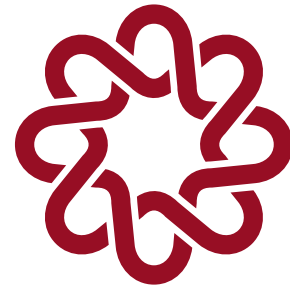


# CASE STUDIES ON COMMON DEFECTS IN CRIMINAL INVESTIGATIONS.



The Chambers of Bharat Chugh

*For training of officers at the Sikkim Judicial Academy*

Delivered by Bharat Chugh,

Advocate, Supreme Court of India

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**AN OVERWHELMING NUMBER OF CASES FAIL ON  
ACCOUNT OF DEFECTS IN INVESTIGATION.**

**THESE DEFECTS ARE OFTEN AVOIDABLE!**

# THE BROAD MECHANICS OF INVESTIGATION IN A POLICE CASE



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# **CASE STUDY NO.1**

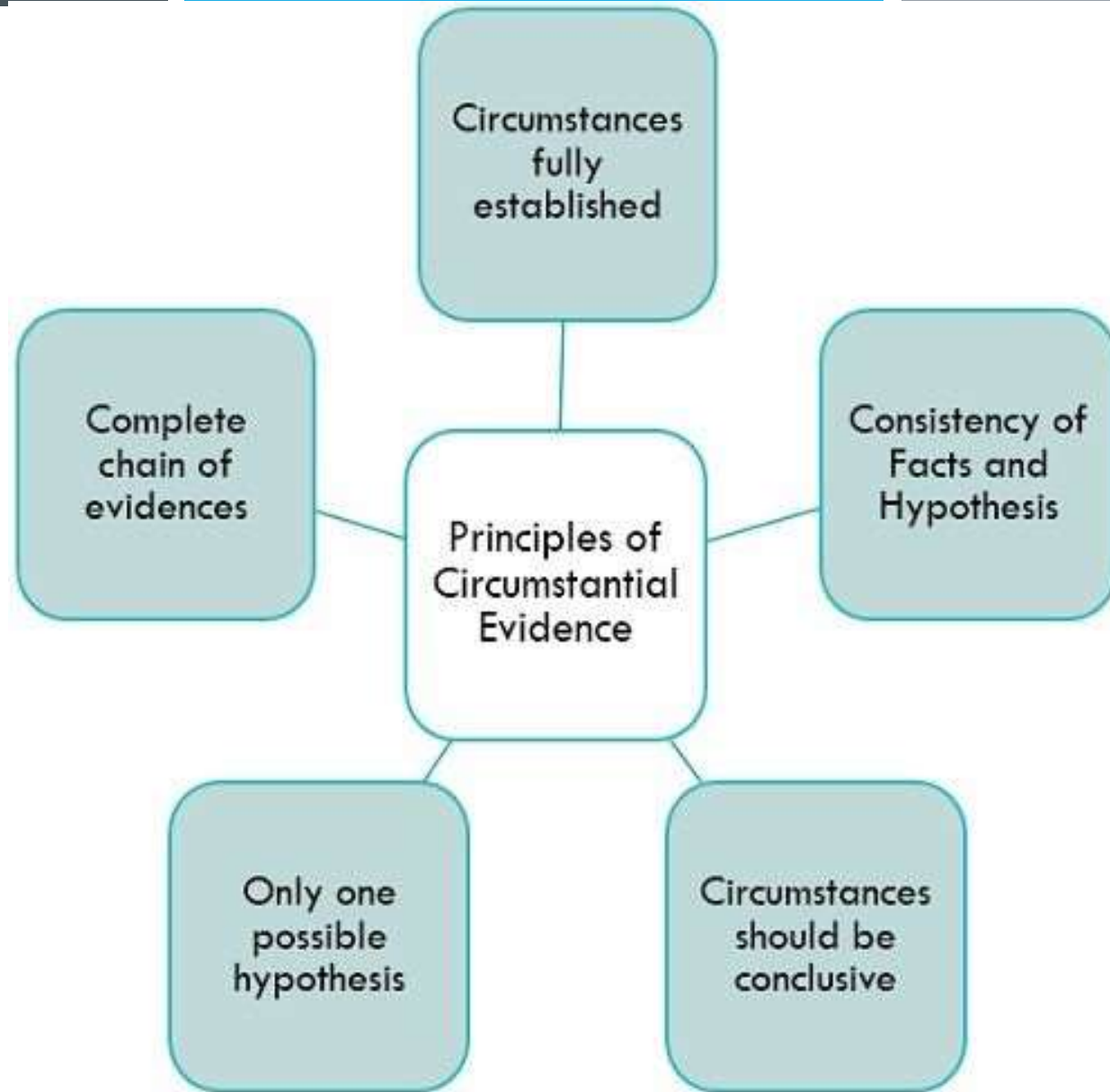
STATE OF GUJARAT V. KISHANBHAI (2014) SC

