

PART E
RECORD OF EVIDENCE IN CRIMINAL CASES

1. Only relevant evidence should be recorded :- In recording evidence, magistrates should take care to see that it is relevant and admissible under the provisions of the Indian Evidence Act. If any objection is raised as to the admissibility of any evidence, the magistrate should endeavour to decide it forthwith and the particular piece of evidence objected to, the objection and the decision thereon should be clearly recorded.

2. Duty of Court to elucidate facts:-Magistrates should endeavour to elucidate the facts and record the evidence in a clear and intelligible manner. As pointed out in 23 P.R. 1917 a Judge in a criminal trial is not merely a disinterested auditor of the contest between the prosecution and the defence, but it is his duty to elucidate points left in obscurity by either side, intentionally or unintentionally, to come to a clear understanding of the actual events that occurred and to remove obscurities as far as possible. The wide powers given to the Court by section 165 of the Indian Evidence Act and section 540 of the Code of Criminal Procedure should be judiciously utilised for this purpose when necessary.

3. (i) Mode of recording evidence:- Section 272 to 283 of Chapter XXIII Part A of Code of Criminal Procedure, 1973 deals with mode of taking and recording of evidence in inquiries and trials.

3(ii). Procedure for Recording Evidence:-

a) The depositions of witnesses shall be recorded, in typed format, if possible. The record of evidence shall be prepared on computers, if available, in the Court on the dictation of the Presiding Officer.

Provided that in case the language of deposition is to be recorded in a language other than English or the language of the State, the Presiding Officer shall simultaneously translate the deposition either himself or through a competent translator into English.

b) The deposition shall be recorded in the language of the witness and in English when translated as provided in the sub-rule (ii) (a) above.

c) The depositions shall without exception be read over by the Presiding Officer in Court. Hard copy of the testimony so recorded duly signed to be a true copy by the Presiding Officer/court officer shall be made available free of cost against receipt to the accused or an advocate representing the accused, to the witness and the prosecutor on the date of recording."

3(iii). Format of recording evidence of witnesses:-

a) The deposition of each witness shall be recorded dividing it into separate paragraphs assigning paragraph numbers.

b) Prosecution witnesses shall be numbered as PW-I, PW-2 etc, in seriatim. Similarly, defence witnesses shall be numbered as DW-1, DW-2, etc., in seriatim. The Court witnesses shall be numbered as CW-1, CW-2, etc, in seriatim.

- c) The record of depositions shall indicate the date of examination-in-chief, the cross-examination and re-examination.
- d) The Presiding Officers shall wherever necessary record the deposition in question and answer format.
- e) Objections by either the prosecution or by defence counsel shall be taken note of and reflected in the evidence and decided immediately, in accordance with law, or, at the discretion of the learned Judge, at the end of the deposition of the witness in question.
- f) The name and number of the witness shall be clearly stated on any subsequent date, if the evidence is not concluded on the date on which it begins.

3(iv) Exhibiting of material objects and evidence: -

- a) Prosecution exhibits shall be marked as Exhibit P-1, P-2 etc in seriatim. Similarly, defence exhibits shall be marked as Exhibit D-1, D-2, etc in seriatim. The Court exhibit shall be marked as Exhibit C-1, C-2, etc in seriatim.
- b) To easily locate the witness through whom the document was first introduced in evidence, the exhibit number shall further show the witness number of such witness after the exhibit number. If an exhibit is marked without proper proof, the same shall be indicated by showing in brackets (subject to proof).
- c) Explanation: If Prosecution witness no. 1 (PW1) introduces a document in evidence, that document shall be marked as Exhibit P-1/PW1. If proper proof is not offered for that document at the time when it is marked, it shall be marked as Exhibit P-1/PW1 (subject to proof). The Second document introduced by PW1 shall be marked as Exhibit P-2/PW1.
- d) c) The Material objects shall be marked in seriatim as MO-1, MO-2 etc.

3(v) Subsequent references to accused, witness, exhibits and material objects: -

- a) After framing of charges, the accused shall be referred to only by their ranks in the array of accused in the charge and not by their names or other references except at the stage of identification by the witness.
- b) After recording the deposition of witnesses, marking of the exhibits and material objects, while recording deposition of other witnesses, the witnesses, exhibits and material objects shall be referred by their numbers and not by names or other references.
- c) Where witness cited in the complaint or police report are not examined, they shall be referred to by their names and the numbers allotted to them in the list of witnesses attached with the complaint or police report.

3(vi) References to statements under section 161 and 164 Cr.P.C.-

- a) During cross-examination, the relevant portion of the statements

recorded under Section 161 Cr.P.C used for contradicting the respective witness shall be extracted. If it is not possible to extract the relevant part as aforesaid, the Presiding Officer, in his discretion, shall indicate specifically the opening and closing words of such relevant portion, while recording the deposition, through distinct marking.

- b) In such cases, where the relevant portion is not extracted, the portions only shall be distinctly marked as prosecution or defence exhibit as the case may be, so that other inadmissible portions of the evidence are not part of the record.
- c) In cases, where the relevant portion is not extracted, the admissible portion shall be distinctly marked as prosecution or defence exhibit as the case may be.
- d) The aforesaid rule applicable to recording of the statements under Section 161 shall mutatis mutandis apply to statements recorded under Section 164 of the Cr.P.C, whenever such portions of prior statements of living persons are used for contradiction/corroboration.
- e) Omnibus marking of the entire statement under Section 161 and 164 Cr.P.C shall not be done.

3(vii) Marking of confessional statements.- The Presiding Officers shall ensure that only admissible portion of Section 8 or Section 27 Indian Evidence Act, 1872 is marked and such portion alone is extracted on a separate sheet and marked and given an exhibit number."

