

Trial before a Court of Session: An Outline

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Introduction

A Court of Session is the court, which deals with serious criminal cases and passes any sentence including death, at the district

(sessions division) level. It cannot take cognizance of any offence directly, except when it functions as a special court, in accordance with some special laws.

Therefore a Magistrate initially has to take cognizance of the offence even in a serious criminal case and has the right to exercise the powers relating to bail/remand to custody then. He, thereafter on due examination of the seriousness of the offence, commits the serious case to the Court of Session by sending the record of the case along with the connected articles, if it is triable exclusively by the latter, and informs the Public Prosecutor of its commitment.

The Court of Session will conduct the case thus committed to it, as provided for in the sections 225 to 237 of the Criminal Procedure Code, 1973 (CrPC).

Two types of criminal trial

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A criminal trial under the CrPC has been categorized into two: one is magisterial trial and the other is sessions trial.

The first schedule of the CrPC in its column 6 indicates whether an offence that comes within the Indian Penal Code, 1860 (IPC) requires trial before a Magistrate or Sessions Judge.

Supplying the accused the documents

The Magistrate initially taking cognizance of the offence should supply to the accused the documents like police report, FIR, statements recorded by the Police etc.

If any document is so voluminous, allowing the accused / his pleader to inspect it is quite sufficient.

Purpose of a Trial

Every criminal trial is a quest for truth in regard to an offence. The trial must be fair and just.

The purpose for the criminal trial is to suppress the criminality in the society and punish the guilty as a deterrent measure. The trial is to be conducted on day-to-day basis without any adjournment in between.



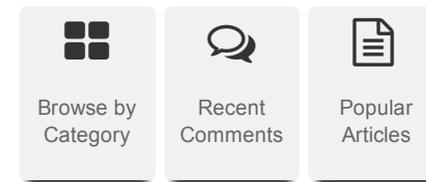
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Public Prosecutor Conducts the Trial

Every trial before a Court of Session shall be conducted by a Public Prosecutor who represents the State.

An advocate appointed by the complainant with permission of the court can also assist the prosecution under the directions of the Prosecutor. The private advocate so appointed can submit written arguments with the permission of the court.

The public prosecutor must be fair to the prosecuting wing of the state, the accused and the court simultaneously. He should allow lawful benefits to the accused too, if it comes to his notice.

A Counsel must defend the accused

On the other hand, every accused person has a right to be defended by an accused of his choice. If the accused has no sufficient means to engage an advocate, the court shall assign one advocate for his defence at the state's expense.

Before starting the trial, the Court of Session must ensure that the accused person has been supplied with copies of the police report, FIR statement of the prosecution witnesses etc, as required by Sections 207 & 208 CrPC, so as to ensure fairness of the trial.

Prosecutor Opens the Case

When the accused appears or is brought before the court on commitment the prosecutor shall open the case describing the charge brought against the accused and what evidence he proposes to prove the guilt, as per Section 226 CrPC. The Prosecutor has to produce evidence "in support of the prosecution", but not in derogation of the prosecution case at this stage.

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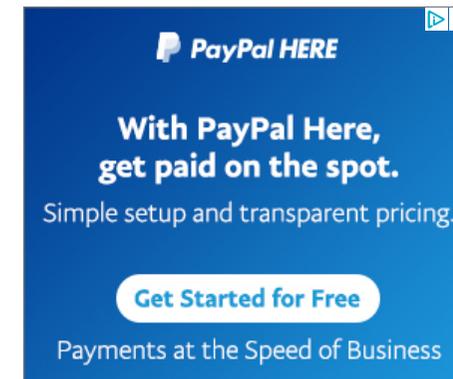
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The opening statement by the prosecutor must be confined to the matters which enable the court to follow the evidence. Full details regarding the evidence including the documents need not be stated at this point. He must focus more on who the witnesses are, and whom he proposes to call for evidence.

Discharge the Accused when no case

The court, on hearing both the prosecution and the accused, and paying attention of the records brought before it, considers that there is no sufficient ground for proceeding against the accused, it shall discharge the accused by stating the reasons for doing so, under Section 227 CrPC. The term “no sufficient ground” means that there is no legal and acceptable evidence, or the allegations do not make out any offence at all. The accused cannot be convicted in such circumstances.

In discharging the accused, the court should sift and weigh the evidence, and find out whether there exists a prima facie case against the accused. If the material placed before the court discloses grave suspicion against the accused the court can frame the charges.

The court should while discharging the accused consider the broad probabilities of the case, the total effect of the evidence and the documents produced before it. The prima facie existence of the case has to be determined based on the facts of each case.

At this stage the court should not make a meticulous examination of the statements of witnesses recorded by the police in the Case Diary.

Framing of charge when ground exists

On the other hand, if the court is of the opinion that the accusation against the accused is not frivolous and there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, the Sessions

Judge shall frame the charge against the accused, as prescribed under chapter XVII CrPC.