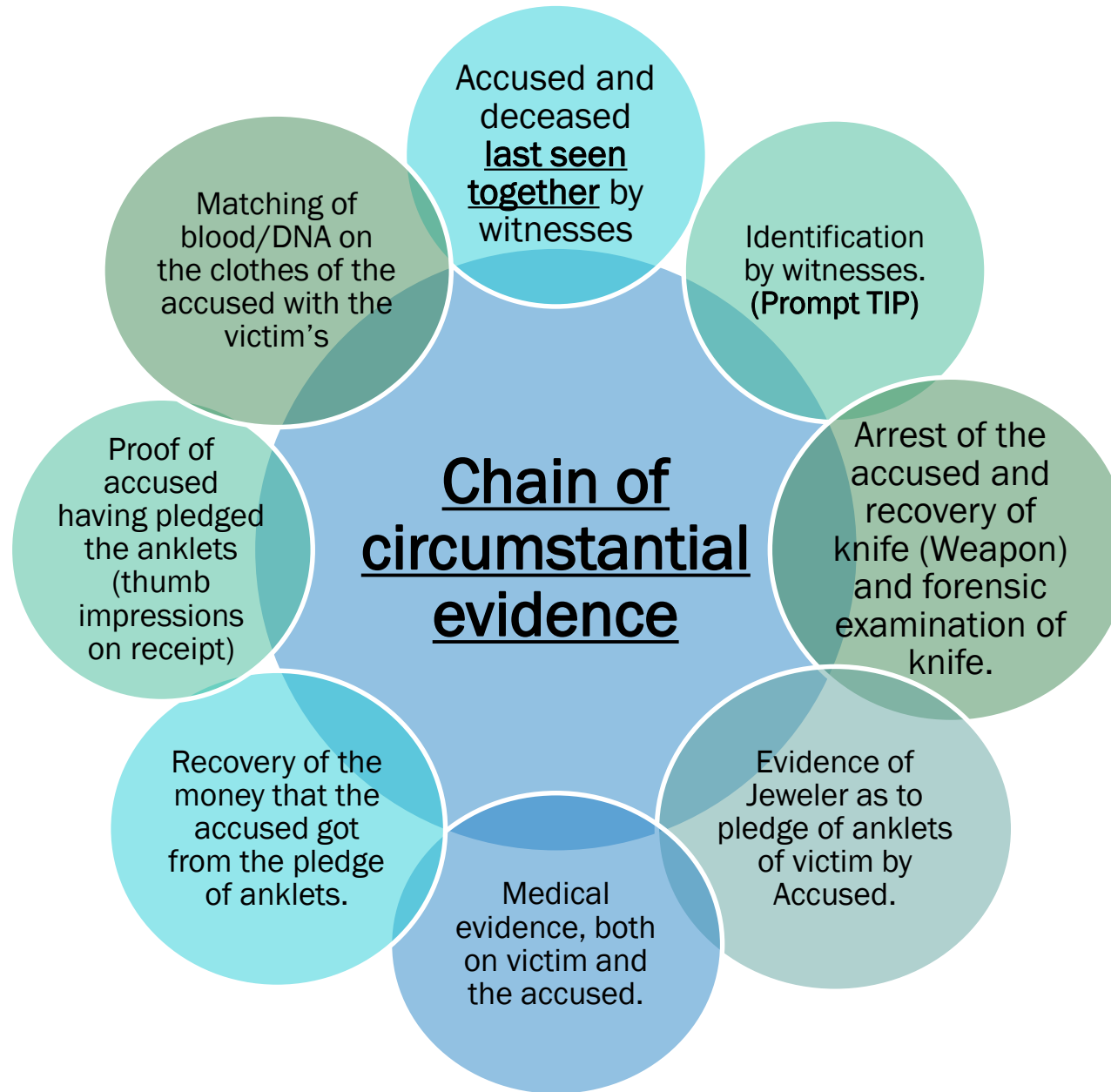
## BRIEF FACTS:

- Unfortunate case of Rape and murder of a 6 year old.
- Accused allegedly took her to a field; killed **and** raped her.
- After the incident, he went-on to chop-off her ankles with a view to steal her **anklets**.
- How was the crime discovered : People in the locality were looking for the child and the accused told a search party that the child **may have gone** towards the field.
- Later, the child's anklets were found to have been **pledged with a jeweler for a sum of Rs. 1000.**
- Accused was arrested later - since he was **"last seen together"** with the deceased child by a few witnesses.
- The **jeweler**, on hearing about the incident, also came to the police station with the anklets.
- Case based on circumstantial evidence. **(NO EYE WITNESSES!)**

## DECISION

- Trial Court convicted and gave **death sentence.**
- High Court acquitted the accused giving him “*benefit of doubt*”.
- Matter reached the Supreme Court.
- Supreme Court upheld the acquittal on account of **serious defects in the investigation of the case.**







## THE **FATAL** DEFECTS IN THE INVESTIGATION

1. Jeweler who accepted the pledge of anklets from the Accused **not examined as a prosecution witness**, though the Anklets were proved to be belonging to the deceased.
2. There was a pledge receipt showing thumb impression of the person pledging the anklets. This could have been easily matched with the accused's thumb impression.  
**Not done.**
3. The doctor who medically examined the accused person **not examined as a prosecution witness.** *(This would have revealed biological material and injuries on the person of the accused which would've been consistent with rape).*
4. **Accused's medical report was not placed on the record.** There was blood on the clothes of the accused, *however*, since the blood group of both the accused and victim was B+, it could not be proved that the blood was of the victim, and not the accused's.  
**No DNA profiling.**

