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Legal Implication of Improper Admission and Rejection of Evidence in Trial

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ABSTRACT

The Indian society is credited for its heterogeneity, powerful democracy, and observance of spirit of Rule of Law. Indian criminal justice system is also pervaded with the modern outlook along with classical sense of justice. Dharma was the very foundation of ancient criminal justice system. Preamble of the Constitution focuses on different dimensions of justice, namely social, political, and economic. Recently, we have witnessed major reforms in criminal law as three important legislations were enacted by the Parliament, which enforced from first day of July 2024. These reforms have brought structural changes, created new normative principles, and challenges to the police, court, and correctional agencies. However, it is a fact that fundamental assumptions, underlying principles, and rules have remained intact despite of incorporation of new rules to cope with modern advancement and technological development.

The recent changes were made to laws and institutions more responsive, fair, just, and neutralize the gap between law in words and law in action. It would be required to radicalize the profile of Indian criminal jurisprudence. In this backdrop, it has been tried to analyse the significance of evidence in general. Admission of proper evidence would lead to justice-oriented decision, and rejection of unnecessary evidence will also save the time of the court, parties, and enforcement machinery. The legal effect of improper admission of evidence as well as rejection of evidence by the trial court, has been discussed in this research paper. Analysis of laws relating to other jurisdictions is also a natural corollary of this inquiry.

Keywords: Evidence, Fair Trial, Common Law, Reversal of Judgment, Appeal and Remand

I. INTRODUCTION

The main objective of the Bhartiya Saksha Adhiniyam (hereafter referred as BSA) is to ensure fair trial in Indian jurisdiction, which was mandated through the judiciary's application of fundamental rights. Court has been the pioneer institution in advancing the cause of justice and affording fair chances to the litigant to present their case in an appropriate state of affairs. The success of the court is highly dependent upon the quality of evidence produced before it. It is a fact beyond doubt that the court's power is very wide, which is strictly restricted in the

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administration of justice. Hence, in *Sheo Swaroop v. King Emperor*² According to the Privy Council, the court's authority shall not be restricted unless specifically mentioned in the code. Observation by court reflected that the procedural law must be explicit on this matter.

BSA devised the mechanism to identify the relevant evidence and convince the court to admit it, and also form a basis of judgment. It is a proverb, *you reap what you sow*, meaning thereby that for a better result, proper evidence must not only be presented by the parties but also appreciated by the court while deciding on any matter. According to the rules pertaining to factual relevancy, the Adhiniyam required the court to request that the party wishing to testify demonstrate the relevance of their testimony. Relevant fact must be in contemplation and consideration of the court while announcing a decision in the litigated case. In other words, legal evidence shall be the basis of the court decision, which is ultimately obligations also. The non-observance of this rule would affect the legality of the judgment, as it may cause the trial to be illegal and provide a substantive ground of reversal of decision by the higher court. Unless prohibited by the BSA or other laws, the court must record all pertinent evidence. The trial is tainted if admissible evidence is rejected. In *T. Nagappa v. Y.R. Muralidhar*³, according to the ruling, there cannot be a fair trial if the appellant is not allowed to present her evidence. The Court further observed that a fair trial entails giving her the appropriate and equitable chances to establish her innocence. It is a valuable right to provide evidence to help the defense. If that right is denied, a fair trial will also be denied. The courts should be envious when they observe that the rules of process, which are meant to guarantee justice, are being strictly adhered to.

II. LEGAL PROVISION IN BSA

Evidence that is improperly admitted or rejected and does not negatively impact the case's merits should not be given significant weight. The consequences of the trial court's incorrect acceptance or rejection of evidence are covered in Section 169 of the BSA. Court hearing the appeal shall not ordinarily order a fresh trial or pass an order of reversal of decision. The court can do so if the decision would be different in case of admission of rejected evidence or rejection of improperly admitted evidence. This fact must be considered by the court on hearing an appeal against trial court. According to Section 169, "reversal of judgment" is a term that can only be used by an appellate court. This suggests that this clause also applies to appeals. Analysis of section 169 reveals that use of the words "in any case" demonstrates that both criminal and civil cases are covered by this provision. Similarly, the use of "any decision" indicates the scope that

² (1934) Privy Council

³ AIR 2008 SC 2010

extends to not only final decrees and judgments but also interlocutory orders.

