Boraiah Alias Shekar Vs. State

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Court : Karnataka

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Judge : B. Padmaraj, ;M.P. Chinnappa and ;Manjula Chellur, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 293, 294, 294(1), 294(2), 294(3) and 311; Indian Penal Code (IPC), 1860 - Sections 29; Evidence Act - Sections 58

Appeal No. : Order on Reference in Crl. A. No. 338 of 1999

Appellant : Boraiah Alias Shekar

Respondent : State

Advocate for Def. : B.C. Muddappa, Addl. SPP

Advocate for Pet/Ap. : Somasekar Angadi, Amicus Curiae

Judgement :

Padmaraj, J.

1. This is a reference to the full bench by the Division Bench of this Court involving a question of some legal importance as to the true interpretation of Section 294 of Cr. P.C. As the Division Bench of this Court in Cri. A. No. 338/99 (Boraiah alias

Shekar v. State) was not in agreement with and did not propose to accede to the proposition of law laid down earlier by a Division Bench of this Court in the case of Anjinappa v. State of Karnataka, reported in ILR 2000 Kant 3501 and having been pursuaded to accept the view taken by the full bench of the Bombay High Court in the case of Shaikh Farid Hussinsab v. The State of Maharashtra, reported in 1983 Cri LJ 487 and being of the view that where the Post Mortem report is marked by consent and where its genuineness is not disputed, it is clearly admissible in evidence notwithstanding the fact that the author of the Postmortem report is not called into the Court to give evidence, and moreso or especially where the defence has not chosen to cross-examine the doctor who conducted the postmortem examination on the dead body of the deceased, has referred this question for decision or for resolution of the said legal issue by a larger bench under Section 10 of the Karnataka High Court Act and accordingly the matter is placed before this Bench.

2. Heard the arguments of the learned Amicus Curiae for the appellant Sri Somashekar Angadi and the learned Addl. SPP Sri B. C. Muddappa as well as the learned advocates who were requested by issue of notice to assist this bench in resolving the issue referred by the Division Bench viz., Sriyuths A. H. Bhagwan, S.G. Bhagwan, Hashmath Pusha and R. B. Deshpande. The said advocates effectively assisted this bench.

3. It would appear from the case papers placed before this Bench that the earlier judgment of the Division Bench of this Court in the case of Anjinappa v. State of Karnataka, reported in ILR 2000 Kant 3501 was brought to the notice of the Division Bench of this Court hearing the Crl A. No. 338/99. The Division Bench of this Court hearing the said Cri. A. 338/99 did not share the view or did not propose to accede to the proposition of law laid down by the Division Bench in the case of Anjinappa v. State of Karnataka, reported in ILR 2000 Kant 3501 and on the other hand being pursuaded to accept the view taken by the full Bench of the Bombay High Court in the case of Shaikh Farid Hussinsab v. The State of Maharashtra, reported in 1983 Crl LJ 487, has observed as under :

'10. In the case on hand, the genuineness of the document-post mortem report is not disputed by the defence. The defence Counsel had no objection to mark the document in evidence and therefore there was no prohibition for the Court, which had admitted the document in evidence to rely upon to find corroboration or contradiction to the other evidence on record. Therefore, we are of the opinion that where post-mortem report is marked by consent and where its genuineness is not disputed, it is clearly an admissible evidence. Notwithstanding the fact that the author of the post-mortem report is not called into the Court to give evidence, specially where the defence has not chosen to cross-examine the post-mortem Doctor. Therefore, the observations made by Their Lordships in the case of Anjinappa v. State of Karnataka, reported in ILR 2000 Kant 3501), extracted supra, with great respect, we do not propose to accede to this proposition laid down by the Division Bench in Anjinappa's case and in our opinion, it needs further consideration by a larger Bench.'

4. We have heard at length the learned Addl. SPP as well as the learned Amicus Curiae for the appellant and also the learned advocates who were specially invited to assist the Court, on the matter in issue which is referred for resolution by this full bench and carefully perused the relevant provisions of the Cr. P.C. as well as the Evidence Act and also the several decisions which were brought to our notice by both the sides.

5. Learned Addl. SPP while drawing our attention to the provisions contained in Section 294 of Cr. P.C. has vehemently contended before us that once the document is marked by consent, it could be read in evidence under Section 294 of Cr. P.C. and the genuineness of which cannot be disputed by any of the parties in the subsequent proceedings. He contended that any document referred to in Section 294 of Cr. P.C. includes even the PM report and when once the genuineness of which is not disputed by any of the parties, it could be looked into for all practical purposes and it is a piece of evidence on which the prosecution as well as the defence can rely upon.