{Rule 3 substituted vide C.S. No. 40 Rules/II.D4 dated 10.12.2021}

4. Comparison of memorandum with vernacular statement:- An omission to record the memorandum referred to above cannot be justified except under circumstances which render it impossible for the magistrate to record it. Want of time cannot be accepted as a valid excuse. In these cases the magistrate should be careful to follow the deposition of each witness, when it is read over to him in the vernacular in accordance with section 360 of the Code of Criminal Procedure, and observe whether his memorandum is in conformity therewith. Any apparent discrepancy between the vernacular statement and the English memorandum should be explained in a note by the magistrate under the memorandum. Considerable differences are often found between the English and vernacular records owing to a neglect to put these instructions into practice.

5. English Record:- The High Court expects every Sessions Judge, District Magistrate and Magistrate exercising powers under section 30 of the Code to be able to cause the evidence of each witness as it proceeds to be taken down in writing from his dictation in open court. Where it is necessary to make a memorandum of the evidence, it should be kept in English and be as full as possible. Magistrates are not considered eligible for enhanced powers under section 30 unless they are able to keep a proper record in English.

6. Evidence to be taken down in full :- Sessions Judges and Magistrates of Districts should see that the procedure above prescribed is followed strictly, and that in all criminal cases tried by magistrates the evidence is taken down in full by the magistrate who tries the case, where he is required to do so by law.

7. Statement of witness to be read over:- The statement of a witness must be read over to him in the presence of the accused, if in attendance, or of his pleader and corrected if necessary according to the provisions of Section 360 of the Code. In this connection please see I.L.R., 1927 Rangoon 53 (P.C.) A. 1 . R . 1927 Privy Council 44.

8. Evidence and judgments in summary trials:- In those summary cases in which an appeal would not lie no evidence need be recorded; but the magistrate should record the particulars mentioned in section 263 of the Code in the register prescribed for the purpose. But in summary cases in which an appeal would lie the magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall before passing any sentence, record a judgment in the case (Section 264).

9. Particulars of witnesses or parties to be noted:- Care should be taken to record the parentage, age, place of residence, and, except in the case of converts to Christianity, caste of parties and witnesses. At the request of the Punjab Government, judicial officers are directed to refrain in all judicial proceedings from adding any caste designation to the names of known converts to Christianity, unless such designation be absolutely necessary for the identification of the party referred to. When a person is known by two names, or his precise name is doubtful, both should be given or the doubt cleared up. It should also be noted whether a witness is called by the prosecution, or by the defence, or by the Court.

10. Cross-examination and re-examination to be distinguished by a note in the margin:- Care should be taken to distinguish the cross-examination and re-examination of witnesses by a note in the margin. If a witness is not cross-examined the record should show that the accused did not wish to do so.

11. Illegible record:- The memoranda of evidence, the depositions or statements should be carefully written in a legible manner. In cases forwarded to the High Court, in which from any cause the memoranda or deposition and judgments should be submitted with the record of the case.

12. Documents on record should be duly proved:- (i) Care should be taken to see that all documents placed on the record, for example, the first information report, plan of the spot, medical certificates, etc., are duly proved. As regards special rules of evidence please see Chapter XLI of the Code. Section 510 has been amended by Act 28 of 1955 and now besides the reports of the Chemical Examiners, the reports of the Chief Inspector of Explosives, the Director of Finger Print Bureau or an officer of the Mint upon any matter or thing duly submitted to any of them for examination or

analysis may be used as evidence in any proceeding under the Code. The Court may, and if so required by any party shall, summon and examine any such officers as to the subject-matter of the report.

Evidence on affidavits:- In view of the new Section 510-A evidence of a formal character may be given by affidavits, and subject to all just exceptions be read as evidence in proceedings under the Code. Here again the Court may, and if so required by any party shall, examine the deponent as to the facts contained in his affidavit.

13. Demeanour of witnesses:- Magistrates should not omit to make a note about the demeanour of a witness when such is noteworthy and affects their estimate of the value the evidence given by the witness (Section 363.)

14. Record to contain a brief note of all material orders passed:- Each record or memorandum of should be dated and the record of a case made by a magistrate or Sessions Judge should not only contain depositions or memoranda of evidence, according as the evidence is or is not recorded by him in full, but also, in its proper place, a short note of every material order made during the inquiry or trial, with the date on which such order was made. Every order of adjournment must be entered, and the date on which the inquiry was resumed should be apparent.

Notes – Orders to be written by the Magistrate in his own hand:- All notes and orders recorded by Presiding officer (e.g., orders of adjournment, notes regarding the presence of witness) other than depositions, orders deciding any matter in dispute and the final judgment, should be written by the Presiding Officer in his own hand- writing or from his dictation and signed and dated and appended to the record. Each 'order' or 'note' should be clearly marked as such.

Notification regarding Court language:- Punjab Government Notification No. 69 (243)-4J- 62/42280, dated the 28th September, 1962.

In supersession of all previous notifications issued in this behalf, the Governor of Punjab, in exercise of the powers conferred by section 558 of the Code of Criminal Procedure, 1898, is pleased to determine that for the purpose of the said code, the language of the Courts subordinate to or within the jurisdiction of the High Court shall be-

- (a) Hindi in Devnagri Script in the Hindi Region and Punjabi in Gurmukhi script in the Punjabi Region;
- (b) English and Urdu in Chandigarh Capital.

Provided that English shall continue to be used for those Court purposes within the State for which it was being used immediately before the aforesaid date.

Explanation.-The expressions 'Hindi Region' and Punjabi Region' shall have the meaning assigned to them in the Punjab Regional Committees Orders, 1957.

Note.-The language of the High Court is English (Vide Punjab Government notification No. 316-G, dated the 18th January, 1906.