

PART G.-MISCELLANEOUS MATTERS IN CONNECTION
WITH INQUIRIES AND TRIALS

(a) *Age of accused persons, complainants and witnesses to be carefully considered when the point is material.*

In criminal cases, in which the age of an accused person, complainant or witnesses, is material to the matter in issue, or is likely to affect the sentence, the Court should record a careful finding as to probable age of such accused person, complainant or witness, and should refer to, and comment on, any discrepancies which there may be in the evidence on the point. In cases of doubt, the opinion of a medical officer should be taken. The age of the accused as found or believed by the Court should be invariably stated in the judgment. A careful statement of the probable age of the accused is especially necessary in murder cases in which the person charged is a youth of is very advanced in years. But in every case in which a charge is framed the accused should, at the opening of his examination, be required to state his age; and in all cases in which the age of the accused appears to the Court to be under twenty or over fifty years, or to be material for any special reason, the magistrate should add a note expressing his own opinion as to the probable age of the accused.

NOTE-It has been brought to the notice of the High Court that owing to insufficient inquiry into the age of juvenile offenders youths of too advanced age are not infrequently sent to the Reformatory School. The Judges, *therefore, invite the* attention of all magistrates to the necessity of exercising care in the preliminary inquiry into the age prescribed in section II of the Reformatory Schools Act of 1897 and to the propriety of taking medical advice in doubtful cases.

(b) *Medical examination of persons for purposes of evidence.*

Neither the complainant, nor a witness nor an accused person can be compelled to submit to medical examination for the purposes of evidence. A criminal Court has by law no power to order any person, whether male or female, to be subjected to medical examination, though, where the consent of the person to be examined (or, in the case of a minor, or his or

her lawful guardian) has been obtained, such examination may be authorised. The practice of ordering the medical examination of a woman who has complained of an offence against her virtue is illegal without her consent.

(c) Distinction between cases of Assault and Hurt.

1. It has come to notice that junior magistrates are apt to confuse sections 352 and 323 of the Indian Code and to issue process and convict under the former section in cases in which the complaint is laid under section 323, and the evidence for the prosecution establishes that fact of violence having been actually used.

2. In view of the amendment of the definition of a 'warrant-case' both cases would now be triable as a summons-case. The magistrates should not, therefore, be led away by the impression that they must have to follow a complicated procedure if an offence under section 323 of the Indian Penal Code is made out against the accused.

3. Section 352 of the Indian Penal Code would not apply to cases where the offender uses criminal force which actually causes hurt to a person. Such cases would fall under section 323 of the said Code.

4. It has been ruled that section 304-A is inapplicable to cases in which an assault, however, petty, is deliberately made and death ensues. Such cases fall either under section 302, section 304, or section 335, section 325 or section 323.

(d) Death of complainant.

Criminal proceedings once instituted whether upon a complaint or otherwise do not terminate or abate merely by reason of the death of the complainant or person injured (See 2 I.L.R. Lahore 27).

(e) Exhibits.

(i) Sessions Judges and Magistrates should ordinarily pass orders under section 517(1) of the Code of

Criminal Procedure for the disposal of exhibits on the conclusion of the trial. The time at which such an order is to be carried out is governed by sub-sections (3) and (4) of section 517 of the Code of Criminal Procedure. The order remains in force, unless it is modified, altered or annulled under section 520 of the Code of Criminal Procedure. If such orders are made on the conclusion of the trial, the inconvenience of giving directions at a later time, when the matter is no longer fresh in the mind of the Court, and the possibility of a legal difficulty in making orders long after the conclusion of the trial will be avoided.

(ii) Instructions relating to the sending of exhibits to the High Court in Sessions cases are contained in paragraphs 47, 48 and 49 of Chapter 24-B, of this volume. In respect to magisterial cases, exhibits, other than documentary exhibits, should not be sent to the High Court unless the High Court calls for them, or unless the Magistrate, considers that a particular exhibit will be required in the High Court, in which case he should record a note at the foot of his judgment that the exhibit should be forwarded to the High Court in the event of an appeal or revision to the High Court.