liquor. An officer who has acquired sufficient experience as an official of the Excise Department can in a given case tender evidence in that regard.[1]

50. Expert opinion of witnesses.—Opinion of witnesses of peculiar skill relating to relevant facts is admissible in evidence.[2]

Once the report of expert is proved and admitted in evidence then it is not necessary that report should be corroborated by his statement before Court.[3]

51. Filing an application for examination of document.—In *Devaraju Padayachi* v. *Sivasarkara Padayachi*,[4] High Court held as follows—

> "If the disputed document and the alleged signature of the decree holder in the receipt are examined by a handwriting expert and opinion is received, it would be easier for the Principal District Munsif, Cuddalore to have an opinion about the truth and genuineness of the disputed receipt and the alleged signature of the decree holder therein or otherwise. Such an expert opinion would give much more clarity for arriving at a decision upon the truth and genuineness of the disputed receipt. But, unfortunately, neither the decree holder nor the judgment debtor has taken steps to get such expert opinion before the Principal District Munsif, Cuddalore. In such circumstances, irrespective of the fact that the Judge can compare the signature, it would be better for the Judge *viz.*, Principal District Munsif, Cuddalore to get the expert opinion after examination of the disputed receipt and comparison of the signature therein with the admitted one of the decree holder which may help further to find out the truth and genuineness of the signature."

High Court held that irrespective of the fact that the Judge can compare the signature, it would be better for the Judge to get the opinion of the expert after examination and comparison of the signature with the admitted one.

In *Vijayakumar, S.N.* v. *S.R. Velusamy*,[5] High Court held as follows—

> "The provision of law gives ample power to the trial Court to compare the signature in the disputed document and the admitted signatures of the revision petitioner and then come to an independent conclusion based on such comparison. If in any event, the trial Court finds it difficult to arrive at any definite conclusion even after such comparison, it is open to either of the parties to take the document to a handwriting expert for comparison and offering his opinion on this aspect of the matter. Hence this Court is of the considered view that the trial Court may be suitably directed to adopt such course as stated above and dispose of the suit at an early date.
>
> Thus the civil revision petition is ordered as hereunder—
>
> (*i*) The trial Court is directed to compare the disputed signature of the revision petitioner with that of the admitted signatures to arrive at the right

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1 *Huding Singh* v. *State*, 1995 Cri LJ 1128.

2 *Lalit Popli* v. *Canara Bank*, AIR 2003 SC 1769.

3 *Raj Kumar* v. *State*, 2005 Cri LJ 1322 (J&K).

4 *Devaraju Padayachi* v. *Sivasarkara Padayachi*, 2004 (4) CTC 445.

5 *Vijayakumar, S.N.* v. *S.R. Velusamy*, 2005 (2) CTC 445.

The first two circumstances, if found true, would create the ground, for application of the theory of "last seen together".[1]

The deceased having been last seen with the appellant around the time he was killed is a circumstance which together with other circumstances proved in the case, are explainable only on one hypothesis that the appellant was guilty of killing the deceased. The fact that the appellant had borrowed the spade, tide it with `Sutil' after wrapping the wooden part with the newspaper is fully established by the statement of Jadunath Das, PW 6.[2]

7. Kidnapping and Murder—Circumstantial evidence.—In the present case, there are no eye witnesses to affirm and corroborate the fact that the Appellant No. 1, as allegedly confessed, had taken Arjun on a bicycle and handed over the child to Appellant Nos. 2 and 3. Further, the unfounded last seen theory, contradicting medical evidence, and facts of the case, particularly concerning the recovery of the body, belie the material details of the alleged extra-judicial confession. Ergo, in the absence of any credible corroboration of both : the actual occurrence of such a confession and the incriminating facts alleged to have been disclosed in the confession, this Court cannot accept that the conviction of the appellants can be sustained on the basis of such a confession.[3]

