

## **CODE OF CRIMINAL PROCEDURE Sec. 293—Syp. I:**

### **SYNOPSIS**

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**1. Legislative changes-** See discussion under Synopsis No. I. Legislative changes under Section 292 ante. The Law Commission in its 41st Report observed:

"41.6. Section 510 will deal with other expert reports where security is not a consideration. We propose to add two more experts in that list, namely

(i) the Director of the HalTkeine Institute, Bombay , and

(ii) the Director of the Central Forensic Laboratory.

We are not convinced that handwriting experts employed by Government should be treated in the same way. Their evidence is almost always subject to controversy and no special value can be attached to their reports merely because the expert is employed by Government. Nor can we justify the extension of this provision to cover ordinary medical or

veterinary experts. The procedure here is very special and must be confined to special experts.

“In an earlier Report (14th Report, Vol. 2, pages 848, 849, para 26), the Commission noted that Section 510 (2), as amended in 1955, makes it obligatory for the Court to summon the Chemical Examiner or other officer mentioned in sub Section (I), if either party so desires. The Commission regarded this provision as unsatisfactory and recommended that it should be left to the discretion of the Court i.e. summon such officers. We agree with this recommendation and are suggesting an amendment to implement it.”<sup>20</sup>

**Cr. P. C. Amending Act, 1978** – Sub-section(4) has been amended to include Deputy Director and Assistant Directors of Central and State Forensic Science Laboratories in the List of Government scientific experts.

**2. Scope of the section.**—This section provides an exception to the rule of law laid down by Section 273 of the Code that all evidence taken in the course of a trial shall be taken in the presence of the accused.<sup>21</sup> This section further makes departure from the elementary principle of law that evidence which is not stated on oath and is tested by cross-examination by the party against whom it is sought to be used cannot be admitted in evidence.<sup>22</sup> Under this section the reports of the experts mentioned in this section are admissible in evidence without calling them as witness in the case.<sup>23</sup> The reason for the enactment of this rule is the expense

20. Vide Law Co 41st Report, Vol. 1, pp. 327, 328, para 4i .6.

21. Ram Singh v. Crown, ( 951) 5. : U 99 (Simla).

22. Sulernan V. State of Gujarat, ( 1961) 2 Cr LJ 78, 81 (Gu).

23. Rup Devi v. State of H.P., 1955

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and delay and inconvenience which would be entailed if the experts have to travel round the province giving evidence in every case in which they have given opinion. ` provisions of Section 239 being special provisions must be strictly adhered to. The report of an expert not mentioned in this section is not admissible in evidence without calling him as witness.<sup>25</sup> Section 293 being special provision prevails over the general provisions of Section 45, Evidence Act.<sup>1</sup> Section (293) (4) (e) covers the report by the Director, Forensic Science Laboratory in respect of the bullet sent to him for opinion as to whether it had been fired by a particular revolver or not, and the examination of the Director is not required.<sup>2</sup>

**3. “Am Chemical Examiner or Assistant Chemical Examiner” [ Sub section(4), Clause (a)].**—The report of Public Analyst,<sup>3</sup> report of the Professor of Anatomy, Grant Medical College, Bombay,<sup>4</sup> report of Excise Analyst to Government,<sup>5</sup> report of the Chemist of the State Laboratory unless the State Government appoints him as the Chemical Examiner of the State,<sup>6</sup> report of a Municipal Analyst,<sup>7</sup> report of Currency Officer regarding the genuineness of the currency notes,<sup>8</sup> are not governed by Section 293. The provisions of this section do not apply to the report of a public analyst under •the Prevention of Food Adulteration Act, but the accused has right to call him as a witness under

Section 247.<sup>9</sup> Report of Central Forensic Laboratory that the examination of the site of explosion and that of the contents indicate that the deceased was in the process of manufacturing country made bombs cannot be admitted in evidence as the concerned officer could only report as to what the chemicals were<sup>10</sup>. Assistant Director of the Chemical Section of Forensic Laboratory, Rajasthan, Jaipur, is a chemical examiner of the Government and his report can be received in evidence without proof of his appointment as a chemical examiner is not necessary."<sup>11</sup>