III. COMMON LAW COUNTRIES

The laws relating to improper admission or rejection of evidence are on a similar trend in common law countries. In New Zealand, Canada, and England, the courts have declined to interfere in the trial court decision if the wrongly admitted evidence or rejected evidence would not adversely affect the verdict. The inquiry of New Zealand jurisdiction divulges that, in general, the court will not interfere unless there is a possibility of miscarriage of justice. In *William Duffield McKee v. R*⁴, Court observed that “if inadmissible evidence is led that would be capable of affecting the verdict, the possibility of a miscarriage of justice would then increase. The court may reject an appeal against a conviction if the error is insignificant or inconsequential and there has been no serious injustice or miscarriage of justice.”

Similarly, in *R v. Jolivet*⁵ (2000), when the evidence against the accused is strong, and there is no reasonable chance that a fresh trial will result in a different verdict, “the Supreme Court(SC) of Canada” stated clearly in the public interest to avoid the expense and delay of additional proceedings.

According to the *Supreme Court's Rules*, “the Court of Appeal in England” has the power to reverse a lower court's ruling or mandate a new trial. When court of appeals determines that a significant error or miscarriage has been caused, the authority must be used. Regularly ordering a new trial or reversal based just on misdirection, faulty evidence admission or rejection, or whether a document is sufficiently stamped or does not need to be stamped is prohibited.

Furthermore, *UK Criminal Appeal 1968's Section 2(1)(a)* states that “the Court of Appeal shall permit an appeal against conviction if they believe that the conviction is unsafe.” So, it gives a liberty to the jury/court to decide subjectively if they consider the verdict unsafe or unsatisfactory (injustice has been done), the appellate court can entertain the matter.

IV. LEGAL EFFECT IN CIVIL MATTERS

It is a noticeable fact that the presence of adequate evidence to support the very basis of adjudication does not warrant intervention by the Appellate Court. Consequently, it does not pave the way for trial De novo. According to the decision in *Abdul Rahim v. King-Emperor*⁶, acceptance of inadmissible evidence does not automatically warrant a new trial or the overturning of a verdict. The only prerequisite is the discovery of more evidence to support the

4 (2013), NZSC 122 the Supreme Court of New Zealand

5 [2000] 1 S.C.R. 751, Supreme Court of Canada

⁶ AIR1924Cal 889

findings and arrive at the same conclusion. Court in India usually declines to interfere if the result of the adjudication process is intact in both conditions. The possibility of an unusual verdict, if left, evidence would be taken into account, is equipping a ground for meddling in the established adjudication.

A. Part of Court Record

The significance of “Code of Civil Procedure” cannot be undermined in laying down rules for conducting civil trials. According to the code, the court may reject any document at any point during the lawsuit that it determines to be irrelevant or inadmissible, noting the reasons for the rejection.⁷ The suit record must include a copy of any document that is admitted into evidence or substituted under Rule 5.⁸ Additionally, “documents not admitted in evidence will be returned to their producers”.⁹ Once a document is acknowledged, it is a usual consequence to permit such credentials as a part of a court proceeding. Such discretionary power is assigned to the court. However, the grounds of acceptance or rejection must be reflected in the directive of the law court. The party has liberty to pursue the court to acknowledge its documents, but the court stands in its right to refuse to make it part of the court record, and consequently it can be given back to the party that proposed such evidence.