8. Last seen evidence must be proved.—To prove the *factum* of last seen, it is for the prosecution to prove that the deceased was seen with the appellant soon before the incident. In the present case, there is no witness, which could state that the appellant was seen with the deceased Golu prior to the incident. Under such circumstances, the factum of last seen is not at all established by the prosecution. It is not proved that the deceased Golu was found with the appellant prior to the incident.[4]

9. Last seen evidence, not established.—It can be safely concluded that the prosecution has failed to bring any iota of evidence to show that the appellants called the victim to their residence over phone and on receiving such phone he went to their house.[5]

10. Last seen in company of accused.—In a case in which the prosecution relies upon the evidence of last seen in the company of the deceased, it is imperative upon the prosecution to prove that in between the period of occurrence date there was no possibility that the deceased to have entangled with any person or any stranger. In that circumstance, only it can be held that there was no chance for the victim coming in contact with the other persons and only in that circumstance, theory of last seen of evidence can be applicable.[6]

11. Last seen theory.—The present case of circumstantial evidence primarily hinges on two main aspects, which is the last seen evidence and the recovery of stolen property. Considering the fact that the details of the last seen circumstance as deposed by PW12 and PW20 are not found in the first information, PW12 and PW20 did not see the

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1 *Latika Koteswara Rao* v. *State of A.P.*, 2009 Cri LJ 257 (AP).

2 *Amitava Banerjee* v. *State of West Bengal*, AIR 2011 SC 2913 : 2011 (3) Crimes 214 : 2012 (1) SCC (Cri) 624 : 2011 (12) SCC 554.

3 *Shailendra Rajdev Pasvan* v. *State of Gujarat*, **AIR 2020 SC 180.**

4 *Bihura* v. *State of M.P.*, 2014 Cri LJ 4745 (MP).

5 *Dilip Das alias Rabi* v. *State of West Bengal*, **2020 Cri LJ 366 (Calcutta).**

6 *Baleshwar Mahto* v. *State of Bihar*, 2014 Cri LJ 235 (Pat).

had happened in the night. These facts stated by him are relevant because they form part of the same transaction. They are coming from the mouth of the father and that of the deceased. They are relevant under Sections 6, 7 and 8 of the Indian Evidence Act as he has stated about the previous and subsequent conduct of the accused. The learned trial Judge had the occasion to watch the demeanor and it has relied upon the conduct of the P.W. 1. His evidence is not just based on conjectures and surmises but same is such which in totality establishes beyond reasonable doubt that it is Suraj who had killed Shashibhushan.[1]

26. Fact discovered must be material fact.—A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. That information which does not distinctly connect with the fact discovered or that portion of the information which merely explains the material thing discovered is not admissible under section 27 and cannot be proved.[2]

27. Failure of eye-witness to mention names of accused.—If in prosecution of accused for murder of a girl by rifle it is found that the only eye-witness (the girl's father) failed to mention the names of accused to the neighbours who came to the scene soon after the occurrence, that will only show that the accused is not known to the witness but that by itself will not render the prosecution story untrue when prosecution case does not rest on the evidence of that witness alone and there are other corroborative circumstances lending enough support to the involvement of accused in the crime.[3]

28. False implication—Proof of motive.—Proof of motive by itself may not be a ground to hold the accused guilty. Enmity, as is well-known, is a double edged weapon. Whereas existence of a motive on the part of an accused may be held to be the reason for committing crime, the same may also lead to false implication. Suspicion against the accused on the basis of their motive to commit the crime cannot by itself lead to a judgment of conviction.[4]

29. First information report by accused—Admissibility of.—The first information report is nothing but the statement of the maker of the report at a Police Station before a police officer recorded in the manner provided by the provisions of the Criminal Procedure Code. The first information report is admissible under Sec. 156, Evidence Act, as corroborating the testimony of the first informant or for contradicting him under Sec. 145 or under Sec. 8 of the Evidence Act as evidence of his conduct. It may also be admissible under S. 21 of the Evidence Act as his admission. When the accused himself makes the first information report, S. 25 of the Evidence Act lays down that if it is in the nature of a confession, being made to a Police Officer, it is inadmissible, and it cannot be proved as against him. If it is not a confession but contains admissions made by the accused, the first information report is admissible in evidence under Sec. 21 of the Evidence Act.[5]

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1 *Suraj Singh* v. *State of Chhattisgarh,* 2006 Cri LJ 3476 (Chatt).