**4. "A report under the hand of a Government scientific expert".**—Any document purporting to be a report under the hand of an expert under the section must bear the signatures of the expert concerned. Where the report is of a Chemical Examiner, the signature should purport to be that of a Chemical Examiner or Assistant Chemical Examiner appointed by the Government.<sup>12</sup> A paper on which it is written in somebody's handwriting that Chemical Examiner's report goes like this is not a legal evidence and cannot be a substitute for the original certificate or of copy thereof.<sup>13</sup> The report of a chemical examiner or assistant chemical examiner

24. Piarey v. Emperor, 1938 L 496 (1938) 39 Cr LJ 714.

25. Champak Lal v. Natwar Lal, 1970 Cr LJ 128, 130 (Gu).

1. Bhagwan v. State of Punjab, 1983 FAC 60 (P & H) (DB).

2. Naseem v. State of U. P., (1984) 1 Crimes 1004 (A);

3. Municipal Corporation of Delhi v. Ram Dayal, 1970 Cr J 22 I (D); Chainpak Lal v. Natwar Lal, (1983) 2 FAC 250 (Gu) Municipal Corporation of Delhi v. Ram Dayal, (1981) 2 FAC 255 (D).

4. Emperor v. Mahila, 1923 B 183 (1925) 26 Cr LJ 537.

5. Bansi v. Emperor, 1928 B 241: 29 Cr LJ 990.

6. Ram Prasad v. State, 1953. Bhop 17

7. Suleman v. Emperor, 1943 B 445, 446 contra see Mohari Lal v. Corporation of Calcutta, 1953 Cr LJ 1347: 1953 C 561.

8. Hamid Ali v. State, 1961 Tri 46:(1961) 2 Cr LJ 801.

9. Ram Dayal v. Municipal Corporation, 1970 SC 366: 1970 Cr LJ 515.

10. Mohd. Yasmin v. State, 1983 DLT 464.

11. Manaram v. State of Rajasthan, 1982 Cr LJ 696 (R).

12. Muhammad Shafi v. Crown, 1949 L 240: (1949) 50 Cr LJ 101; (DB) Ranchhod Mula v. State, (1961) 2 Cr LJ 472, 473 (Gu) (DB) (the report must be excluded).

13. Pearey Lal v. Emperor, 1938 L 496: (1938)39 Cr LJ 714.

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may be signed by his Secretary.<sup>14</sup> If the chemical examiner appends his signature to the report of his Assistant Chemical Examiner, it does not detract from the value or legality of the report and the report is admissible in evidence without formal proof.<sup>15</sup> The report of ballistic Expert not signed by the Director or Deputy Director of State Forensic Science Laboratory cannot be read in evidence without the examination of the Ballistic Expert.<sup>15-1</sup>.

**5. "Duly Submitted"** – The prosecution must establish that the articles examined by Chemical Examiner are those which were sent to him. In the absence of such proof, the report of the Chemical Examiner is of no worth.<sup>16</sup> The defect is not a technical defect and the whole trial is vitiated.<sup>17</sup> The prosecution, there fore, must lead evidence to show that the officer recovering the matter or thing sent for examination, immediately sealed them after recovery and further that the seals were not tampered with till the articles were sent to the Chemical Examiner for analysis. In the absence of such precautions it would always be open to the accused to say that the police later put human blood on the articles in order to implicate the accused.<sup>18</sup> Where all the sample bottles contain the same stuff, it is not necessary to send all of them to the expert for analysis.<sup>19</sup> Where no doubt or suspicion is raised about the genuineness or authenticity of the samples, it is not necessary to examine any or every concerned official of the Chemical Examiner with regard to the safe custody of the sample.<sup>20</sup>

**6. "Proceeding under this Code".**—The expression "proceeding under this Code' in Section 293 is not tantamount to a judicial proceeding. The report of a Chemical Examiner received prior to the initiation of prosecution is admissible in evidence in any proceeding in the Court.<sup>21</sup> Proceedings held by a Customs Officer prior to the filling of a complaint are not proceedings under the Code and the provisions of Section 293 would not apply to certificate issued by the Mint Master in respect of gold taken from the possession of the accused.<sup>22</sup>

**7. Report submitted to police officer is not inadmissible in evidence.**— A report of a blood test submitted to police officer during the course of investigation is admissible in evidence and is not hit by Section 162 (1) of the Code.<sup>23</sup>

14 Dule Singh Gopal Sing v. S 1954 MBLJ 1190, 1192.

15. Public Prosecutor v. Venkatachalamaiah, 1957 AP 286: 1957 Cr LJ 830, 831.

15 1. Jai Mal Singh v. State, (1987) 1 Crimes 760, 765 (All).