6. As against this, the learned Amicus Curiae for the appellant has contended that Section 294 of Cr. P.C. does not refer to a document which even if exhibited

cannot be read in evidence as a substantive piece of evidence. While elaborating this submission, he contended that the post-mortem report by itself proves nothing as it is not a substantive piece of evidence and on the other hand it is only a previous statement of the doctor who conducted the post-mortem examination on the dead body of the deceased and that it is the testimony of the doctor in Court which alone is the substantive evidence and that the Post-Mortem report can be used only to corroborate the evidence of the doctor in Court under Section 157 or for refreshing his memory under Section 159 of the Evidence Act or for contradicting his evidence in Court under Section 145 of the Evidence Act. He further contended that: if the doctor conducting the Post-Mortem examination is dead or is not available for being examined in Court under the circumstances mentioned in Section 32 of the Evidence Act, the Post-Mortem report is admissible under clause 2 of Section 32 of the Evidence Act. In view of this legal position, he contended that the mere marking of the Post-Mortem report under Section 294 of Cr. P.C. will not transform the report into a substantive piece of evidence until and unless the doctor concerned has been examined in Court. According to the learned counsel for the appellant, the Post Mortem report being not a substantive evidence, the mere marking of such document under Section 294 of Cr. P.C. even by consent will not make that report a substantive evidence and hence it cannot be relied upon in the absence of the evidence of the doctor to speak to the contents of the PM report prepared by him.

7. Learned advocates who were invited by the Bench to assist in resolving the issue, have contended that if the procedure prescribed under Section 294 of Cr. P.C. is strictly followed and if the document is marked by consent in compliance with the provisions contained in Section 294 of Cr. P.C., the same could be read in evidence as substantive piece of evidence. But however, they contended that it is left to the discretion of the Court to read the same in evidence or not by virtue of the proviso to Section 294 of Cr. P.C. They contended that though a document is marked by consent and could be treated as evidence under Section 294 of Cr. P.C., it is always left to the discretion of the Court to treat the same as substantive evidence or to call upon the author of the said document to give evidence in Court. They also contended that once the provisions contained in Section 294 of Cr. P.C. are pressed into service, the document marked by consent becomes a substantive

piece of evidence and it can be relied upon by both the prosecution as well as the defence. One of the learned counsel has however expressed some doubt whether the provisions contained in Section 294 of Cr. P.C. can be extended to a document which is not a substantive piece of evidence in the eye of law. A doubt was also expressed whether the provisions contained in Section 294 of Cr. P.C. will have any application to the Post Mortem report while Section 294 of Cr. P.C. refers only to document and not to reports and that a definite distinction has been maintained by the Legislature between a document and a report.

8. They have relied upon the following decisions :

1. In the case of Jagdeo Singh v. State, reported in 1979 Cri LJ 236, the Division Bench of the Allahabad High Court has held as under :

'A reading of Section 294 would reveal that it contemplates reading in evidence, upon admission about genuineness by the opposite party, only such documents which, when formally proved speak for themselves. It does not refer to a document which even if exhibited, cannot be read in evidence as a substantive piece. Post-mortem report by itself proves nothing as it is not a substantive piece of evidence. It is only a previous statement of the doctor based on his examination of the dead body. It is the statement of the doctor made in Court which alone is the substantive evidence. The post-mortem report can be used to corroborate the statement of the doctor concerned under Section 157 of the Evidence Act. The doctor can also use it to refresh his memory under Section 159 of the Evidence Act or it can be used to contradict his statement in the witness-box under Section 145 of the Evidence Act. If the doctor is dead or is not available for examination in Court under the circumstances mentioned in Section 32 of the Evidence Act, the postmortem examination report is admissible under Clause (2) of Section 32 of the Evidence Act.

In view of the legal position, exhibiting of post-mortem report under Section 294, Cr. P.C. is not permissible and even if such an exhibiting has been done, the report itself cannot be used as a substantive piece of evidence until and unless the doctor concerned has been examined in Court.'