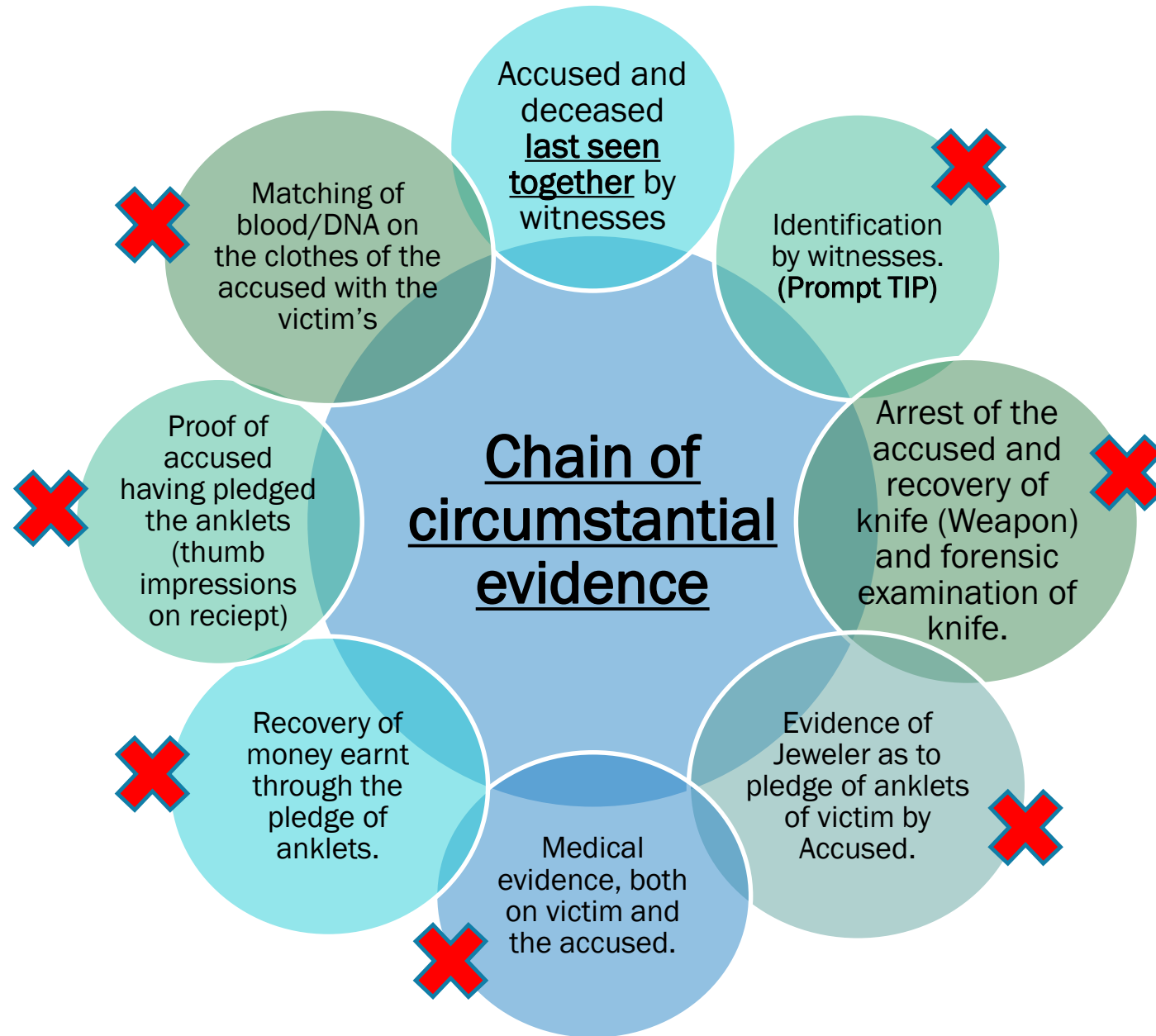
## THE **FATAL** DEFECTS IN THE INVESTIGATION

5. Prosecution Witness who saw the accused last with the deceased **was not examined as a prosecution witness.**
6. The victim's body was covered by a green dupatta. None of the prosecution witnesses refer to the accused or deceased having a green dupatta. **Prosecution failed to explain this.** (*Was there a third person present there? Leads to doubt*)
7. PW6, who deposed that the accused had come to his shop to take a knife and later took it, had seen the accused for the first time on that date, and later, identified the accused for the first time **only** at trial, years later. **No Test Identification Parade (TIP) was done.**
8. **There was no sketch map/time-line.** This was crucial because the Court believed that it may not be possible for the accused to > lure the victim > steal knife > go to the field (which was some distance away) > Murder, rape and chop-off the feet > Go to the jeweler and sell the anklets > Change shirt and come all the way back >> all within a period of 2 hours, **especially given the considerable distance between these points.**

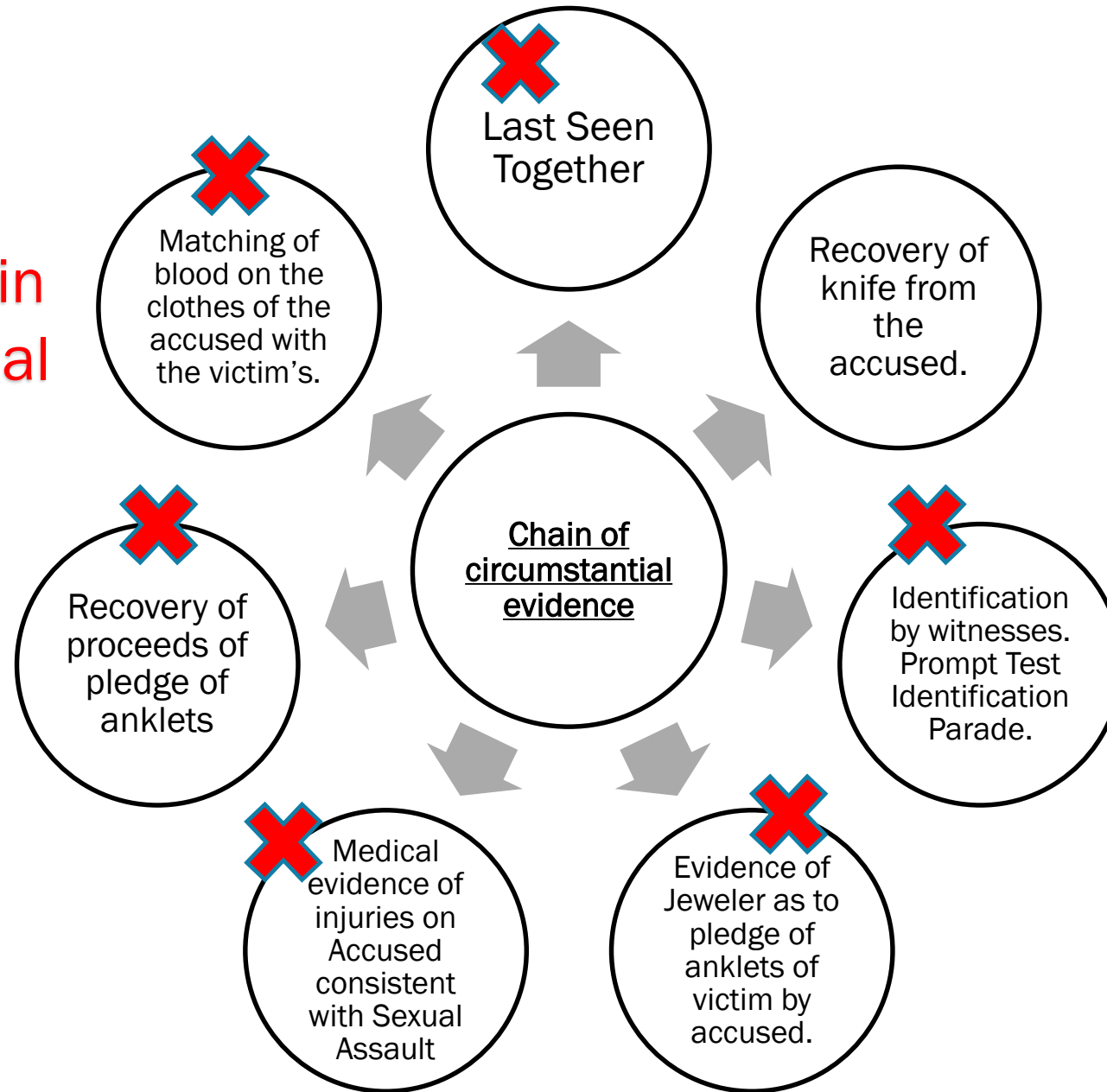
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## THE **FATAL** DEFECTS IN THE INVESTIGATION

