidence which the witness has neither personally seen or heard, nor has he perceived through his senses and has come to know about it through some third person in *Ratanlal* & *Dhirajlal*[5]. There is no bar to receive hearsay evidence provided it has reasonable nexus and credibility In *Hasmukhlal V. Shah v. Bank of India and others*, (1997) 3 GLR 1891, When a piece of evidence is such that there is no *prima facie* assurance of its credibility, it would be most dangerous to act upon it. Hearsay evidence being evidence of that type has therefore, to be excluded whether or not the case in which its use comes in for question is governed by the Evidence Act. In *K.P. Abdul Kareem Hajee and another v. Director, Enforcement*, (1977) 2 MLJ 47.

(g) *Judicial Evidence*–Evidence received by Court of justice in proof or disproof of facts before them is called judicial evidence. The confession made by the accused in the Court is also included in judicial evidence. Statements of witnesses and documentary evidence and facts for the examination by the Court are also Judicial Evidence.

5. Lexis Nexis Butterworths Wadhwa, 21st Edition, Nagpur

(h) *Non-Judicial Evidence*–Any confession made by the accused outside the Court in the presence of any person or the admission of a party are called Non-Judicial Evidence, if proved in the Court in the form of Judicial Evidence. The scope of Section 27 of Evidence Act was summarized in the case of *Pulikin Kotayya v. King Emporer and Musthkeem @ Sirajuddin v. State of Rajasthan*, 2011 Cri. LJ 678, AIR 1947 PC 67 = 1947 Cri. LJ 533, AIR 2011 SC 2769 = 2011 AIR SCW 4410 = 2011 (3) SCC (Cri) 473 = In the case of *Varun Chaudhary v. State of Rajasthan*, reported in (2011) 12 SCC 545 = AIR 2011 SC 72 = 2011 Cri LJ 675 = 2010 AIR SCW 6794, it was held that, if the recovery memos were prepared at the police station itself, then the same would lose their sanctity. In the case of *Jckaran Singh v. State of Punjab*, AIR 1995 SC 2345, it was observed that, the absence of the signature or thumb impression of an accused on disclosure statement under Section 27 of Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement.

Merely because the recovery memo was not signed by the accused, will not vitiate the recovery itself as every case has to be decided on its own facts. *Golkonda Venkateswara Rao v. State of A.P.*, AIR 2003 SC 2846; *Dr. Sunil Clifford Daniel v. State of Punjab*, See also 2012 (6) Supreme at Pages 641 and 643

(i) *Direct Evidence*–Evidence is either direct or indirect. Direct Evidence is that evidence which is very important for the decision of the matter in issue. The main fact when it is presented by witnesses, things and witnesses is direct, evidence whereby main facts may be proved or established that is the evidence of person who had actually seen the crime being committed and has described the offence. We need hardly point out that in the illustration given by us, the evidence of the witness in Court is direct evidence as opposed to testimony to a fact suggesting guilt. The statement before the police only is called circumstantial evidence of, complicity and not direct evidence in the strict sense. In *Tahsildar Singh and another v. The State of Uttar Pradesh*, AIR 1959 SC 1012

(j) *Circumstantial Evidence or Indirect Evidence*– There is no difference between circumstantial evidence and indirect evidence. Circumstantial Evidence attempts to prove the facts in issue by providing other facts and affords an instance as to its existence. It is that which relates to a series of other facts than the fact in issue but by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion.

In *Hanumant v. State of Madhya Pradesh*, AIR 1995 SC 343, The Hon'ble *Supreme Court* Observed, "*In dealing with circumstantial evidence there is always the danger that suspicion may take the place of legal proof. It is well to remember that in cases where the evidence is of a circumstantial nature the circumstances from which the conclusion of guilt is to be drawn should in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. In other words there can be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.*" In the case of *Ashok Kumar v. State of Madhya Pradesh*, AIR 1989 SC 1890, the Hon'ble *Supreme Court* held-

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

(2) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of accused.

(3) The circumstances, taken cumulatively should from a chain so complete that there is no

escape from the conclusion that within all human probability the crime was committed by the accused and none else.