2. In the case of Vijender v. State of Delhi, reported in 1997 SCC (Crl) 857, the Hon'ble Supreme Court has held as under :

'In view of Section 60 the prosecution is bound to lead the best evidence available to prove a certain fact and in the instant case it was the doctor who held the post-mortem examination. It was of course true that in an exceptional case where any of the prerequisites of Section 32 are fulfilled a post mortem report can be admitted in evidence as a relevant fact under Sub-section (2) thereof by proving the same through some other competent witness but this section had no manner of application in the present case for the evidence of the record clerk clearly reveals that on the date he was deposing the doctor who conducted the post-mortem was in the hospital where the post-mortem was conducted. The other reason for which the trial Judge ought not to have allowed the prosecution to prove the post-mortem report is that it was not the original report but only a carbon copy thereof and that too not certified. Under Section 64 of the Evidence Act document must be proved by primary evidence, that is to say, by producing the document itself except in the cases mentioned in Section 65 thereof. Since the copy of the post-mortem report did not come within the purview of any of the clauses of Section 65 it was not admissible on this score also.'3. In the case of State of Haryana v. Ram Singh, reported in 2002 (1) Supreme (Criminal) 11 : (2002 AIR SCW 219) the Hon'ble Supreme Court has held as under :

'While it is true that the post-mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post-mortem can by no means be ascribed to be insignificant. The significance of the evidence of the doctor lies vis-a-vis the injuries appearing on the body of the deceased person and likely use of the weapon therefore and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses.'4. In the case of Saddiq v. State, reported in 1981 Cri LJ 379, the full bench of the Allahabad High Court has held as under :

'Under Sub-section (3) of Section 294 an injury report filed by the prosecution under Sub-section (1) of Section 294 may be read as substantive evidence in place of the deposition of the doctor who prepared it if its genuineness is not

disputed by the accused.

If the prosecution or the accused does not dispute the genuineness of a document filed by the opposite party under Sub-section (1) of Section 294 it amounts to an admission that the entire document is true or correct. It means that the document has been signed by the person by whom it purports to be signed and its contents are correct. It does not only amount to the admission of it being signed by the person by whom it purports to be signed but also implies the admission of the correctness of its contents. Such a document may be read in evidence under Sub-section (3) of Section 294. Neither the signature nor the correctness of its contents need be proved by the prosecution or the accused by examining its signatory as it is admitted to be true or correct. The phrase 'read in evidence' means read as substantive evidence, which is the evidence adduced to prove a fact in issue as opposed to the evidence used to discredit a witness or to corroborate his testimony. It may be mentioned that the phrase used in evidence' has been used in Sub- section (1) of Section

293. Cr. P.C. with respect to the reports of the Government scientific experts mentioned in Sub-section (4) of Section 293, Cr. P.C. and the phrase 'read in evidence' has been used in Sub-section (1) of Section 296, Cr. P.C. with respect to the affidavits of persons whose evidence is a formal character. The phrases 'used in evidence' and 'read in evidence', have the same meaning, namely, read as substantive evidence.

5. In the case of P.C. Poulose v. State of Kerala reported in 1996 Cri LJ 203, the High Court of Kerala has concluded as under :

'4. The counsel for the petitioner contended that the prosecution has miserably failed to prove the case of death of the boy inasmuch as the doctor who conducted the post-mortem on the dead body of the deceased was not examined before the Court and the post mortem certificate Ex. P7 was also not proved in terms of the Evidence Act or in terms of Section 294, Cr. P.C. Section 294. Cr. P.C. reads as follows :

'294. No formal proof of certain documents :--

(1) Where any document is filed before any Court by the prosecution of 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 document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this code 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'

A reading of the above Section shows that when a 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. It also interdicts that the list of documents shall be in such form as may be prescribed by the State Government. Only where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, or trial without the proof of the signature of the person to whom it purports to be signed,. There is no material before this Court to show that before Ex. P7 was produced and marked as an exhibit the petitioner was called upon to admit or deny the genuineness of Ex. P7. Ex P7 was also not filed through a list which shall be in the form prescribed by the State Government as contemplated under Sub-section (2) of Section 294, Cr. P.C.

6. I have perused the evidence of P.W. 10 and he has stated as follows :

'I obtained the post-mortem certificate of the deceased Kader Kutty in this case from Dr. Sadasivan and produced before the Court. The said certificate is the one showed to me. It is marked as Ex. P7'

There is nothing in the evidence to show that before the marking of the document the accused was called upon to admit or deny the genuineness of that document. As the prosecution did not strictly comply with the provisions of Section 294, Cr. P.C. I am of the view that Ex. P7 ought not to have been marked and proved as a document evidencing the cause of death of the deceased Kader.