16. State of Orissa v. Kaushalya Devi, 1965 Oudh 38; In re Chukkapaili Ramayya, 11 Cr LJ 222, 229 (M) (1966) I Mys LJ 911.

17. Muhammad Din v. Emperor, (1925) 26 Cr LJ 1420, 1421 (L) Queen Empress v. Mutal Muchi, 10 C 1026 (C) Ofel Molla v. Emperor, (1914) 15 Cr LJ 147 (C) In re Chukkapalli Ramayaya, 11 Cr LJ 222 (M) Tan Kyilin v. Emperor, (1926) 27 Cr LJ 1281 (Rang).

18. State v. Motia, 1955 R 82 see also Javitri v. State, 1957 Raj LW 132; Kala v. Emperor, 1944 L 206 (evidence tendered should establish beyond doubt the origin and ownership of each exhibit sent for examination); see also Radhey Shyam v. State, (1961) 2 Cr LJ 430 (K) Panna Ram v. State of Rajasthan 1983 Cr LR 685 (R) (when tampering ruled out, report can be relied upon) Somwaria v. State of Rajasthan, 1984 Cr LR 429 (R) (infirmary of consequence where tampering is ruled out) ; State of Rajasthan v. Banshilal, 1984 Raj Cr C4.

19. Virendrajit v. State, 1953 SC 247: 1953 Cr LJ 1097: 1953 SCJ 328.

20. Bhagwan v. State of Punjab, 1983 FAC 60 (P & H) (DB).

21. Public Prosecutor v. Venkatachaltmaiah, 1957 Cr LJ 830: 1957 AP 286 (1931) A 269 relied on ; 1919 Pat 139 (2) dissented from

22. Abdul Rahiman v. State of Mysor 1972 Cr LJ 406 (Mys).

23. Usha Lolhe v. State of Maharashtra, 1963 SC 1531(1963 2 Cr LJ 418 : Pandian In re., 1970 2 Mad LJ 26.

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**8. Expert report must be tendered In evidence.**—The report of the expert though is a piece of evidence which does not require any formal proof, but at the same time, it must be tendered in evidence so that the accused may have a chance of questioning it.<sup>24</sup> It must be tendered in evidence before the close of the trial and a copy of it must be furnished to the accused.<sup>25</sup> It cannot be tendered in evidence for the first time in appeal.<sup>1</sup> The original report must be tendered in evidence, and not a copy of such report.<sup>2</sup> When the copy of the report is filed, it is not admissible in evidence without formal proof. When the Court comes to know that original report has been received from the Chemical Examiner, it should insist upon the production of the original report and should not remain satisfied with the copy of the report filed by the prosecution.<sup>3</sup> A report of the State Forensic Science Laboratory is not admissible in evidence unless it is tendered in evidence and exhibited.<sup>4</sup>

**9. The contents of report of a Chemical Examiner.**—The report of the Chemical Examiner must contain reasons for arriving at a particular conclusion, disclose the tests or experiments performed by the Chemical Examiner, the factual data revealed by such tests or experiments and the reasons which led the Chemical Examiner to form his opinion, so as to enable the Court to arrive at its own independent conclusion.<sup>5</sup> The report must contain all the information which the Chemical examiner would have furnished, had he been called and examined as a witness in the case.<sup>6</sup> Where the matter to be reported on is the presence of certain substance in the article submitted for examination, much would turn on the quantity of the incriminating substance found in the article and that must be mentioned in the report.<sup>7</sup> In cases of blood-stained articles submitted for report, the Chemical Examiner must indicate in his report the number of blood-stains found by him on each exhibit and the extent of each blood-stain unless they are too minute and too numerous to be described in detail. Merely to say that blood was detected on each exhibit is not sufficient.<sup>8</sup> When the report is meagre or cryptic, the Court should call for a detailed report or examine the Chemical Examiner.<sup>9</sup>

The Chemical Examiner, however, need not indicate the method adopted by him in the analysis or examination of the material or article.<sup>10</sup>

24. Wali Muhammad v. Emperor, 1924 A 193: (1925) 26 Cr LJ 200, 201; Tej Singh v. State of Rajasthan, 1984 Raj LW 210: (1984) 1 Cr.LC 523 (R).