(4) *The* ***Circumstantial Evidence*** *in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*

Direct Evidence V. Circumstantial Evidence

The question that which evidence is superior is going from a longtime, on this subjects jurists differ in their views. Some jurists hold that direct evidence is superior evidence. When a particular says that he had seen a particular event happening then undoubtedly his evidence is superior, but even relying on direct evidence at once is also hazardous because a witness can make a completely false statement. In the same manner in the case of circumstantial evidence circumstances are also proved by witnesses. Particularly the manner in which the Court draws inferences from circumstances they can be wrong and also and thus circumstances also become false. In the case of *Kallu v. State of Uttar Pradesh*, AIR 1958 SC 180, the accused was tried for the murder of the deceased by shooting him with a country made pistol. A cartridge was found near the bed of the deceased. The accused was arrested at a distance of 14 miles from the village which was the place of occurrence. He produced a pistol from his house which indicated that he could have alone have known of its existence there. The fire-arms expert proved that it was the same pistol from which the shot was fired and deceased was killed. The Hon'ble Supreme Court while convicting the accused held "*Circumstantial Evidence has established that the death of the deceased was caused by the accused and no one else.*"

Difference between Direct Evidence and Hearsay Evidence

Direct Evidence	Hearsay Evidence
1. Direct evidence is that which the witness is giving on the basis of his own perception	1. Hearsay evidence is that which has been derived by other person.
2. Direct evidence is best oral evidence of the fact to be proved.	2. Hearsay evidence is secondary one and it is admitted in exceptional cases.
3. The liability of veracity of direct evidence is on person who is giving its evidence.	3. In case of hearsay evidence the person giving evidence does not take the responsibility of its veracity.
4. The person giving direct evidence is available for cross-examination for testing its veracity.	4. The person giving hearsay evidence is not author of original evidence. It is derived from original author.
5. The source of direct evidence is the person who is present in Court and giving evidence.	5. In case of hearsay evidence the person giving hearsay evidence is not original source of evidence given by him.

Different Kinds of Witnesses Section 118 of Evidence Act speaks that, all persons shall be competent to testify, unless the Court considers that, they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease whether of body or mind or any other cause of same kind. Section 119 of Evidence Act speaks that a witness, who is unable to speak may give his evidence in any other manner, in which he can make it

intelligible as by writing or by signs and such evidence shall be deemed to be oral evidence. (dumb witness).

The witness can be divided mainly into two categories—

(1) Eye-Witness

(2) Circumstantial Witness

(3) Child Witness

Witness can be further divided into following kinds-

(1) **Prosecution Witness–**Prosecution is the institution or commencement of criminal proceeding and the process of exhibiting formal charges against an offender before a legal Tribunal and pursuing them to final judgment on behalf of the State or Government by indictment or information. A prosecution exists until terminated in the final judgment of the Court to write the sentence, discharge or acquittal, a witness which appears on behalf of the prosecution side is known as a Prosecution Witness.

(2) **Defense Witness–**Defense side in a criminal proceeding is opposing or denial of the truth or validity of the prosecutor's complaint, the proceedings by a defendant or accused party or his legal agents for defending himself. A witness summoned on the request of the defending party is known as a Defense Witness.

(3) **Expert Witness–**An 'expert' is not a 'witness' of fact. His evidence is really of an advisory character. The duty of an 'expert witness' is to furnish the judge with the necessary scientific criteria for testing the accuracy of the conclusion so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and alongwith the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data furnished which form the basis of his conclusions, as was laid down in the case of *State of Himachal Pradesh v. Jai Lal*, AIR 1999 SC 3318

Section 45 of Evidence Act

While considering the evidence of experts in the light of Section 45 of Evidence Act, it was held that such evidence is only an advisory in character since such expert is not a witness of fact. *Ramesh Chandra Agarwal v. Regency Hospital Ltd.*, (2009) 9 SCC 709 = AIR 2010 SC 806 = 2009 AIR SCW 7038.

Evidence of Handwriting Expert when to be accepted and when not - discussed in *Ravi Chandan v. State by Dy. Supdy of Police, Madras*, 2010 (4) MLJ (Cri) 516 (SC); *Rahimkhan v. Khurushid Ahmed and others*, AIR 1975 SC 290 = (1974) 2 SCC 660 (Para 39). Admissibility of report/opinion of Hand-writing Expert–discussed in *Sukhvinder Singh v. State of Punjab*, 1994 SCC (Cri) 1376. The evidence of hand writing expert should not be made the basis of a decision where there was direct evidence which proved the execution of the document. AIR 1977 SC 1091

Sections 45 and 73 of Evidence Act : The Supreme Court indicated the circumstances in which the Court may itself compare disputed and admitted writings *Murarilal v. State of Madhya Pradesh*, AIR 1980 SC 531 (Para 12) = (1980) 1 SCC 704

"Hand Writing" in Section 45 of Evidence Act, was construed to include "Typewriting" *State v. S.J. Chowdary* Considered and cited in 2006 (6) Supreme 143 = AIR 2006 SC 2820 = (2006) 7 SCC 607 = 2006 (7) Scale 587 = 2006 AIR SCW 3961; *State of Punjab and others v. M/s. Amritsar Beverages Ltd and others.*

Section 45 of Evidence Act empowers the Court, in order to form an opinion upon a point of foreign law, or of science, or of art or as to identity of hand writing or finger print impressions, to rely upon the opinions of persons specially skilled in such matters. *New India Assurance Co. Ltd. v. Protection manufacturers Ltd.*, AIR 2010 SC 3024 at Page 3042 (Para 32).