6. In Sait Tarajee Khimchand v. Yelamarti Satyam, : AIR 1971 SC1865 the Apex Court held that the mere marking of a document as an exhibit does not dispense with the proof of document. A Full Bench of the Bombay High Court in Shaikh Fand Hussinsab v. The State of Maharashtra 1983 Cri LJ 487 took the view that a document becomes both relevant and authentic evidence of its contents without the proof of its authenticity by the author or anybody else by force of Section 294 on its conditions being complied with. It is not in dispute that the conditions contemplated under Section 294 were not complied with in this case and in my view the non-compliance of the conditions contemplated under Section 294 makes Ex. P7 inadmissible and it is rejected.'

7. In the case of K. Pratap Reddy v. State of A.P., reported in 1985 Cri LJ 1446, the Division Bench of the Andhra Pradesh High Court has observed as under :

'Sections 293 and 294 of the Code are obviously intended to slim the proceedings by dispensing with elaborate and sometimes long drawn procedure of examining the concerned person when the genuineness of document is not in dispute. The refrain from such procedure is not invariable and the Court is empowered to examine depending upon the circumstances and expediency. In the instant case, the report of the Deputy Controller of Explosives is taken as evidence as the Court did not consider it necessary to examine the expert in view of express consent of accused for reception of the report. Similarly post mortem report is admitted as evidence as no exception is taken for reception of the same. Section 294, Cr. P.C. empowers Court to admit the document as evidence in the situation embodied in Section 294 Cr. P.C. namely, when no objection is taken as to the admission of the document by either side and when it is not possible to examine the person connected with the document. Both these requirements have been satisfied as there was no objection for the admission of the document and further the doctor

who conducted the post-mortem was laid up in the hospital. The trial Court is justified in admitting the report of the Deputy Controller of Explosives and post-mortem report as evidence without insisting upon the evidence of expert or doctor.'

8. In the case of Shaikh Pand Hussinsab v. State of Maharashtra, reported in 1983 Cri LJ 487, the full bench of the Bombay High Court has held as under :

'Section 294 of the Cr. P.C. dispenses with proof of every document when it becomes format on its genuineness not being disputed. There is nothing in Section 294 to justify exclusion of a post-mortem report, from the purview of 'documents' covered thereby. Sub-section (3) of Section 294, Cr. P.C. covers post-mortem notes and every other document pf which genuineness is not disputed. The word 'genuineness' contemplates not only genuineness of the signature but also genuineness of the contents of the document. Raising no dispute to the ' genuineness of any document implies their considered decision of further details being irrelevant. The Court has ordinarily to accept this decision and refrain from entering into the arena itself unless miscarriage of justice is apprehended on demonstrable grounds. Thus, a document whose genuineness is not disputed can ordinarily be read in evidence without the formal proof. The authority to read in evidence implies the authority to use the document and rely on it for adjudicating points at the trial. A document becomes both relevant and authentic evidence of its contents without the proof of its authenticity by the author or anybody else by force of Section 294 on its conditions being complied with. The documents covered by Section 294 are, therefore, receivable in evidence without anything more. Thus, the post-mortem report is receivable in evidence without the doctor's evidence and can still furnish corroborative evidence to support other evidence in the case.'

9. In the case of Sanne Gowda v. State By Sakaleshpur Rural, Police reported in ILR 2001 Kant 2660, the Division Bench of this Court has concluded as under :

'It is no doubt true that in this case, the Doctor, who conducted the post mortem examination has not been examined in Court and, on the other hand, the Post Mortem Report issued by the Doctor has been marked through the evidence of the Investigating Officer, PW. 16. But, the same has not been objected to by the defence at the time when the PM report, Ex. P12 was marked through PW. 16.

That means, the defence did not dispute the genuineness of the PM report, Ex. P12. Where the genuineness of any document is not disputed, such document may be read in evidence. Under Sub-section (3) of Section 294, Cr. P.C. the PM report filed by the prosecution, the genuineness of which being not disputed by the defence can be read, in our view as a substantive evidence. Section 294, Cr. P.C. applies to every document whose genuineness is not disputed. The PM report filed by the prosecution and got marked through the evidence of the Investigating Officer PW. 16 can be read as a substantive evidence when its genuineness is not disputed by the defence. That is to say, if the genuineness of a document filed by the prosecution is not disputed by the defence, it may be read as substantive evidence under Sub-section (3) of Section 294, Cr. P.C. Accordingly, the PM report Ex. P12 marked through PW 16 can be read as substantive evidence to prove the correctness of its contents without the Doctor concerned being examined, when its genuineness was not disputed by the defence.'