2 *Himachal Pradesh Administration* v. *Om Prakash,* AIR 1972 SC 975.

3 *Harbhajan Singh* v. *State of J and K,* AIR 1975 SC 1814.

4 *Ramesh Baburao Devaskar* v. *State of Maharashtra,* 2008 Cri LJ 372 (SC) ; See, *Bishal Tamang* v. *State of Sikkim,* 2016 Cri LJ 4426 (Sikkim).

5 AIR 1918 Lah 69 : AIR 1952 SC 354 : AIR 1960 SC 1125.

primary evidence. But this can amount to secondary evidence under Section 63(2). But before any secondary evidence can be made admissible certain other conditions laid down in Section 65 of Evidence Act must be satisfied.[1]

12. Difference between counterpart and copy.—Counterpart means duplicate. When a deed is prepared in two or more identical forms, the pact signed by the grantor is the original, the other parts are counterparts. A copy is defined, when a document is an accurate and full representation of the original it would be a copy.[2]

13. Documents—When can be admitted.—Document a receipt and not promissory note can be admitted on payment of penal stamp duty. Secondary evidence of such document cannot be refused.[3]

14. Duly-stamped document.—Document a receipt and not promissory note can be admitted on payment of penal stamp duty. Secondary evidence of such document can be refused.[4]

15. Duplicate copy—Primary evidence.—Duplicate partition deed registered alongwith the original deed. Deposited *bona fide* by one of the executants of the partition deed to whom only a duplicate was given as his title deed and not the original. Deposit of original deed be insisted only as a rule of prudence and caution and not as a legal requirement for the purpose of validity creating an equitable mortgage and it cannot be said that duplicate can be accepted as title deed for the purpose of creating equitable mortgage only when the original is lost.[5]

16. Duplicate copy as collateral security for equitable mortgage.—Bank accepting duplicate copy of partition deed as collateral security for equitable mortgage. No evidence to show that original of partition deed was with borrower. *Held*, bank was justified in accepting such duplicate.[6]

17. Duplicate copy if registered to be treated as original.—The main purpose of executing duplicates and registering the same along with the partition deeds whereby title to immovable properties is created in favour of several persons is to treat each of them as original itself having the same operation and effect as that of other. It is precisely to serve the above purpose that parties to a partition usually get duplicate partition deeds.[7]

18. Execution of document—Proof of.—If a document is duly executed by the defendant, the truth of the contents are proved by the production of documents itself.[8]

19. Execution of Will—Validity of.—Wherein one of the attesting witnesses though alive was not examined to prove due execution of Will, non-compliance of mandatory provision Section 68 of the Act, such Will cannot be used as evidence.[9]

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1 *Union of India* v. *Nirmal Singh*, AIR 1987 All 83 : 1986 All WC 692.
2 *Jayarama Iyer* v. *S. Ramanatha Iyer*, AIR 1976 Mad 147 : 1976 (1) Mad LJ 135.
3 *Kundan Mal* v. *Nand Kishore*, AIR 1994 Raj 1.
4 *Kundan Mal* v. *Nand Kishore*, AIR 1994 Raj 1.
5 *State Bank of Travancore* v. *Velayudhan Pillai Bhaskaran Nair*, AIR 1996 Ker 32.
6 *State Bank of Travancore* v. *Velayudhan Pillai Bhaskaran Nair*, AIR 1996 Ker 32.
7 *State Bank of Travancore* v. *Velayudhan Pillai Bhaskaran Nair*, AIR 1996 Ker 32.
8 *Achuthan Pillai* v. *Marikar (Motor) Ltd.*, AIR 1983 Ker 81.
9 *Sohan Singh* v. *Amrik Singh*, AIR 2005 P&H 176.