44. Solitary Witness.—Under Section 184, Evidence Act, there is no restriction or limitation as to the number of witnesses which can be produced. Convincing and consistent evidence of a solitary witness, against whose veracity no attack can be levelled, can constitute the basis of conviction.[1] Unreliability of the testimony of the solitary witness being the prosecutrix, the medical evidence which is apparently not supporting the prosecution, coupled with the inordinate delay of 7 days in lodging the FIR, raises serious doubt on the veracity of the prosecution case and as such, the accused appellant atleast ought to have been given the benefit of doubt.[2]

It is not law that no court can convict any accused on the basis of the deposition of a solitary witness.[3]

45. Statement.—"Statement" in its dictionary meaning is the act of stating or reciting. *Prima facie* a statement cannot take in an omission. A statement, not only includes what is expressly stated therein, but also what is necessarily implied therefrom.[4]

A statement is a narration, and it connotes the idea that the narration is addressed to some person and, therefore, it implies an *animus* on the part of the author of the statement. It pre-supposes an intention to communicate the subject-matter of the statement to the person to whom it is made or addressed. Any conversation which is not a narration and is not addressed to the police officer and regarding which there is no *animus* on the part of the maker of the statement that he is making it to the police officer cannot be a statement for the purposes of Section 162 Cr PC.[5]

"Statement" is act of stating; that which is stated; a formal account, declaration of facts *etc.* The word "statement" includes both oral and written statement. Communication to another is not however an essential component to constitute a "statement".[6]

46. Test Identification Parade.—The value of identification at a test parade depends to a very large extent on whether the identifying witness had any opportunity between the occurrence and the test identification parade to see the suspect. If, as is usual, the suspect remains in custody after his arrest, the opportunity of the identifying witness seeing him is reduced to a minimum; if, however, the suspect has been let out on bail the opportunity of the identifying witness seeing him is considerably increased.[7]

47. Trap witnesses—Corroboration of.—In regard to the corroboration of trap witnesses it is interesting to find out what the standard treatises : English, American, Canadian and Indian have got to say. In *Roscoe's* Criminal Evidence, page 145—

> "Agents provocateurs, spies, informers, detectives, *etc.*, are not accomplices. Such persons employed in entrapping criminals are entirely distinguished in fact and in principle from accomplices', per *Maule, J.*, *K.* v. *Mullins*,[8] ; spy on Chartists; "and I do not see that a person so employed deserves to be blamed if he instigates

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1 *Mulkh Raj Des Raj* v. *State,* 1969 Cri LJ 94 (P&H).
2 *Rajib Bordoloi* v. *State of Assam,* **2021 Cri LJ 2528 (Gauhati).**
3 *Kasim Abdul Sattar Gaji @ Biryani* v. *State of Gujarat,* 2019 Cri LJ 3235 (Gujarat).
4 *Tahsildar Singh* v. *State of UP,* AIR 1959 SC 1012 : 1959 Cri LJ 1231.
5 *Yusufalli Esmail Nagree* v. *State,* 1965 (1) Cri LJ 12 : AIR 1965 Bom 3.
6 *Ajay Singh* v. *State of Maharashtra,* AIR 2007 SC 2188.
7 *Hazara Singh* v. *State,* 1951 Cri LJ 492 (Calcutta).
8 *K.* v. *Mullins,* (1848) 3 Cox CC 526.

impression on the document, the onus of the propounder can be taken to have been discharged.[1]

74. Opinion of expert redundant.—Opinion of except is not admissible in regards to matters upon which the Court can form its judgment from other evidence and circumstances.[2]

It cannot be said that opinion of expert may be relevant at least, to test the veracity of the testimony of the attestors. What the attestors are expected to speak under Section 68, Evidence Act is only factum of execution of the Will within the meaning of Section 63 of Succession Act. They are not obliged under law to testify the identity of the signature of the testator.[3]

75. Original of the public document.—Section 114 only empowers the Court to use its commonsense, cannot be used to contravene an express provision of the Act itself. So if the original of a public document is sought to be tendered in evidence, it must be proved in the manner required by law.[4]