9. Section 294 of the Criminal Procedure Code reads as under :

'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 document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code 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.'

10. The object of Section 294 of Cr. P.C. is to accelerate the pace of trial by avoiding the time being wasted in examining the signatory to the document filed by either of the parties to prove his signature and correctness of its documents; if its

genuineness is not disputed. This section is intended to dispense with the formal proof of certain documents. It is obviously intended to slim the proceedings by dispensing with elaborate and sometimes long drawn procedure of examining the concerned person when the genuineness of document is not in dispute. Sub-section (3) providing for such dispensation is the main provision, Sub-sections (1) and (2) being merely procedural. Such dispensing of proof is restricted only to such documents of which genuineness is not disputed when called upon to do so under Subsection (1) of Section 294 of Cr. P.C. The refrain from such procedure is not invariable and the Court is empowered to examine depending upon the circumstances and expediency. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under :

'Section 58 : Facts admitted need not be proved :-- No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission.'

11. The proviso to Section 58 of the Evidence Act specifically gives a discretion to the Court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Section 294 of Cr. P.C. In view of this, it is quite clear that the Court at no stage can act blindly or mechanically. Section 294 of Cr. P.C. if examined in its correct perspective would show that such document whose genuineness is not disputed may be led in evidence in enquiry trial or other proceedings under the provisions of Cr. P.C. without proof of signature of the person by whom it purports to be signed. The intention of the Legislature in introducing this provision under Section 294 of Cr. P.C. is to eliminate the formal procedure of proving the mere signature on such documents in trial enquiry or any other proceedings which used to take sufficient time previously as there was no such provision in the earlier Cr. P.C. It has to be pointed out that this provision dispenses with the formal proof of a document when

the genuineness of which is not disputed by the other side. Section 294 dispenses proof of every document when it becomes formal on its genuineness not being disputed. A Post Mortem report or any other document of which genuineness is not disputed by accused can be read as substantive evidence without formal proof. Even if the genuineness of the PM report is not disputed and the report is read as substantive evidence, it may still be necessary to examine the doctor concerned to clarify his opinion in the reports or to obtain his opinion on medical questions. This section dispenses with proof of every document when it becomes formal on its genuineness not being disputed. Sub-section (3) of Section 294 of Cr. P.C. covers Post Mortem reports and every other document of which genuineness is not disputed. Thus such documents can be read in evidence as genuine without the formal proof. Section 294 does not control or regulate Section 293. Section 293 deals with certain category of documents which can be received in evidence without proof whereas Section 294 of Cr. P.C. deals with every document of which the genuineness is not disputed and such document may be read in evidence without proof of the signature of the person to whom it purports to be signed. It would however be pertinent to note that the party seeking to avail the benefit of Section 294 of Cr. P.C. should file a list containing the particulars of every such document and shall call upon the other side to admit or deny the genuineness of each such document. Only where the genuineness of any document is not disputed, such document may be read in evidence in any enquiry or trial without the proof of the signature of the person to whom it purports to be signed. That is to say there must be something on record to show that either the prosecution or the defence was called upon to admit or deny the genuineness of certain document and it is only where the genuineness of the document is not disputed, such document may be read in evidence without the proof of the signature of the person to whom it purports to be signed. Section 294 of Cr. P.C. dispense with only the proof of the signature of the person to whom it purports to be signed. That being so, there must be enough indication in the record to show that the party against whom a document is sought to be put was called upon to admit or deny the genuineness of such document. If there is no such indication and if the document is simply marked without being objected to by the other side, then it cannot be read in evidence as it does not fulfil the requirements of Section 294 of Cr. P.C.