- 9. Only 940 Rupees recovered. No explanation as to balance amount (assuming accused had no money of his own).
- 10. No DD entry before departure of the police officer/IO to the scene of crime and anomalies regarding time of arrest.



## The actual chain of circumstantial evidence



# PROOF BEYOND REASONABLE DOUBT

Acquittal

MAY BE GUILTY

**MUST BE** GUILTY

Conviction



# **ACCUSED ACQUITTED.**

## **GUIDELINES ISSUED BY THE COURT IN THIS CASE**

1. Constitution of the 'Standing Committee' of Senior Police Officers and Prosecution department.
2. To incorporate training programmes.
3. Course content to be reviewed annually.
4. Training programmes to be put in place in 6 months.
5. In case of an acquittal, the investigating officer and prosecuting officials responsible must be identified.
6. Such erring officer must suffer consequences for lapses committed.
7. State governments to formulate procedures for taking action against erring officers.



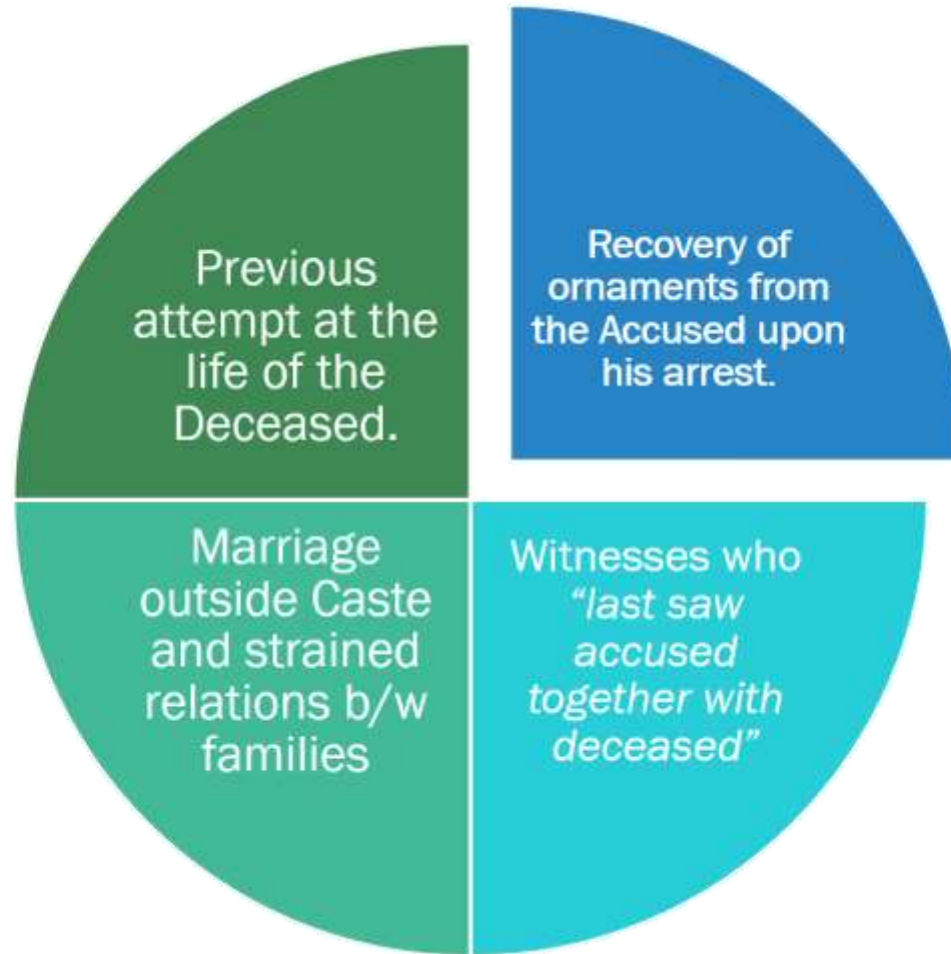


# CASE STUDY NO.2

DANDU JAGGARAJU V. STATE (MANU/SC/1050/2011)

## THE STORY LINE

- Case of murder of a young girl (“Deceased”). The Deceased had married a boy against the wishes of her family (allegedly).
- Deceased’s uncle (“Accused”) called the Deceased and told her that her grandmother was seriously ill and wanted to see her and he would come and pick her up.
- Deceased left with her uncle/Accused on his scooter and never returned home ever again (16<sup>th</sup> August)
- Later in the day, Deceased’s husband came back from work and started looking for her.
- Efforts to find Deceased failed. Missing report (First FIR) filed by husband of the Deceased on the next date. (17<sup>th</sup> August)
- Dead body recovered later the next day.
- Second FIR lodged by the husband of the deceased *“expressing suspicion that she was killed by the Accused after being taken away on the pretext of grandmother being ill”*. (17<sup>th</sup> August). **Honor killing angle.**
- Accused arrested on 7<sup>th</sup> September. Jewelry of Deceased recovered from his pockets.