76. Ownership of property—Execution of settlement of deed.—When settlement deed stood proved as *G* had admitted execution of such deed in his cancellation deed and daughter had established execution of settlement deed by her evidence and examination of attesting witness is not required as there is no specific denial of execution in plaint.[5]

77. Payment before registering authority—Proof of.—Document containing endorsement of registering authority about payment of consideration. Document showing that one of the executants admitted having received consideration. Discrepancy in oral evidence as to whether consideration was paid before the registering authority or prior to registration. Court would not come to conclusion that no consideration passed.[6]

78. Presumption as to correctness—Registered document.—It has been held that registration of document does not dispense with need of proving execution and attestation of document required by law to be proved in manner provided in Section 68, Evidence Act. On account of registration of document, including Will or Codicil, presumption as to correctness or regularity of attestation cannot be drawn.[7]

79. Presumption of signature of witnesses.—On the foot of the endorsement of the Registrar when there is signature of two persons, it is presumed that they signed as witnesses.[8]

80. Probate of Will—Granting of.—Without proof of valid execution and attestation the probate of Will cannot be granted.[9]

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1 *C.K. Medhi* v. *Lakheswar Nath,* AIR 1976 Gau 94.
2 *R. Saraswathy* v. *P. Bhavathy Ammal,* AIR 1989 Ker 228 : (1988) 2 Ker LJ 512 : (1988) 2 Ker LT 736 : (1988) 2 Hindu LR 724.
3 *R. Saraswathy* v. *P. Bhavathy Ammal,* AIR 1989 Ker 228 : (1988) 2 Ker LJ 512 : (1988) 2 Ker LT 736 : (1988) 2 Hindu LR 724.
4 *C.H. Shah* v. *S.S. Malpathak,* AIR 1973 Bom 14 : 1972 Mah LJ 816.
5 *Govindaraju (died)* v. *Rathinammal,* 2004 (3) CTC 9 (Mad).
6 *Susila Sa* v. *Durju,* AIR 1977 Ori 178 : 1977 (44) Cut LT 37.
7 *Bhagat Ram* v. *Suresh,* 2003 (10) Scale 131 : 2003 (*VII*) SLT 376 : 2004 (2) LW 355 (SC).
8 *Girja Datta Singh* v. *Gangotri Dutta Singh,* AIR 1955 SC 346.
9 *M. Gurulingam* v. *Nityanandan,* 2000 (3) MLJ 710 (Mad).

(*c*) Section 325 of the Indian Penal Code (45 of 1860) provides that whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt shall be subject to certain punishment.

A is charged with voluntarily causing grievous hurt under Section 325.

The burden of proving the circumstances bringing the case under Section 335, lies on *A*.[1]

60. Burden of proof.—The accused may raise a plea of exception either by pleading the same specifically or by relying on the probabilities and the circumstances obtaining on the case. The initial presumption against the accused regarding the non-existence of the circumstances in favour of his plea, gets displaced and on examination of the material even if a reasonable doubt arises the benefit of it should go to the accused. The accused can also discharge the burden under Section 105 by preponderance of probabilities in favour of his plea. In case of general exceptions, special exceptions, proviso contained in the Penal Code or in any law defining the offence, the Court, after due consideration of the evidence, in the light of the above principle, if satisfied, would state in the first instance as to the exceptions the accused is entitled, to then see whether he would be entitled for complete acquittal of the offence charged or would be liable for a lesser offence and convict him accordingly.[2]

61. Burden of proof—Accused to prove that his case falls under exception 9 to section 499 IPC.—The accused relied upon exception 9 to Section 499 I.P.C. Therefore it is for him to prove that his case falls under that exception.[3]

62. Burden of proof—Legal presumption.—The traditional rule that it is for prosecution to prove the offence beyond reasonable doubt applies in all criminal cases except where any particular statute prescribes otherwise. The legal presumption created in Section 105 with the words "the Court shall presume the absence of such circumstances" is not intended to displace the aforesaid traditional burden of the prosecution. This presumption helps the Court to determine on whom is the burden to prove facts necessary to attract the exception and an accused can discharge the burden by "preponderance of probabilities" unlike the prosecution. But there is no presumption that an accused is the aggressor in every case of homicide. If there is any reasonable doubt, even from prosecution evidence, that the aggressor in the occurrence was not the accused but would have been the deceased party, then benefit of that reasonable doubt has to be extended to the accused, no matter he did not adduce any evidence in that direction.[4]