But when once the requirements of Section 294 are fulfilled, there could be no difficulty in treating such document as Substantive evidence in the case. Section 294 of Cr. P.C. requires the prosecutor or the accused as the case may be, to admit or deny the genuineness of the document sought to be relied against him at the outset in writing and on his admitting or indicating no dispute as to the genuineness of such document, the Court is authorized to dispense with its formal proof thereof. In fact after indication of no dispute as to the genuineness of a document, proof of document is reduced to a sheer empty formality. Section 294 of Cr. P.C. makes dispensation of formal proof dependent on the accused or the prosecutor not disputing the genuineness of the documents sought to be used against them. Such contemplated dispensation is not restricted to any particular category of documents as under Section 293, in which ordinarily authenticity is dependent more on the mechanical process involved than on the knowledge, observation or the skill of the author rendering oral evidence just formal. Nor it is made dependent on the relative importance of the document or probative value thereof. The documents being primary or secondary or substantive or corroborative, is not relevant for attracting Section 294 of Cr. P.C. Not disputing its genuineness is the only solitary test for dispensing with the formal proof of a document. Even the PM report is also a document as any other document. Primary evidence of such a document is the report itself. Section 294 of Cr. P.C. enables the accused to waive the mode of proof in respect of such documents also by admitting it or raising no dispute as to its genuineness when called upon to do so under Sub-section (1) of Section 294, Sub-section (3) of Section 294 enables the Court to read it in evidence without requiring the same to be proved in accordance with the Evidence Act. There is nothing in Section 294 to justify exclusion of the PM report from the purview of documents covered thereby. The mode of proof of it also is liable to be waived as of any other document. It is clear to us that the words, reading, using, receiving, giving or admitting in evidence cannot but have the same meaning and import and the words can only mean that a document can be used at the trial for the disposal of the case in the same manner as any other document, proof of which is not dispensed with and is proved in accordance with the provisions of the Evidence Act. No document with all its probative value can be received in evidence unless its genuineness is first

established by the mode of proof prescribed under the Evidence Act. The mode of proof however is liable to be waived by virtue of Section 294 of Cr. P.C. In the situation therefore, the PM report also is receivable in evidence without the evidence of the doctor and can still furnish corroborative evidence to support other evidence in the case. But this cannot be true of each and every case. Whether the doctor's evidence is necessary or not depends on the facts and circumstances of each case. raising no dispute to the genuineness of any document implies the considered decision on the part of the person against whom the said document is sought to be used. The Court has ordinarily to accept this decision and refrain from entering into the arena itself unless miscarriage of justice is apprehended. This Section also invests the Court with a discretion to examine the doctor or any such witness in that case. Therefore Section 294 of Cr. P.C. itself furnishes an in built protection to the defence or to the prosecutor against all possible lapses. It is open to the Court in its such discretion to examine the doctor or any other witness when it apprehends miscarriage of justice. As we have already stated Section 294 of Cr. P.C dispenses with proof of every document when it becomes formal on its genuineness not being disputed. It does not contemplate existence of any class of documents as such, requiring formal proof. It is Section 293, however, which deal with a certain category of documents which can be received in evidence without proof. The language of the two Sections viz., Sections 293 and 294 is distinct enough to admit of any mistake. Every document is required to be proved by its author unless he cannot be made available for evidence due to unavoidable reasons. The genuineness of any document is a condition precedent to its relevancy and it is difficult to conceive of any relevant document which can be relied on even if not genuine. In our opinion if the prosecution or the accused does not dispute the genuineness of a document filed by the opposite party under Sub-section (1) of Section 294, it amounts to an admission that the entire document is true or correct. It means that the document has been signed by the person by whom it purports to be signed and its contents are correct. It does, not only amount to the admission of it being signed by the person by Whom it purports to be signed but also implies the admission of the correctness of its contents. Such a document may be read in evidence under Sub-section (3) of Section 294. Neither the signature nor the correctness of its contents need be proved by the

prosecution or the accused by examining its signatory as it is admitted to be true or correct. The phrase 'read in evidence' means read as substantive evidence, which is the evidence adduced to prove a fact in issue as opposed to the evidence used to discredit a witness or to corroborate his testimony. It is open to the prosecution or the accused to dispute the genuineness of a document filed by the opposite party under Sub-section (1) of Section 294 of Cr. P.C. In such a case the signatory of the document must be examined by the party filing the document to prove his signature and also the correctness of its contents and the evidence of the signatory will be the substantive evidence and the document may be used to corroborate or discredit his testimony. But where the genuineness of a document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. is not disputed by the opposite party, Sub-section (3) of Section 294, Cr. P.C. is applicable and such a document may be read as substantive evidence. It is based on the rule of evidence that facts admitted need not be proved contained in Section 58 of the Evidence Act. Section 58 of the Evidence Act lays down that proof need not be given of facts which the parties or their agents, which of course include advocates, agree to admit at the hearing or which they agree to admit before the hearing by writing under their hands or which by any of the provisions of law (Section 294 of Cr, P.C.) are deemed to have been admitted, The proviso to Section 58 of the Evidence Act, however, gives power to the Court to require a fact to be proved otherwise eventhough admitted. There might be feigned and collusive case or an admission might be fictitious or colourless. So the Court cannot be compelled to accept an admission and it may require any fact to be proved by evidence in the ordinary way as laid down in the proviso to Section 58 of the Evidence Act. Hence there should be no absolute rule on the subject and the trial Court's discretion should determine whether a particular admission is so plenary as to render the party's evidence wholly needless under the circumstances. Section 58 of the Evidence Act just like Section 294 of Cr. P.C. relates to agreed statements of facts made between the parties to save time and expense at a trial. Admissions by agreement are those which for the sake of saving expense or preventing delay, the parties or their advocates agree upon between themselves. They ought, in general, to be in writing, and signed either by the parties or their advocates. They should be clear and distinct and a party

