

TRIAL TO JUDGMENT

INTRODUCTORY:-

The word “trial” is used both in civil and in Criminal matters. In civil, it is used to determine the fact in issue before the court of law. In criminal matters, trial is a process of determining innocence or guilt of an accused. Determining the fact in issue and determining the innocence or guilt of an accused is by way of examination of witness adduced by both sides.

The process of trial as enumerated in our Indian Constitution Art. 21 and also in certain enactments is that “trial is a right of a person”, which should be conducted fairly i.e., trial of a court should be a “fair trial”. Right to get a fair trial is a basic fundamental right of every person.

The concept of fair trial includes fair and proper opportunities to adduce evidence on their behalf before the court of law to prove their case.

Before trial could commence, there are certain guidelines and principles to be followed to conduct a fair trial. There are:

1. Accused shall be informed the details of the accusation made against him, such information must be communicated in his own language.
2. Accused shall have free assistance of an interpreter, if he cannot understand the language used in court.

3. Accused shall given adequate time to engage him counsel. If he report that no means to engage counsel on his behalf, the court should provide free legal aid counsel to the accused.

4. Accused shall have adequate time and facilities for preparation of his defence.

The other most important principle while conducting trial is that prosecution must establish guilt of the accused beyond all reasonable doubt, hence the burden of proof always lies on the prosecution. Therefore, accused has right to remain silent.

Coming to the present topic trial to judgment, the commencement of trial is enumerated in Cr.P.C. under chapters XVIII to XXI deal with five types of trials. The basis for conducting trial based on the quantum of sentence that can be inflicted for each offence. The quantum of sentence is to be imposed specified in Indian Penal Code and the manner in which the procedure of trial with regard to examination of witness to be followed according to Indian Evidence Act. Apart from the above stated enactments, there are other special enactments which specify punishment and nature of trial to be held for such offence. The proper course would be to call upon the prosecution to prove its case by adducing evidence.

Before commencement of trial, judge has to ensure that the original FIR , the charge sheet, original statements of witnesses and relevant documents are before the court for examination of accused and for framing charge.

Framing of the charges marks the termination of investigation and the enquiry and the beginning of the trial. The purpose of framing the charges is to acquaint the accused precisely the offence for which he is to be tried. Any defect either in the wording or in failure to specify clearly the width and scope of the offence may result in failure to give reasonable opportunity to the accused to defend himself. Hence, the charge must specify the name of the offence as it occurs in the criminal law.

In **Akbar Dar vs. State of J&K AIR 1981 SC 1548**, Supreme court held that framing of charge is not the stage when the court can enter upon meticulous consideration of evidence and the other matter available before the court.

In **Garware nylon ltd. vs. The collector of 844 customs and C.E. pune AIR 1999 SC 844** Supreme Court **held that** “Omission to frame charge , unless the accused is prejudiced, does not affect conviction”.

A charge once framed shall not be changed except in proved circumstances warranting alteration.

Framing of charge is the first stage of a trial. The court shall frame charges with due care and caution. While framing charges, court should see that there is a separate count of charge for each penal section. Framing of charge is the crucial step for the case, for which the trial start by examination of witness stated by the prosecution.

In **State of Kerala Vs. Sebastain 1983 Crl.J.416**, the Kerala HC held that once the charge has been framed, the Magistrate is bound to proceed

further with trial and he cannot discharge the accused. Framing of charge against the accused cannot be reviewed in the interest of accused.

After framing of charge the court shall commence the trial. The actual trial commence from the date when the court decides to commence the trial and fixes for that purpose a date and issues summons to the witnesses. Therefore, the trial is said to be commenced on the date so fixed for hearing by the court, the witnesses who are to be examined in trial to be present in the court on the date of hearing. When once the trial commences with the examination of the witnesses the court, shall examine the witnesses in accordance with the order appear in the list of witnesses. It is the duty of the court to see that witnesses are examined in proper manner and it shall be the duty of the court to protect the witnesses in the cross- examination from improper treatment.

In **Ambika prasad vs. State AIR 2000 SC 718**, Supreme court held that non-examination of investigating officer is not a fatal to prosecution nor can be deposition of witnesses examined by the investigating officer be discarded on that ground.

In **State of Maharashtra vs. Dr. Praful B. Desai 2003 (5) ILD (SC) 1**, Supreme court that the examining the witnesses through video conferencing is valid even though the accused may not be present by actual physical presence.

