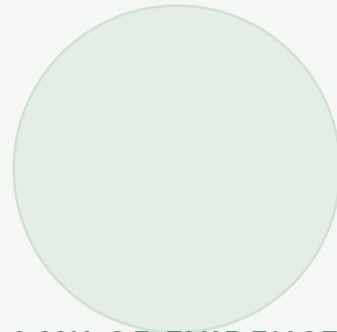




LAW OF EVIDENCE

UNIT – II

Confessions · Dying declarations · Judgments · Experts

Twenty slides in this unit

1. Confession idea

2. ss.24–26 bars

3. s.27 discovery

4. s.30 co-accused

5. s.58 admitted facts

6. Dying declaration s.32

7. English law note

8. ss.32 other clauses

9. ss.34–38

10. Judgments 40–44

11. Fraud / collusion

12. Experts 45–51

13. Who is an expert

14. Types of expert

15. Judicial notice vs expert

16. Cases confession

17. Cases s.32 / expert

18. Takeaways

19. BSA map

20. Close

Confession – relevancy and danger

A confession is an admission of the offence (or of substantially all the facts that constitute it). Because it can be forced, the Act hedges it with ss.24–26.

s.24

Caused by inducement, threat or promise from a person in authority – irrelevant.

s.25

Confession to a police officer – not proved against the accused.

s.26

Confession by a person in police custody, unless made in immediate presence of a Magistrate.

Policy

Custodial torture history; the bar is structural, not case-by-case sympathy.

s.27 – discovery exception

Text

So much of the information as distinctly relates to the fact thereby discovered may be proved.

Conditions

Accused in custody; information; discovery in consequence; distinctness.

Pulukuri Kottaya

The fact discovered, not the whole confession, comes in.

Joint discovery

Need care in identifying whose information led where.

Planting risk

Courts watch the recovery mahazar closely.

BSA

Discovery rule continues in the confession cluster.

s.30 and s.58

s.30: a proved confession by one accused may be considered against a co-accused in the same trial. It is weak and needs independent corroboration. s.58: admitted facts need not be proved.

s.30 caution

Bhuboni Sahu – it is not substantive evidence of the strongest kind.

Same trial

Does not travel to a separately tried accused.

s.58 civil/criminal

Facts formally admitted can be skipped.

Still discretionary

The court may require proof despite admission.

Dying declaration – s.32(1)

A statement by a person who is dead as to the cause of death, or as to any of the circumstances of the transaction which resulted in death, is relevant if the cause of that death is in question.

Why believed

Nemo moriturus praesumitur mentiri – but Indian law does not require a religious last-breath.

Form

Oral, written, signs, questions-and-answers; preferably a Magistrate.

Corroboration

Not a legal requirement if the declaration is trustworthy (Kushal Rao; Paniben).

Multiple DDs

Contradictions can sink them; consistency helps.

Other s.32 clauses (quick)

s.32(2)

Business entries in ordinary course –
maker dead or unavailable.

s.32(3)

Against interest of the maker.

s.32(4)

Public right / custom opinion.

s.32(5)(6)

Pedigree and family tradition.

s.32(7)

Document relating to a transaction in
s.13.

s.32(8)

Several persons expressing feelings.

ss.34–39 books and statements

s.34

Account books – not alone sufficient to charge a person with liability.

s.35

Public record / electronic record of official acts.

ss.36–38

Maps, charts, statutory books, law-books.

s.32 vs 154 CrPC

Police statement of a living witness is for contradiction, not DD.

English contrast

Res gestae and dying-declaration common-law limits are tighter on religious expectation.

s.33

Prior evidence in a later proceeding if the witness cannot be produced and the first chance to cross-examine existed.

Judgments – ss.40–44

A previous judgment is relevant when it is a bar (*res judicata* / *autrefois*), or when it is *in rem*, or when it is a fact in issue. It is not a travelling proof of the facts found, except as the Act allows.

s.40

Judgments that bar a second trial or suit.

s.41

Probate, matrimonial, admiralty, insolvency – judgments *in rem*.

ss.42–43

Other public / private judgments – limited relevance.

s.44

Judgment can be attacked for fraud, collusion, or want of jurisdiction.