## THE FOUR **FATAL** DEFECTS IN THE INVESTIGATION

1. No evidence collected of there being a past attempt to hurt the deceased and strained relations between the families. The couple was married for 6 years and had a child.
2. No explanation for the first FIR where the Deceased's husband expressed no suspicion on the in-laws/Accused.
3. Statements of witnesses who last saw Accused and Deceased together recorded four months after the alleged incident.
4. Despite the witnesses saying that they did not know the Accused from before, no Test Identification Parade conducted and Identification done for the first time in Court 2 ½ years after the incident.



# **CASE STUDY NO.3**

DR. (SMT) NUPUR TALWAR V. STATE OF UP (2017 SCC ONLINE ALL 2222)

## BRIEF FACTS

- Case of murder of a 14 year old girl (X) and the servant of the house (“Y”)
- 15<sup>th</sup> May, 2008, the family (Parents and their only daughter) had dinner; gift the daughter a digital camera (as advance birthday gift) around 10 PM and retire to bed around 11:30 PM. Around that time X was already asleep.
- Next morning, the maid rings the doorbell but no-one opened the door; there are three doors – outer iron grill door, inner iron mesh door and an inner wooden door.
- The maid, presses the door-bell again. Mother opens the innermost wooden door and asks about Y and suggests that the door is locked (**disputed fact**)
- Prosecution and Defence are at variance on as to what transpired between the two. Prosecution argues that the Mother told the Maid that the door was locked by Hemraj and she would have to wait till Y comes back. Maid asks for the key to be thrown from the balcony so that she can unlock the door and come-in.
- Maid goes downstairs. Mother throws the key. Maid comes up, opens the outer door (which was open) finds the door only latched from the outside and not locked. Walks in and sees the parents weeping over the dead body of X.

## BRIEF FACTS (CONTD.)

- X's throat is slit and there are head injuries.
- Initial suspect is the servant – Y.
- Police and witnesses arrive at the spot. (*Crime scene badly contaminated*)
- Statements recorded; some evidence collected; X's body sent for PM the same day.
- **Discovery of Y's dead body:** Next day, someone notices blood on the stairs on the way to the terrace. Prosecution claims that Father resisted unlocking of the lock of the terrace and said he did not have key and, moreover, police should go look for Y, instead of loitering about the terrace.
- Lock broke open; on the terrace, Y's dead body is lying in pool of blood covered by the cooler cover. Throat slit; Head injury.
- But the plot thickens, other suspects come-in: K and friends, were other workers, who, it is alleged, had drinks with Y and then went on to kill X and Y.
- “Khukri” seized from K and a blood-stained purple pillow cover. (Y's blood in K's room)
- Narco analysis done which showed presence of K, R and V along with K in the family house that night.