Section 45 - Opinion of finger print expert does not bind the Court, when the Court is of the considered opinion that there is no necessity to consider the same.

(4) *Eye-Witness*–A witness who gives testimony to facts seen by him is called an eye-witness, an eye-witness is a person who saw the act, fact or transaction to which he testifies. An eye-witness must be competent (legally fit) and qualified to testify in Court. A witness who was intoxicated or insane at the time the event occurred will be prevented from testifying, regardless of whether he or she was the only eye-witness to the occurrence. Identification of an accused in Court by an 'Eye-witness' is a serious matter and the chances of a false identification are very high "Proof of Guilt by *Glanville Williams*[6], Where a case hangs on the evidence of a single eye-witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence Courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs." *Shivaji Sahebrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793. "Indeed, conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the Courts have no difficulty in basing conviction on his testimony alone. However, where the single eye-witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the Courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the Courts find that the single eye-witness is a wholly unreliable witness that his testimony is discarded *in toto* and no amount of corroboration can cure that defect." *Anil Phukan v. State of Assam*, (1993) 3 SCC 282

The Court will not then insist on corroboration by any other eye-witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye-witness being present. Indeed, the Courts insist on the quality, and, not on the quantity of evidence." *Kartik Malhar v. State of Bihar*, (1996) 1 SCC 614

(5) *Hostile Witness*-The witness who makes statements adverse to the party calling and examining him and who may with the permission of the Court, be cross-examined by that party. Now it is true that in *Coles v. Coles*, (1866) LR 1 P&D 70 and it may be in other cases, a hostile witness has been described as a witness who from the manner in which he gives his evidence shows that he is not desirous of telling the truth to the Court. This is not a very good-definition of a hostile witness and the Indian Evidence Act is most careful in Section 154 not to restrict the right of 'cross-examination' even by committing itself to the word 'hostile'. In *Bhagwan Singh v. State of Haryana*, AIR 1976 SC 202, it was held that merely because the Court gave permission to the Public Prosecutor to cross-examine his own witness describing him as hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon the testimony of such

6. 3rd Edition

witness. In *State of U.P. v. Ramesh Prasad Misra* (supra), the Supreme Court held that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defense may be accepted. In *Balu Sonba Shinde v. State of Maharashtra*, 2003 SCC (Crl.) 112, the Supreme Court held that the declaration of a witness to be hostile does not *ipso facto* reject the evidence. The portion of evidence being advantageous to the parties may be taken advantage of, but the Court should be extremely cautious and circumspect in such acceptance. The testimony of hostile witness has to be tested, weighed and considered in the same manner in which the evidence of any other witness in the case. In *Shyama v. State of Rajasthan*, 1977 WLN 278.

In the case of *Vinod v. State* decided on 8.2.2016 the Hon'ble High Court of Delhi has observed that, the evidence of hostile witness can be considered to the extent, which he supported.

In the case of *Prem Sagar Manocha v. State* decided on 6.1.2016 the Hon'ble Supreme Court had summarized the procedure in initiating proceedings under Section 340 of Cr.P.C., against the witness, who turned down to the prosecution case.

In the case of *Ayyappan v. State by Inspector of Police*, decided on 22.12.2015 Hon'ble High Court of Madras recorded a conviction against the accused for the offence under Section 302 IPC, taking into consideration of the evidence of a hostile witness to the extent which he supported.

CHILD WITNESS : A child of tender age can be allowed to testify, if he or she has intellectual capacity to understand questions and give rational answers there to, as was observed in the case of *State of Karnataka v. Shantappa Madivarappa Kalapuji and others*, 2009 (5) SCJ 42

COMMENTS ON SECTION 498-A, INDIAN PENAL CODE, 1860 AND THE DOWRY PROHIBITION ACT, 1961

By

—**KAMALAKARA RAO. G**, Advocate,
Guntur, A.P.
Email:gk.raolawyer@gmail.com

Whether the concept of dowry, of law givers/framers/makers/Legislature is completely incorporated under the provisions of Section 498-A of Indian Penal Code, 1860 or under the provisions of the Dowry Prohibition Act, 1961.

The giving of dowry in INDIA in most of the States is in the form of MONEY.

Whether the MONEY comes under the definition of Section 498-A of IPC, 1860 or under the definition of Section 2 of Dowry Prohibition Act, 1961.

Section 498-A, IPC reads as follows:

Husband or relative of husband of a woman subjecting her to cruelty:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section "cruelty" means—