25. In re Rangaswami, 1957 M 508.

I. Wali Muhammad v. Emperor, 1924 A 193 : 26 Cr LJ 200, 201.

2. State v. Karu Cope, 1954 Pat 131 1954 Cr LJ 201 (DB) ; State of Orissa v. P. Parvatisam, (1963 I Cr LJ 310: 1963 Oudh 58; Ratan Jaipur Municipality, 1967 Cr LJ 1372 : 1967 R 231.

3. State of Orissa v. P. Parvatisam, 1963 Oudh 58: (1963) I Cr LJ 310.

4. Tej Singh v. State of Rajasthan, 1984 LW 210: (1984) I Cr LC 523 (R).

5. Dhian Singh v. Saharanpur Municipality, 1970 SC 318: 1970 Cr LJ 492 State of Kerala v. Shaju, 1985 KLT 33 ; State of Gujarat v. Lasanmal, (1963) 1 Cr LJ 533, 535 (Gu) ; see also Gaya Kunwar v. Emperor, 1934 Oudh 62 Gairani v. Emperor, 1933 A 394 Ram Prasad v. State of Bhopal, 1953 Cr LJ 702, 703 (Bhop) ; State v. Bhusa, 1962 B 229; Mahadevayya v. State of Mysore, 1966 Mys 75 Ajit Rai v. Vasumati, 1969 Gu 48 Srinivasa, in re, 1970 M 512.

6. Behram Sheriav v. Emperor, 1944 B 321.

7. Behram Sheriav v. Emperor, 1944 B 321 : (1945) 46 Cr LJ 162, 164.

8. Prabhu Bahaji v. State of Bombay, 1956 SC 51.

9. Gaya Kunwar v. Emperor, 1934 Oudh 62; State of Kerala v. Shoju. 1985 KLT 33.

10. Bhaskaran v. State, 1967 Ker LT 165

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The report of the Chemical Examiner as a whole, including the averments with regard to the condition of the sample and the seals thereon and the manner of its receipt are admissible under Section 293 (1)<sup>11</sup>."

**10. Public analyst.**—The certificate of the Public Analyst should contain the factual data which the analysis should reveal and not merely the opinion of the Public Analyst as to what that data indicates about the nature of the article of food. L the certificate merely gives the final opinion of the Public Analyst and if such an opinion be held to be conclusive evidence about the nature of the article of food, the merit of the case against the accused is really decided by the Public Analyst and not by the Court and the Court just gives its authority to the conclusion of the Public Analyst and this cannot be the position in law.<sup>12</sup> When the report of the Public Analyst does not give any data of the quantitative analysis, the report cannot be adequately tested and must be rejected.<sup>13</sup> In cases of milk sent for opinion. the Public Analyst should state what was the actual percentage of water in

the sample and unless that is specified, it is not possible for the Court to test accuracy of his opinion since standards vary for various reasons."<sup>14</sup> The Analyst should also mention in his report date and time of the examination by him. When the time and date of the examination are not given, it leaves for the argument that by the time they were analysed, the articles of food undergone a change.<sup>15</sup>

**11. "May be used in evidence" [ Sub-section (1)].**—It is not obligatory upon a Court to use the report of the experts mentioned in Section 293 as evidence in every case.<sup>16</sup>

**12. Evidentiary value of the report.**—The words "may be used in evidence have been used in Section 293. A Court is not bound to accept and act on a report as conclusive evidence of its contents.<sup>17</sup>

**13. Sub-section (2).**—The words "may, if it thinks fit" have been used in the sub-section (2). The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report. An expert covered by this section is not to be summoned for oral evidence as a matter of routine at the instance of a party the Court has discretion in this matter and may summon the witness only if it is satisfied that it is expedient to do so for the ends of justice. The matter entirely lies in the discretion of the Court.<sup>18</sup> Not when there is difference of opinion in the two reports in which case duty lies on the prosecution to explain difference<sup>19</sup> or when the prosecution of the accused apply for summoning the

11 Bhagwan v. State of Punjab, 1983 FAC 60 (P & H) (DB) State of Punjab v. Nachhattar, 1982 Cr LJ 1187 (P & H) (DB) (opinion and all that is stated in the report is admissible without formal proof [(1970) 72 Punj LR 618 overruled].