intending to rely upon such admissions should be careful not to leave any fact to be merely inferred from them, for if he does, he will not, on appeal, be allowed to adduce evidence as to such fact. When once the genuineness of the document is thus not disputed, no question of proof arises as it is dispensed with by Section 58 of the Evidence Act which is almost analogous to Section 294 of Cr. P.C. It has to be pointed out that documents are either proved by a witnesses or marked on admission. When they are marked on admission without reservation, the contents are not only evidence but are taken as admitted and cannot be challenged by cross-examination or otherwise. In case of documents marked on admission dispensing with formal proof, the contents are evidence, although the party admitting does not thereby accept the truth of the contents which can be challenged by cross-examination or otherwise. Admissions dispensing with proof can be allowed in criminal cases in order to see that the trial of a criminal case may be shortened by admissions of many formal facts. Waiver or formal proof of documents in a criminal trial cannot be regarded as violation of rules of evidence. In fact when a counsel of a party or the party himself admits a fact, it need not be proved under Section 58 of the Evidence Act, It is true that in the trial of capital offences the Court should exercise care and discretion in regard to admissions made by the accused or by his advocate in open Court, and that every conviction should be supported by some evidence produced in Court, and so even a plea of guilty will not ordinarily be accepted. But it is not true that an accused cannot either by himself or his counsel, in his own interest, admit some fact which though necessary for the State to establish, may be consistent with his innocence and the defence he maintains. Subject to the reasonable discretion of the Court in the protection of the accused against improvidence or mistake, admissions during trial by the accused or his counsel as to the genuineness of a document; admissions as to the testimony of a witness not produced would give if present, or the fact his testimony would establish, voluntarily made for the purpose of preventing a postponement of the trial; and admission in the interest of the accused limiting the issue to the material facts upon which alone his successful defence depends, have long been permitted under the Criminal Rules of Practice and we think their lawfulness and propriety rest upon sound reason. It would be of some relevance to note here itself that Section 58 of the Evidence Act makes no exception of criminal

trial, but under the proviso the practice is to insist of proof of all really essential fact. Section 58 of the Evidence Act as we have already stated exactly corresponds to Section 294 of Cr. P.C. An admission by an accused or his counsel for the purpose of dispensing with the further proof of disputed facts is binding on the party unless of course circumstances are shown which would justify the Court in requiring proof under the proviso. Both under Section 58 of the Evidence Act and Section 294 of Cr. P.C. the Court has a discretion to require proof Of such signature. The object underlying the provisions contained in Section 294 of Cr. P.C. is to avoid the time of the Court being wasted by examining the signatory of the document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. to prove his signature when the correctness of its contents and the genuineness thereof is not disputed by the opposite party. If the signature and the correctness of the contents of a document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. whose genuineness is not disputed by the opposite party are still require to be proved by examining the signatory of the document, the very object of enacting Section 294, Cr. P.C. will be defeated. We are therefore of the opinion that all documents filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. whose genuineness is not disputed by the opposite party may be read as substantive evidence under Sub-section (3) of Section 294, Cr. P.C. The PM report filed by the prosecution is obviously a document as defined in Section 29 of IPC as well as in Section 3 of the Evidence Act. Under Sub-section (3) of Section 294, Cr. P.C. the Post Mortem report filed by the prosecution under Sub-section (1) of Section 294, Cr. P.C. may be read as substantive evidence in place of or in substitution of the testimony of the doctor who prepared or issued it, if its genuineness is not disputed by the accused. If the genuineness of the PM report prepared by the doctor is disputed by the accused, then the doctor who conducted the PM examination and issued the PM report must appear in the witness box to speak to the contents thereof and also to prove the PM report and in such a case the statement of the doctor or the testimony of the doctor in Court would be the substantive evidence and the PM report may be used to corroborate or contradict his testimony in Court. We are therefore unable to accept the contention that it is not permissible to exhibit the PM report under Section 294 of Cr. P.C. and even if