63. Burden of proof—Preponderance of probabilities.—The general burden of establishing the guilt of accused is always on the prosecution and it never shifts, Even in respect of the cases covered by S.105 the prosecution is not absolved of its duty of discharging the burden. The accused may raise a plea of exception either by pleading the same specifically or by relying on the probabilities and circumstances obtaining in the case. He may adduce the evidence in support of his plea directly or rely on the prosecution case itself or, he can indirectly introduce such circumstances by way of cross-

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1 *Vide,* Evidence Act, 1872, Section 105.

2 *State of Maharashtra* v. *Govind Mhatarba Shinde,* 2010 Cri LJ 3586 (Bom.).

3 *Deepchand* v. *Sampathraj,* AIR 1970 Mys. 34.

4 *Periasami* v. *State of Tamil Nadu,* 1997 Cri LJ 219.

to hold that he is unworthy of credit. It ultimately depends upon the Court's view as to the credibility of evidence tendered by an accomplice.[1]

265. Accomplice unworthy of credit.—The principles applicable to cases under the Gambling Act would not be applicable to cases relating to the evidence of an accomplice. Even in the case of an accomplice's evidence, corroboration is not necessary in law, but in practice is necessary at least in one material particular. There is a presumption under S. 114, 111(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars. The same rule would apply to every witness, who is unworthy of credit. For the same reasons, the evidence of a punter and of police investigating officer who are interested in securing a conviction, is unworthy of credit, and there is no reason why the principles applicable to one type of witness who is unworthy of credit, *viz.*, an accomplice, should not apply to another type of witness who is unworthy of credit for different reasons. But as to the extent of corroboration, it is not necessary that there should be independent corroboration in all material particulars.[2]

266. Accomplices or approver's evidence.—It would not be safe to act on the testimony of an approver unless that testimony is corroborated in material particulars. The corroboration must be such as would lead the Court to believe that the evidence that the accomplice is giving is truthful evidence and that it would be safe to act upon that evidence. The corroboration must come from independent sources and ordinarily the testimony of one accomplice would not be sufficient to that of another. It is not sufficient that there should be corroboration of the accomplice evidence that a crime was committed, but there should be corroboration of his testimony that the accused was in some way connected with that crime. The corroboration need not be direct evidence; it can also be by circumstantial evidence.[3]

267. Adverse inference.—Non examination of Roza and Murli as well as the grandmother of the prosecutrix stands fully explained on the record. Roza who was living with the prosecutrix, her brother and grandmother at the Railway Station could not be traced out. Similarly, Murli, the brother of the prosecutrix and her grandmother could not be located by the investigating officer despite search at the Railway Station. Even otherwise examination of these three persons by the prosecution would not have yielded any fruitful results as they are not the witnesses to the incident. No inference, therefore, under Section 114 of the Evidence Act can be drawn against the prosecution for withholding the evidence of Roza, Murli and grandmother as well as the neighbour who probably was narrated the incident by the prosecutrix.[4]

The accused was apprehended from public thorough fare but no member of public was examined. Further no suggestion was given to witnesses examined by the prosecution that members of the public were present at the spot. A case of sudden apprehension

1 *K. Hasim* v. *State of Tamil Nadu,* 2005 Cri LJ 143 (SC) : AIR 2005 SC 128 : 2005 (1) Crimes 12 ; *Sri. Biplab Bhar* v. *State of Tripura,* 2017 Cri LJ 1621 (Tripura).

2 AIR 1937 Bom. 385 and AIR 1948 Bom 250 and AIR 1953 Bom. 82 and AIR 1983 Guj 145 and Cr. App. No. 170 of 1950 (Bom) and Cr. Rev. No. 78 of 1950 (Bom) and (*S*) AIR 1957 SC 614.

3 AIR 1949 PC 257 : AIR 1952 SC 159 and AIR 1952 SC 54 ; *L.S. Raju* v. *State of Mysore,* AIR 1953 Bom. 297.

4 *Arshad* v. *The State.*, 2010 Cri LJ 954 (Del).