There will be antagonistic repercussions if a necessary party is not joined because they will not have the opportunity to present their evidence. Except for this clause, the Court cannot change or reverse any decree that has already been issued by a trial court with competent jurisdiction because of "non-joinder or mis-joinder" of parties or causes of action, or because of any mistake, flaw, or irregularity in any suit proceedings that would not have an impact on the merits of jurisdiction or case.¹⁰ Principle stated in “section 99” has also received affirmation in “*Dwijesh Chandra Roy Chaudhry v. Naresh Chandra Gupta*”.¹¹ The appellate court's involvement cannot be rationalized in a banal way. Intervention must take place if the circumstances necessitate the court to resurrect it.

The code¹² governs when a party can appeal a decree to “*the High Court*”. To permit a second appeal, the High Court (HC) must identify a significant legal issue.

B. When the Appellate Court Can Pass an Order of Remand

Appeals from original decrees are allowed under *CPC Order 41, 1908*. The Code gives appellate

⁷ Order XIII Rule 3 of CPC, 1908

⁸ Order XIII Rule 7(1) of CPC, 1908

⁹ Order XIII Rule 7(2) of CPC, 1908

¹⁰ Section 99 CPC, 1908

¹¹ (1946) 1 Cal. 149

¹² Section 100 CPC, 1908

courts three remand options. Orders 41 Rule 23, 23-A, and 25 cover these three situations:

1. Remand of case by appellate court (Rule 23)

If the appeals court has decided the suit on a preliminary point and reversed the decree, the appellate court may remand the case by order. The court from which the appeal is preferred may also receive a copy of its judgment and order, along with instructions to readmit the suit under its original number in the register of civil suits and proceed with the suit's decision. It may also specify which issue or issues will be tried in the case so remanded. Subject to all conceivable exceptions, the evidence (if any) that was recorded during the initial trial will be used as evidence in the trial that follows remand.

2. Remand in other cases (section 23A)

If the circumstances required the court to issue a retrial order, the appellate court has the same authority, even if the decree was issued on a matter other than the preliminary one.

3. Where appellate court may frame issues and refer them for trial to court whose decree appealed from (section 25)

In *Jegannathan v. Raju Sigamani and Another*¹³ “The Indian SC” enumerated the conditions that allow for the use of appellate jurisdiction to issue a remand order. Court considered matter in both conditions, when the decree was passed on merit or on an initial basis. Even if no issue was framed or tried by the court, court can remand after framing an issue.

V. LEGAL EFFECT IN CRIMINAL CASES/BNSS, 2023

“*The Bhartiya Nagrik Suraksha Sanhita, 2023* (hereafter referred to as *BNSS*)” is India's new criminal procedure code. It aims to modernize the criminal justice system by integrating technology and forensics into investigations. It also mandates definite timelines for conclusion proceedings and establishing a mechanism that will not only be infallible but also meet the requirements of the contemporary period. The Legislature has provided a safeguard in criminal cases.¹⁴ Section 511 of the BNSS addresses the appellate court's limited authority to intervene when the trial court makes a mistake, omits something, or acts irregularly. Only scope of interference available to appellate court is when a failure of justice has actually resulted from any mistake, omission, or irregularity.¹⁵ Except in this situation, appellate court cannot reverse or alter order of trial court in routine manner. If there are any omissions, mistakes, or irregularities in the proclamation, complaint, warrant, summons, judgment, order, or other

¹³ (2012) 5 SCC 540

¹⁴ B.M Prasad & Manish Mohan, Ratanlal & Dhirajlal-The Law of Evidence, Lexis Nexis, 25th ed. 2013 p.810

¹⁵ Section 511(1) of the Bhartiya Saksha Adhiniyam 2023

proceedings, or in any sanction for the prosecution, the rule would remain the same. After evaluating whether the objection could and should have been raised earlier in the proceedings, the ground of interference, that is, any error, omission, or irregularity that a failure of justice has actually caused, will be decided.¹⁶

A. Improper Admission of Evidence

Legal consequences of improper admission in criminal cases were properly dealt by the judiciary in various cases. In “*Abdul Rahim vs. King-Emperor*¹⁷” case, it was decided that if evidence was improperly admitted during the trial phase of a criminal case, the HC on appeal should attempt to exclude that inadmissible evidence while maintaining the same ruling. Requirement that the evidence already in existence be sufficient to establish the case and arrive at the same conclusion.