At the time of framing of charges, the accused need not produce any evidence, ordinarily. While framing the charge a strong suspicion alone is enough. If two views in regard to the innocence or guilt of the accused are possible and the evidence gives a grave suspicion, the court may frame the charge. The court cannot go into the veracity of the material circumstances and evidence at this stage.

If the court finds that the offence is not one that is triable by the Court of Session, it may frame the charge and transfer the case to the Chief Judicial Magistrate for trial.

If the Sessions Court proceeds with the trial, the charge framed shall be read and explained to the accused. Thereafter the accused be asked whether he pleads guilty or wants to have the trial. The judge may interrogate the accused to ascertain whether the accused fully understood the charge before asking him whether he pleads guilty.

Accused Pleads Guilty

If the accused pleads guilty in unambiguous terms, the judge shall record the plea and may convict him thereon at this discretion. The court has enough discretion to accept the plea of guilty and to convict the accused. Since conviction under plea of guilty is non-appealable the exact words stated by the accused in regard to his guilt should be recorded.

In cases of offences punishable with death or life imprisonment the court would be reluctant to convict the accused exclusively on the basis of the plea of guilty.

Evidence for Prosecution

If the accused refuses to plead guilty, the judge shall fix a date for the examination of witnesses and issue any process for compelling the attendance of the witnesses or production of any document by anyone. On the date so fixed for evidence, the judge shall take evidence in support of the prosecution. Evidence includes all statements which court permits (oral evidence) and all documents (documentary evidence) allowed to be produced before him.

Witnesses shall ordinarily be first examined-in-chief by the party calling him, then cross examined by the adverse party and re-examined by the party calling him. The judge has enough discretion to defer cross examination of any witness until any other witness is examined, under Section 231(2) CrPC.

The prosecution has every right to drop any witness, if it is found reasonable. But the prosecution has not right to avoid examining a witness on the ground that his evidence - though not untrue - may go in favour of the accused. The solemn duty of the Prosecution is to avoid miscarriage of justice, but not to punish the accused by all means.

Oral evidence of each witness shall be ordinarily taken down in the form of narrative but the judge may take down any part of it in the form of question and answer. It shall be read over to the witness in the presence of the accused and be signed by both the witness and the judge.

If the witness denies the correctness of any part of the written testimony then the correction should be recorded not in the deposition, but as a memorandum incorporating the correction thus raised along with the remarks of the judge.

The judge can also record remarks such as demeanor of the witness during the examination. This would be of much help to the appeal court in appreciating evidence in the right spirit.

Oral or Written Arguments

The Prosecutor can submit his arguments after conclusion of the prosecution evidence and before the personal examination of the accused.

Examination of the accused

After the examination of the prosecution witnesses the court shall question the accused generally on the case, under Section 313 CrPC.

The accused will be asked about various items of evidence found against him. If any such item is not placed before him in this questioning, the court will be prevented from relying on such evidence.

Acquittal before entering on defence

Even after taking the prosecution evidence, examining the accused, and hearing the prosecution and the defence, the judge may acquit the accused, if he considers that there is no sufficient evidence to prove that the accused committed the offence.

Defence by the Accused

If the accused is not acquitted, he shall be asked to enter on his defence and adduce evidence in his support. The defendant can bring in any witness, produce any document and adduce any evidence in support of his defence.

The judge shall issue such processes for compelling the attendance of any witness if the accused applies for it. The judge can refuse such application by recording reasons, under Section 233(3) CrPC, if he considers that it is merely for delaying the case or defeating the ends of justice.

The defendant may, after the close of his evidence, address concise oral arguments and submit a memorandum of arguments under distinct heads in support of his case. A copy of the memorandum should be given to the prosecution. The memorandum will form part of the record.

Accused can depose as a witness

The accused himself is a competent witness and can give evidence on oath in disproof of the charge made against him, under Section 315 CrPC.

The accused cannot be called as a witness except on his own request in writing.

Accused may submit written statement

The accused person can put in any written statement in his defence. Such statements will be filed along with the record, under Section 233 (2) CrPC.

When the examination of the witnesses for the defence is over, the prosecutor shall sum up the case and the defence shall sum up its reply.

Judgment will follow

After hearing arguments on both sides and considering the points of law, the judge shall give a judgment of acquittal or conviction.

If the court convicts the accused, it shall further hear him on the question of sentence before passing the sentence. The accused can then bring the circumstances that may influence the judgment. The objective of this hearing is to acquaint the court with the social and personal data of the offender which would help the court to decide the proper sentence or the method of dealing with the offender. The offender is the only bread winner of the family is a pertinent matter he can raise.

Then the court, under Section 235(2) CrPC, shall pass its sentence as prescribed by law.

References

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K Rajasekharan
on 06 February 2019



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