Experts – ss.45–51

When the court must form an opinion on a point of foreign law, science, art, or identity of handwriting / finger impressions, experts are relevant. s.45A adds electronic-evidence examiners.

Who is an expert

Special skill or study – not a mere interested practitioner.

s.46

Facts that support or rebut the expert.

ss.47–47A

Handwriting and electronic signature by a familiar person.

ss.48–51

Opinion on custom, usages, tenets, relationship; grounds of opinion.

Problems of expert testimony

Hired guns

Parties shop for a convenient report.

Court is not bound

Expert is a witness, not a thirteenth judge (Ramesh Chandra Agrawal).

Data missing

An opinion without the basis is an empty shell (s.51).

DNA / medical

High value if chain of custody is clean.

Ballistics / fingerprints

Identity evidence – error rates matter.

Conflict of experts

Court may pick the better-reasoned view, or call a third.

Confessions and s.27

Pulukuri Kottaya (1947 PC)

s.27 – only the discovered fact, not the narrative of guilt.

Kartar Singh (1994)

TADA confession regime; constitutional caution.

Selvi v. State of Karnataka (2010)

Narco / polygraph – testimonial bar, Art. 20(3).

Aghnoo Nagesia (1966)

Confessional FIR – how much can be used.

Bhuboni Sahu (1949 PC)

s.30 co-accused confession is weak.

State of U.P. v. Deoman Upadhyaya

Custody and s.27.

Dying declaration and experts

Kushal Rao (1958)

DD can be the sole basis if reliable.

Paniben (1992)

Principles for testing a dying declaration.

Laxman v. State of Maharashtra (2002)

Doctor's fitness certificate is desirable, not indispensable.

Khushal Rao / Pakala Narayana Swami

'Circumstances of the transaction' width.

State of H.P. v. Jai Lal

Expert must be shown to be skilled.

Ramesh Chandra Agrawal (2009)

Court may refuse an unreasoned expert view.

Magistrate confession practice

s.164 CrPC / BNSS

The proper home for a custody confession.

Voluntariness questions

Time to reflect; no police in the room.

Retraction

Common; court looks at medical, time, and corroboration.

Recording language

The language the accused understands.

Thumb / signature

Identify the maker.

If ignored

s.26 still keeps a police-room confession out.

Expert vs judge of fact

The expert supplies a skilled opinion. The court decides whether the accused wrote the note or whether the bone is human.

Helpful

DNA, ballistics, medicine, handwriting, electronics.

Danger

Jargon without reasons (s.51).

Second opinion

Court may summon another expert.

BSA

Expert cluster moved; idea unchanged.

IEA → BSA map (Unit II)

IEA 24-26

BSA confession bars (same policy).

IEA 27

BSA discovery exception.

IEA 30

BSA co-accused use.

IEA 32

BSA 26-area – dead person's statement.

IEA 45-51

BSA expert cluster.

IEA 58

Admitted facts still skip proof.

Key takeaways

01 ss.24–26 shut out tainted and police-custody confessions.

02 s.27 saves only the distinct discovered fact (Kottaya).

03 Dying declaration (s.32(1)) can stand alone if trustworthy.

04 Judgments are relevant as bars or in rem – not as free proof of facts.

05 Experts assist; they do not decide.

06 Cite Kottaya, Kushal Rao, Paniben, Selvi, Bhuboni Sahu.

Confession flowchart

To police

s.25 – out.

In custody, no magistrate

s.26 – out.

Inducement

s.24 – out.

Discovery follows

s.27 – fact in.

Magistrate s.164

May go in if voluntary.

Co-accused

s.30 – weak, corroborate.

DD checklist for answers

Death in issue?

If not, s.32(1) does not open.

Maker dead?

Must be.

About cause / transaction?

Pakala width.

Fit to speak?

Laxman – certificate helpful.

Tutored?

Look at police presence.

More than one DD?

Reconcile or discard.

End of UNIT – II

Next: UNIT-III • Character, oral and documentary evidence