it was done, the report cannot be used as substantive evidence until and unless the doctor concerned is examined in Court. As already stated there is no restriction placed on document in Sub-section (1) of Section 294, Cr. P.C. and it applies to all documents filed by the prosecution or the accused. If the genuineness of any document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. is not disputed by the opposite party, Sub-section (3) of Section 294, Cr. P.C. comes into play and such document may be read as substantive evidence. We are of the considered view that the PM report can be read as substantive evidence under Sub-section (3) of Section 294, Cr. P.C. if its genuineness is not disputed by the accused. The very object of Section 294 of the Cr. P.C. would be defeated if the signature and the correctness of the contents of the PM report are still required to be proved by the doctor concerned even if its genuineness is not disputed by the accused. Section 294, Cr. P.C. is clear and unambiguous and it leaves no doubt that when once the genuineness of the document is not disputed, it could be read in evidence. It is only when the genuineness of the PM report filed by the prosecution is not disputed by the accused that Sub-section (3) of Section 294 of Cr. P.C. will come into play and the PM report may be read as substantive evidence and the signature and the correctness of its contents need not be proved by the doctor concerned. We are therefore very clear in our view that if the genuineness of the PM report filed by the prosecution under Sub-section (1) of Section 294, Cr. P.C. is not disputed by the accused, it may be read as substantive evidence under Sub-section (3) of Section 294, Cr. P.C. The proviso to Section 294 of Cr. P.C, specifically gives a discretion to the Court to require such signature to be proved notwithstanding the fact that the genuineness of such document is not disputed by the prosecution or the accused. It is thus clear that the Court at no stage can act blindly or mechanically. Thus there is an inbuilt safeguard both for the accused and the defence. The proviso to Section 294 of Cr.P.C. makes it very clear that even if the genuineness of a document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. is not disputed by the opposite party, the Court may require the proof of the signature of the person by whom it purports to be signed. In such a case the signatory of the document must appear in Court and prove his signature and the document will thereafter be read as substantive evidence. We may

however add a word of caution that the medical evidence in a criminal case is of utmost importance as the correctness of both ocular and circumstantial evidence produced by the prosecution is tested on the touchstone of the medical evidence. Therefore even if the genuineness of the Post Mortem report is not disputed by the accused and the report is read as substantive evidence in the case, it may still be necessary to examine the doctor concerned to clarify his opinion mentioned in the PM report or to obtain his opinion on questions of medical nature if the Court feels it absolutely necessary to clarify the questions of a medical nature which may be involved in the case by calling the doctor who has issued the PM report in order to arrive at a correct decision in the case. This may be done by the trial Court by examining him under Section 311, Cr. P.C.

12. We accordingly hold that Sub-section (3) of Section 294 of Cr. P.C. covers the PM report and every other document of which genuineness is not disputed and all such documents can be read in evidence as genuine without the formal proof of such documents by examining the author thereof.

13. Consequently, we respectfully agree with the view taken by the Full Bench of the Bombay High Court and the Allahabad High Court in the decisions reported in 1983 Cri LJ 487 (Shaikh Farid Hussinsab v. State of Maharashtra) and 1981 Cri LJ 379 (Saddiq v. State) respectively and approve the view expressed by the Division Bench of this Court in the decision reported in ILR 2001 Kant 2660 (Sanne Gowda alias Gopala v. State by Sakaleshpur Rural Police) and disapprove the observations made by the Division Bench of this Court in the case of Anjinappa v. State of Karnataka reported in ILR 2000 Kant 3501 and hence it stands overruled.

13-A. For the foregoing reasons, we answer the question referred to us for decision that the PM report filed by the prosecution under Sub-section (1) of Section 294 Cr. P.C. whose genuineness is not disputed by the accused may be read as substantive evidence under Sub-section (3) of Section 294 of Cr. P.C. Let our answer be placed before the Court concerned. The Criminal Appeal will now be sent back to the Division Bench for disposal in accordance with law. The reference made to us is answered accordingly.

14. We place on record our appreciation for the able assistance rendered by the learned advocates at the request of this Court to resolve the legal question involved in the case.