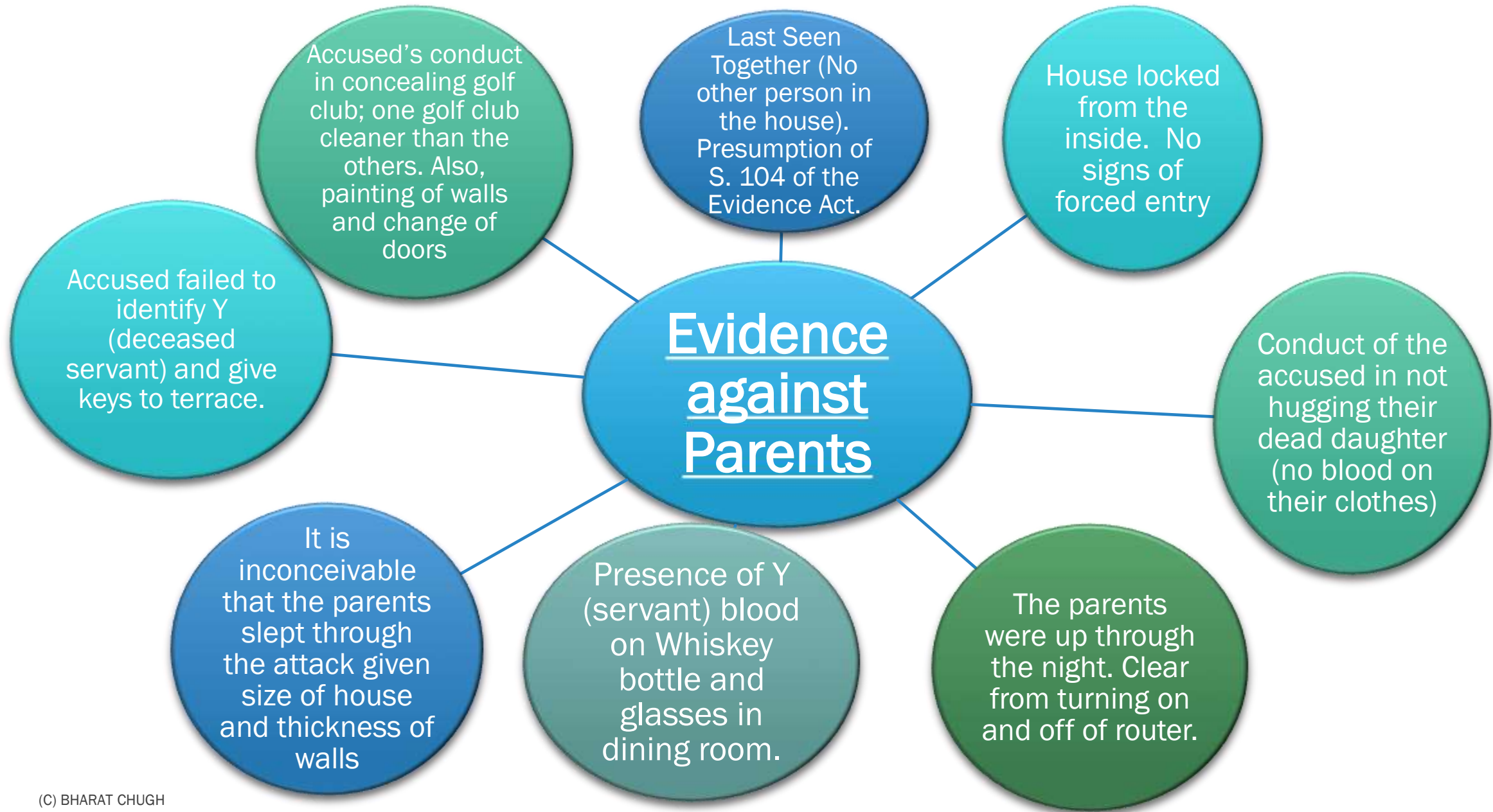
## **BRIEF FACTS (CONTD.)**

- Bottle and glasses of liquor found in Y's room.
- Medical Report of X did not suggest sexual assault or rape.
- Red colored water from water cooler at terrace, bloodstained and plain floor scrapping seized.
- Blood stained palm print embossed on the wall - seized.
- Clothes and shoes of the parents seized.
- Khukhri seized from K and Golf Clubs seized from Father.
- K, Father and Mother arrested at different times.



## TRANSFER OF INVESTIGATION TO CBI.

- The case was transferred to CBI.
- The CBI team initially suspected the Parents' assistants K along with the two other domestic servants- R & V.
- The CBI conducted a Narco Analysis on the three suspects. The three suspects, in the Narco Analysis, confessed about their involvement and it was presumed that they killed X after attempting to sexually assault her and since Y had witnessed the same, they killed Y too.
- But all the three men were released as no evidence was found against them.
- Moreover at the same time the parents came clear in the narco analysis and nothing was found against them and they were not involved in the crime scene.
- This led to the closure report being filed.
- Parents file a protest petition. Ld.MM took cognizance against Father and Mother for offences u/s 302, 201, 203, 120B IPC.



# THE **FATAL** DEFECTS IN THE INVESTIGATION

1. **Theory of rape/sexual relations:** Despite no evidence of any sexual assault, Doctor, as an afterthought allowed to switch statements, and talk about ‘wide vaginal cavity’ (in 5<sup>th</sup> statement). **It is notable that the concerned doctor did not talk about “manipulation with private parts/cleaning up” anywhere in the PM report or any of the three statements recorded u/s 161 of the CrPC.** Initial finding in PM was consistent with Expert Committee Report also. The 5<sup>th</sup> statement may have been an afterthought to show evidence of motive.
2. **Deceased servant (Y) swollen private parts :** Despite clear evidence of swelling in private parts being part of natural degeneration of human body (Modi Medical Jurisprudence), a doctor said that this may be because **Y died in the middle or expectation of sexual intercourse and he said this on the shocking basis of “own marital experiences of doctor”**
3. **Unsubstantiated allegation on father of manipulation of doctor’s report:** Statements u/s 161 of Doctor did not talk about any attempt to manipulate report (to not show rape) at behest of the father.

## THE **FATAL** DEFECTS IN THE INVESTIGATION

4. Investigators unclear on whether door locked from the inside or the outside: Statement of Maid (on whether outer door was locked or not) not clearly recorded.
5. Parents being up all night: Router Activity throughout the night (which would have been good evidence of parents being up in the night) but **not corroborated/juxtaposed with computer/device logs**. Router activity could have been random/network and not human/manual. Notably, the Expert had also written to the IO asking for **“computer internet log/modem router log”** and detailed ISP log to be provided to him but the IO did not provide those. **Therefore, parents being up all night was not proved.**
6. Electronic Evidence wasted: Initially, certificate u/s 65B not filed to prove above electronic record. **Later, one filed, which was faulty as it did not “bear any date” or otherwise “comply with S. 65B”.** Resultantly, crucial evidence was not read by the court and was held to be inadmissible. (Objection was taken by the accused but the same was not rectified by the Investigator/prosecution). (This was a remediable error).

## THE **FATAL** DEFECTS IN THE INVESTIGATION

7. **Wrong instructions to the expert** : The expert was provided incorrect instructions as regards blood on the stairs which led to the conclusion by the expert that “*presence of chance bloodstains on the vertical face of one of the steps in the staircase goes to prove cleansing operation must have been undertaken after the incident*”. **No witness had seen such blood stains (at least no witness led in evidence)**
8. Reliance on “**Dummy test**” - there was reliance on a dummy test conducted by an expert of dragging a dead body up and the marks it would leave. **Such expert opinion is not a valid expert opinion u/s 45 of the IEA and rightfully disregarded by the court. Further, even the circumstances were not rightly simulated.**
9. No explanation of Y wearing a chappal during post-mortem.
10. Y's blood was not found in X's bedroom or anywhere in the house.

# THE **FATAL** DEFECTS IN THE INVESTIGATION

## 11. Wrong inferences drawn from conduct:

- Conduct of not providing key: not proved that couple used to have the key itself.
- Conduct of not hugging the child. Different people react differently.

## 12. Fingerprints from cooler cover – covering Y's body not lifted.

13. Other evidence contaminated and did not yield anything. **The police had gathered 26 fingerprints from the crime scene. However, 24 of these were gathered through wrong methods and could not be preserved.** Only 2 fingerprints were suitable for evidential purposes, but these did not match with any of the suspects.