*Pulukuri Kottaya v. King-Emperor*¹⁸ is a landmark judicial decision on ambit of confession. Though confession is a crucial piece of evidence, the law of evidence prescribes conditions for admissibility of confession by the accused. It must be voluntary and free from any kind of infirmity. The police sub-inspector deposed accused 3 and obtained a confession from him, accused stated:-

I stabbed Sivayya with a spear. I hid the spear in a yard in my village. I will show you the place.

It is necessary to remove the first sentence.

The Court observed that, “therefore, it was the HC's responsibility in an appeal to consider if there was enough evidence left to support the convictions after eliminating the improperly admitted evidence. Because they believed that the evidence was legitimately admitted, the HC judges did not give this issue much thought. Therefore, the case was sent to “*Madras High Court*” with instructions to consider this question. If the Court determines that there is sufficient admissible evidence to support the convictions, they will be upheld. However, they will take whatever action is within their power if they feel that the admissible evidence is insufficient to support the convictions, including ordering a new trial or dismissing the accused. The court, while speaking of the improper admission, implied that the accused must have objected to its admission by the trial court before he could invoke section 167.

The renowned *Privy Council* ruling in “*Pakala Narayana Swami vs. Emperor*.”¹⁹ established a

¹⁶ Section 511(2) of the Bhartiya Saksha Adhinyam 2023.

¹⁷ AIR1924Cal 889

¹⁸ AIR 1947 PC 67

¹⁹ AIR 1939 PC 47

leading authority on confession and dying declarations. The accused's statement, according to the Privy Council, was a combination of confession and defense of his innocence. A confession either acknowledges the offense or, at the very least, largely acknowledges every fact that makes up the offense. A self-explanatory statement cannot be considered a confession. It must be accepted in its entirety or rejected.

According to *Lord Atkin*, the trial court incorrectly interpreted the accused's statement as a confession. Nevertheless, the Privy Council declined to reverse the conviction, citing sufficient proof of the deceased's presence at the accused's residence under these circumstances, the very fact that the statement attempted to prove. Their Lordships cannot claim that there was insufficient evidence for the judge of fact to find the defendant guilty of murder. The mutilated body of a recently murdered man was discovered to be inside a trunk that the accused man had purchased just over twelve hours prior to the trunk being loaded onto the train. Without explaining, he merely denied that he knew the man, that the man had come to his house, or that he had seen the trunk. These claims were all false. Under these circumstances, it is impossible to claim that justice was not served by the proceedings that led to a murder conviction.

B. Rejection of Evidence

The Karnataka High Court observed in the State of “*Mysore v. Sampangiramiiah*²⁰” case, that “accepting inadmissible evidence is less injurious than rejecting admissible evidence.” As in former case, evidence that was improperly admitted may not be taken into account when rendering a verdict. However, in the latter instance, the only way to record evidence that has been incorrectly rejected is to pursue additional legal action.

If “the trial court” bases a choice on evidence that was improperly admitted. Such evidence must be set aside in order to assess its applicability. The decision must be overturned if it is based only on such improperly admitted evidence.

The HC pronouncements made it clear that the verdict must be traced out by the appellate court and determination of matter required to be consider the light of erroneous denunciation or reception of evidence. The exclusivity of erroneous denunciation or reception of evidence shall furnish a ground to set aside adjudication.

When the witness, once proposed by any party to be brought in witness box for examination but due to change in circumstances or other reason, the party caused that such witness out of consideration in adjudication process. In short, such witnesses have not been tendered for

²⁰ AIR 1953 Kar 80

examination. This is not a case of rejection rather than exclusion such person from process. The prosecution had named a particular individual as a witness in the *Narain v. State of Punjab*²¹ case, but they were not particularly interested in questioning him. The prosecution dropped that witness when he refused to testify. According to the court, “Section 167” of the “Indian Evidence Act” does not allow for the rejection of evidence in this case. The prosecution doesn’t genuinely offer individual as a witness in this situation.