When the accused is examined and charge is framed by the court, for which if the accused pleads not guilty, the court shall commence for trial of the case. But in case the accused pleads guilty voluntarily to the charge framed against him, the court in its court direction may record his plea and convict him there on.

In Manish Mishra Vs. State of U.P. 2003 Cr.L.J.4085 held that “the court should not act upon the plea of guilty in serious offences but should proceed to take the evidence as if the plea had been one of not guilty and should decide the case upon the whole evidence including the accused plea.

When court frame one charge against the accused and after completion of trial, finds that prosecution failed to prove that charge and found the case was proved to a lesser charge than the charge framed. The court can punish the accused for the lesser charge only. But where the offence is proved to the higher than the charge framed, the conduct shall conduct denova trail by recalling of prosecution witnesses.

While adducing prosecution evidence, there may be situation: (1) where witness deviates from his previous statements made to the police, the court at its discretion may grant permission u/s.154 of I.E.Act. Such witness evidence, does not completely effaced as refer in **Anil Rai Vs. State of Bihar AIR 2001 SC 3173**. (2) In **State of Karnataka Vs.Yarappa Reddy JT 1999 (8) SC 10** and in **Babu Vs. Chennai AIR 2013 SC 1769** referred that criminal trial cannot be allowed to depend solely on the probity of investigation. If the court finds that investigation is illegal on a suspicious one, court can independently scrutinize the evidence.

In case of private complaint, the accused has right to cross examine the witnesses before framing of charge upon the evidence of complainant, it was held in **Harinarayan G.Bajaj Vs. State of Maharastra (2010) 11 SC 520**.

The court can frame a charge before the appearance of accused in case, if the Magistrate is of opinion that there is a ground the accused had committed an offence, this was held in **Verendra Kumar Vs. Aashrayer Maker 1999(1) ALT CrI. 716 AP.**

After completion of the entire prosecution evidence, if there is any incriminating material against the accused showing the commission of offence, the accused will be examined u/s.313 Crpc. In this step, the accused is not compelled to give oral reply or a written statement. The court cannot compelled the accused to give oral reply, this was held in **Bollam Chandraiah Vs. State of A.P. 2011 (2) Crimes 655 AP.**

After completion of trial and written arguments, the court shall follow the procedure laid down in chapter XXVII of the code. The court shall consider while pronouncing Judgment. 1. Judgment must be pronounced in open court. 2. Read operative part of the Judgment and explain the substance of the Judgment to the accused in the language he can understand. 3. Hear the accused on quantum of sentence. 4. Consider the conduct of the accused and may release on probation. 5. Concept of plea bargaining may be applied.

Hearing the accused sentence is mandatory and it is not illegal if the conviction and sentence are pronounced on the same day as held in **Ram deo chauhan vs. State of Assam AIR 2001 SC 2231.**

As per section 248 of crpc examination of the accused on the quantum of sentence is mandatory even in a summons case.

Omission to provide adequate opportunity to the accused to lead any evidence on the question of sentence amounts to failure of

justice. This was held in **Rosy & Anr. vs. State of Kerala AIR 2000.**

I conclude this session with few words that the principle of double jeopardy is a safeguard provided u/Art 20(2) of the constitution, which prohibits prosecution or punishing a person for the same offence more than once and section 300 of Crpc puts forward there exceptions to the double jeopardy are to be kept in mind while conducting trial and pronouncement of Judgment. The case law **State of A.P. Vs. Kokkiligudda Meerayya and another 1. 1969 SCC 161** which held that “a person once convicted or acquitted cannot be tried for the same offence as an important rule that merges from Art.20 and S.300 of Crpc.

In **Himanshu Singh Sabharwa vs. State of M.P. and others Manu/SC/1193/2008**, the Supreme Court observed that “if fair trial envisaged under the code is not imparted to the parties and court has reason to believe that prosecuting agency or the prosecutor is not acting in the requisite manner the court can exercise its power under section 311 of Crpc or under section 165 of the I.E.Act to call in for the material witness and procure the relevant documents so as to sub serve the cause of justice.

I finally conclude that all persons must be equal before the court. Everyone shall be entitled to a fair trial by an impartial court established by law. Therefore, a judge who is a guardian of law and justice, has to uphold the rights guaranteed under constitution and in order to protect the rights of the individual in all stages of trial, without undue delay.

By

B. JYOTSNA

LL.M

JUNIOR CIVIL JUDGE

AMADALAVALLASA

**SRIKAKULAM DISTRICT
ANDHRA PRADESH.**