## THE **FATAL** DEFECTS IN THE INVESTIGATION

14. Wrong inference drawn from repainting of house/replacement of doors. **No directions issued sealing the premises or part or notice in writing against alteration of structure.**
15. The mystery of the missing one Golf Club. **Author of the so-called email (talking about concealment of one golf club) not led as a prosecution witness.**
16. Not providing the expert adequate material:
  - For instance, the expert was not provided surgical scalpel for examination as to whether the injury could have been inflicted by a dentist's scalpel;
  - Injury presumed to be by golf club because of it being triangular in shape. *(This is despite the fact that there was no injury in PM which was triangular in shape).*

## THE **FATAL** DEFECTS IN THE INVESTIGATION

17. Sound simulation test report concealed from the court. *This report probablised that the parents could have slept through the whole thing.*
18. No explanation of any alternative hypothesis.
19. No explanation as to Y's phone being active in Punjab.
20. The law enforcement agencies did not sanitize the crime scene properly. As a result, key forensic evidence was lost.
21. The CBI never seized parents' dental equipment, including the scalpel that, it claimed, was used to slit X throat.
22. The CBI claimed that Father's golf club was used as a weapon of offence and had later been cleaned. However, the golf club which the prosecution presented in court was a different one and it had no evidence of being wiped clean. It was dirty.



## THE **FATAL** DEFECTS IN THE INVESTIGATION

- 23. An hour-long video surfaced on YouTube showing K, assistant of X's father, purportedly saying that a senior officer had asked him to own up the crime on the promise of getting his sentence reduced.
- 24. Dilution of worth of an important report: K's pillow containing Y's blood by extracting a "clarification" from the lab that Krishna's link to the item was a "typographical error". This was taken after 3 years.
- 25. The local police could not find the body of Y till the next day even though it was lying on the terrace because the police found the door of the terrace to be locked and passed off the blood stains on the railings of the stairs as rust.



# **CASE STUDY NO.4**

## 2002 HIT AND RUN CASE

## 2002 HIT AND RUN CASE! – MAJOR DEFECTS IN INVESTIGATION

IN 2002, A BOLLYWOOD ACTOR WAS ACCUSED OF A HIT AND RUN CASE – KILLING ONE AND INJURING 4 OTHERS. THE ASSISTANT COMMISSIONER OF POLICE ISSUED A CIRCULAR, HIGHLIGHTING GRAVE DEFECTS IN THE INVESTIGATION BY THE POLICE:

- *Delay* in getting the actor's *medical tests* done and sending the *blood samples* to the laboratory.
- Actor's bill from Rain Bar (where the accused had already consumed alcohol) were *not certified under Section 65-B* of Indian Evidence Act.
- The *seized bills and parking tags* were *not entered in Panchnama*.
- No record of the handwritten endorsements on the Rain Bar Bills.
- The *Blood samples* of the accused and the deceased were taken *at different hospitals* without any explanation.

## 2002 HIT AND RUN CASE! – MAJOR DEFECTS IN INVESTIGATION (CONTD.)

- Blood samples arrived at the police station on September 28, 2002 but were sent to the Forensic Laboratory in only on September 30.
- The *statement of the constable* who brought blood samples from the hospital to the police station was *not recorded and he was not examined*.
- Important anomaly: *6ml of blood was extracted from the Actor in two containers, but the lab received only 4ml of blood*.
- Receiving clerk of the lab were not examined.
- The investigating officer *did not verify the medical papers while collecting them*.

## 2002 HIT AND RUN CASE! – MAJOR DEFECTS IN INVESTIGATION (CONTD.)

- *Blood collection reports shows many discrepancies* and defects, which were admitted.
- The defence had claimed that the vehicle had crashed because of a burst tyre but it was *not sent to the lab to verify* this claim.
- The *FIR was altered in two places with no explanation* given.

## 2002 HIT AND RUN CASE! – MAJOR DEFECTS IN INVESTIGATION

### DECISION

HC: The Hon'ble Bombay High Court held *“The appeal is allowed. The trial court's verdict is quashed and set aside. Salman is acquitted of all charges.”*

The court observed that the investigation ***was conducted in a faulty manner with many loose ends*** and as such benefit of this had to be given in favour of the accused.



# **SOME COMMON DEFECTS IN INVESTIGATIONS**

AND WAYS IN WHICH THEY CAN BE RECTIFIED

# COMMON DEFECTS

1. Delay in recording of FIR without reasons.
  1. Loss of crucial evidence.
  2. Defence takes the argument of the case being false and an afterthought.
2. Errors in collection of evidence.
  1. For instance, omission to collect blood stained earth by the IO.
3. Failure to seek expert opinion.
  1. For instance, not sending firearms for comparison and for opinion that the bullets seized from the spot have been fired from the weapon recovered from the accused.
4. Not recording statements u/s 164 of the CrPC.
  1. Increases the chances of the witness turning hostile/being won-over.
  2. Statement u/s 161 has no evidentiary value.
  3. Obligatory now in cases of eye-witnesses. (Doongar Singh v. State of Rajasthan, (2018) 13 SCC 741)
5. Getting statement u/s 161 of the CrPC signed.
6. Not recording a statement u/s 161 at all or recording a 161 statements casually.
7. Statements of witnesses not written in Case Diary as per 161.
8. IO should record the names of accused in the statements of witnesses as are told by him. He should not write that the 'witness told the names as given in FIR'.



# COMMON DEFECTS

## 7. Belated examination of crucial eye-witnesses.

- Though this is not always fatal. There are courts which have recognized that if the officer was overburdened and also had L&O functions, delay, if explained, may not be fatal. Much depends on cross examination of officer on this count.

## 8. Not holding a Test Identification Parade.

1. Or press conference before a TIP with the accused sitting alongside.
2. Not covering the face of the accused before the TIP.
3. Showing accused's photograph to the witness ahead of the TIP.