12. State v. Sahati Ram, 1958 A '34 State v. Nathi Lal, 1956 All LJ 340 Din Dayal v. State, 1956 A 520.

13. Din Dayal v. State, 1956 Cr LJ1031 1956 A 520 (the ipse Dixit of the Public Analyst that a certain sample of ghee is adulterated "or grossly adulterated" and does not conform to the standards, ought not to be accepted by a Court unless and until the Public Analyst gives the data from which it can be ascertained in what respects the sample is different from the standard) Happu v. Emperor 1933 A 837; State v. Shanti Prakash 1957 PU 56.

14. Municipal Board, Kanpur v. Badloo, 1980 A 504, (It is the Court and not the Public Analyst, who is the ultimate Judge of the opinion.); fortune v. Hansu (1886) I QB 202, 205 Newby v. Sims, (1894) 1 QB 478

15. Sohan v. State, 1963 R 17.

16. Public Prosecutor v. Venkatachaltmaiah, 1957 AP 286 1957 Cr. LJ 830. 30.

17. Bhaskaran v. State, 1967 KLT 165

18. Happu v. Emperor, 1933 A 837, 841

19. Tulsi Ram v. State 1954 Sc I; See also Satnam v. State, (1967) 69 Punj LR 645, 647.

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Expert<sup>20</sup> or when the guilt or innocence of the accused turns entirely on the result of the chemical analysis,<sup>21</sup> or when the report of the Chemical Examiner is meagre or cryptic<sup>22</sup>. The Court must summon the expert. When the report of the Chemical Examiner is filed before the institution of the proceedings, the Chemical Examiner must be examined.<sup>23</sup> As long as the report of Director of Finger Prints Bureau shows that the opinion was based on observations which lead to a conclusion, that opinion can be accepted, but should there be any doubt it can always be decided by calling the person making the report<sup>24</sup>. Report of Assistant Chemical Analyser, see the under mentioned case.<sup>25</sup> The Court may in a fit Case summon and examine the Chemical Examiner in the interests or justice.<sup>1</sup> Where the report of the Chemical Examiner is not shown to be deficient, nor requires any further elucidation before admitting in evidence, the report can be admitted and used in evidence, and the examination of the Chemical Examiner is not necessary.<sup>2</sup>

**I 4. Sub-section (3).**—When an expert is summoned, it is not incumbent that he himself should appear. Any officer who is working with him, conversant with the facts of the case and can satisfactorily depose in Court can be deputed on his behalf.<sup>3</sup>

294. No formal proof of certain documents.—( 1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any disputed, such document may be read in evidence in any inquiry, trial of other proceeding under this Court without proof of the signature of the person to whom it purports to be signed.

Provided that the Court may, in its discretion, require such signature to be proved.

## **SYNOPSIS**

1. Scope. section (3)1.
2. Postmortem Injury Reports [Sub- 3. Proviso.
20. Suleman v. State of Gujarat, 1961 JUJ 120; Madan Lal v. State 1961 C 240
21. Behrain Sherin v. Emperor, 1944 B 321.
22. Gaya Kunwar v. Einperr, 1934 audh 62.
23. Chauth Mall v. Emperor, (1919) 20 Cr. LJ 266 267 (Pat).
24. Himachal Pradesh Administration v. Qm Prakash, 1972 Cr LJ 605: 1972 SC 975.
25. State of Maharastra v. Sadhu Singh, 1973 Mah LJ 263.
1. State v. Sadhu Ram , 1963 Punj 142; Madan Lal v. State 1961 C 240.
2. Dasu v. State of Maharastra, 1985, Cr. LJ 1933 (B) (DB)



3. State of Kerela v. Antony, 1977, Ker LT 382.