C. Appeal Against Acquittal

In *State of Karnataka v. K. Gopalkrishna*²², Court stated that the Appellate Court does not merely change the lower court's factual findings when considering an appeal against acquittal. If two reasonable opinions can be drawn from the same evidence and the lower court accepts the accused's position, that is enough to uphold the acquittal order. The Appellate Court will be justified in overturning such an order of acquittal, however, if it determines that the conclusions of the Court below are completely irrational or perverse and not supported by the evidence on file, or if there is grave illegality, such as ignorance or misreading of the evidence on file.

Brief fact of the *Ghurey Lal vs. State of U.P.*²³ is that the accused in this murder case was found not guilty by the trial court. The HC reversed the trial court's decision and found the accused guilty. By doing this, “the appellate court” disregarded criteria by which it evaluates appeals against acquittals and failed to appropriately consider the trial court's opinions regarding the credibility of witnesses. While acknowledging the HC's and lower court's decisions, SC upheld the lower court's decision.

Appellate court's broad authority to examine, “evidence and come to own conclusions”, the SC acknowledged. The Apex Court has informed the Appellate Court of the fundamental principles of criminal jurisprudence. Everyone will be assumed to be innocent. The court of trial has confirmed the accused's presumption of innocence. “Therefore, an acquittal should only be overturned by the appellate court when there are strong and convincing grounds for doing so.” In addressing appeals against acquittal, the SC established the following rules for the appellate courts.

1. In appeals against acquittal, “appellate court” may review the evidence in compliance with sections 378 and 386 of the 1973 “Criminal Procedure Code”. Appellate court has

21 AIR 1959 SC 484

22 (2005) 9 SCC 291

23 (2008) 10 SCC 450

broad review authority and can reexamine all of the available evidence. It can review the trial court's conclusions in light of the facts and the law.

2. Until the accused is proven guilty, they are presumed innocent. When the accused appeared before the trial court, he had this presumption. The trial court's acquittal reinforces the presumption that he is innocent.
3. Trial court's ruling must be given the appropriate weight and consideration. This is particularly true when the credibility of a witness is in question. The HC's alternative interpretation of the evidence is insufficient. Additionally, there must be strong and convincing arguments for concluding that the trial court erred.
4. Only if the appellate court has “very compelling or substantial reasons” for doing so may it overturn the trial court's acquittal or otherwise interfere with it.
5. HC and appellate courts must favor the accused if two reasonable opinions result in acquittal or conviction.
6. In certain cases, the appellate court may have compelling reasons to overturn the trial court's decision. There are “very compelling or substantial reasons”:
 - i) Trial court's assessment of beliefs is blatantly incorrect;
 - ii) Trial court's ruling has been founded on a misconstrued legal theory;
 - iii) A “grave miscarriage of justice” is likely to follow “trial court's ruling”;
 - iv) Trial court's entire procedure used to handle evidence was clearly illegal;
 - v) Trial court's decision has been blatantly unfair or irrational;
 - vi) Trial court has disregarded evidence, misinterpreted important evidence, and disregarded important documents, such as the ballistic expert's report or dying declarations.

VI. CONCLUDING OBSERVATION

The house of adjective law has many mansions which are distinct but not separate in spirit. The same principle found place in BSA, BNSS and CPC which advanced limit on power of appellate court on alteration or reversal of judgment. These laws were drafted taken into consideration the grass root realities to make court responsible which will balance the interest of the parties and also ensure effective and fair administration of justice. The law cannot be such to castigate the trial court decision in a humdrum style. The limitation has an important place in hearing appeal or revision by the superior court. According to the discussion on the subject above, the

superior court would interfere if evidence was improperly admitted or rejected. But such limitation cannot be blanket ban on the power of the court. The substantial and compelling reason would be the cause for discarding trial court's decision.