## 9. Filing of a charge-sheet without sanction (in case of prosecution of a public servant or an offence, for instance, against the central government); (S.17A POCA, 2019 Investigation may also need sanction)

## 10. Not putting the right and entire material before the sanctioning authority.

## 11. Filing of a charge-sheet without FSL/expert reports.

## 12. Non seizure of crucial documents.

## 13. Not sending crucial evidence to the FSL, especially, electronic evidence.

## COMMON DEFECTS

14. Not involving independent witnesses in a search/seizure or discovery of an incriminating article.
15. Using stock witnesses.
16. Failure to send bloodstained articles or other objects to the FSL.
17. In the recording of a dying declaration – not taking proper endorsement from the doctor as to victim's competency to make the statement (orientation and disposition).
18. Delayed sending of the occurrence report to the Magistrate concerned.
19. In cases of evidence to be obtained from outside India – Mutual Legal Assistance Treaties (“MLATs”) to be carefully examined and complied with and letters rogatory sought in the requisite format.
20. Proper preparation in case of extradition requests. Most extradition requests fail because of lack of proper filings.
21. Recording statements of witnesses jointly – “joint statement is a statement of none!”

## COMMON DEFECTS & GUIDELINES.

- 21. Proper witness protection and having witnesses fill bonds in terms of Section 170(2) CrPC. Proper address verification for accused persons and the witnesses.
- 22. Insist on admissions and denials. (Section 294 of the CrPC).
- 23. MLC in proper format (printed format of human body sketch with injuries indicated).
- 24. Withholding material exculpatory evidence. (*You have to file a list of documents, etc both which are relied upon and **those not relied upon***)
- 25. Recording dying declaration oneself when the same can be got recorded through an Executive Magistrate/Judicial Magistrate.
- 27. Conducting narcoanalysis, taking specimen signatures, handwriting samples, conducting TIP without moving an application to that effect before the jurisdictional court.

## COMMON DEFECTS & GUIDELINES.

- 28. Involve forensics experts in sensitive cases from the very start (for instance, sexual assault cases).
- 29. Video recording of dying declarations/inquest post-mortems.
- 30. Witness protection under the DLSA scheme. (be more pro-active in registration of cases u/s 195A & 506 of the IPC).
- 31. Cross cases should be investigated by the same IO.
- 32. Involvement of victim at the time of opposition to bail
- 33. Precautions while seizing electronic evidence/non compliance with S.65B IEA.
- 34. Generate Hash value at the time of seizure of electronic evidence. (TT case).
- 35. Obtaining selective CDRs or using them selectively.
- 36. Not obtaining the DVR (in cases of CCTV footage). Also, seal the DVR! (TT Case)

## COMMON DEFECTS & GUIDELINES.

- 37. Vital CCTV footage viewed during investigation (later lost!) but not mentioned in the case diary. (*TT Case*)
- 38. Non sealing/non-production of seal.
- 39. Contraband being taken in vehicles. But no proof that vehicle was operational at that time.
- 40. Directions to other officers to seize something not recorded in the CD.
- 41. Now accused is entitled to clone copies of all that's seized in investigation.
- 42. The IO did not record during Panchnama which button was pressed in the lift to keep the lift in circuit. (*TT Case*)
- 43. Drafts of a complaint exchanged (these drafts not saved/secured by the IO).
- 44. Preservation of CDRs.

## COMMON DEFECTS & GUIDELINES.

- Don't record joint statements. (Statement of two is statement of none).
- While opposing bail, insist on travel restrictions.
- Seek issuance of Look Out Circular ("LoC") in appropriate cases.
- Pro-actively seek freezing of bank accounts u/s 102 of the CrPC in appropriate cases. (can't seize immovable property).
- Seek assistance of the legal counsel assigned to the relevant police station.
- Implement PP's suggestions.
- Better spot Panchnamas/Scene Mahazar (one done initially by IO, followed by one done on scale by police draftsman (if available or one authorized/nominated by the State) *duly disclosing – place of occurrence, where body is found, where material exhibits and weapons were found, blood stains, source of light, elevation of structures, etc.*
- Caution w.r.t default bail and filing of charge-sheet in time. (what if CFSL results don't come in by that time?).

## COMMON DEFECTS & GUIDELINES.

- In cases where some incriminating thing is recovered and seized; be it arms, explosives or drugs, or any other thing, the following points should be taken care of:
- The case reference is not to be noted in the Seizure memo as at that time there is no foundation of a case. In fact, it's the seizure that leads to the case.
- When taking acknowledgment from a witness to a seizure, get the witness to acknowledge, in his or her own handwriting, the factum of what exactly was seized.
- Non-mentioning of departure and arrival time in the DD register No. II (Roznamcha).
- Non seizing of broken bottles, etc, in excise act cases of drinking in public places.
- Non-joining of excise officer when there is sufficient opportunity for the same.
- In forgery cases, try seizing the original document. Expert may not be able to opine on the basis of a photocopy.

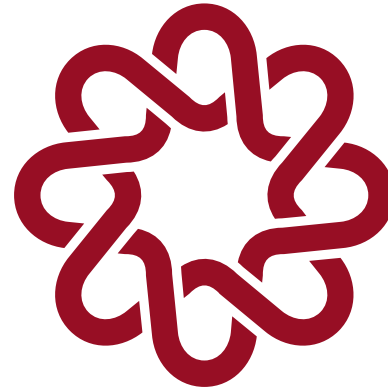
## ON COLLECTION OF ELECTRONIC EVIDENCE

- Preserve the original in a *dust/transmission resistant environment*.
- As far as possible, record in a device which directly saves it on a memory card, which becomes primary evidence.
- Make a **clone copy** of the contents therein (after using devices such as write-blocker to ensure no data is written onto the device during access and process of copying).
- Access the document through the clone/mirror copy only, as accessing the data on the device itself may make the authenticity/integrity of the document suspect and may make it open to challenge.
- Take the '**Hash Value**' of the device at the time of seizure (Hash Value is a specific string of numbers that each file produces; any change in the file, even a space or a comma, leads to a total change of hash value; this algorithm is used to preserve the document in original shape and ensure no tampering takes place). Compare it with the Hash Value at the time of evidence before the court, to convince the court as to non-tampering with the device.



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Thank you! Happy to take questions.



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