

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Except as otherwise expressly provided, all evidence taken under Chapters ¹[* * *] XX, ²[* * *] XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Evidence to be taken in presence of accused

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Manner of recording evidence

355.(1) ³[In cases tried under Chapter XX or Chapter XXII] by a Magistrate of the first or second class and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record ⁴[***] in trials of certain offences by first and second class Magistrates

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

¹ The figure and comma "XVIII," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

² The figure and comma "XXI," were omitted by section 26 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982)

³ The words and figures "In cases tried under Chapter XX or Chapter XXII" were substituted, for the words, figures, brackets, letters and commas "In summons-cases tried before a Magistrate and in the cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried" by section 27 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

⁴ The words "in summons-cases and" were omitted by section 27 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

Record in other cases

356.(1) In all other trials before Courts of Session and Magistrates and in all inquiries under ¹[Chapter XII] the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

(2A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Session Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

¹ The word and figure "Chapter XII" were substituted, for the words and figures "Chapters XII and XVIII" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

357.(1) The Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.

Language of record of evidence

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language or in the language of the Court, although such language is not his mother-tongue.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Government has made the order referred to in section 357, in the manner provided in the same section.

Option to Magistrate in cases under section 355

359.(1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

Mode of recording evidence under section 356 or section 357

(2) The Magistrate or Sessions Judge may, in his discretion take down, or cause to be taken down, any particular question and answer.

360.(1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

Procedure in regard to such evidence when completed

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

Interpretation of evidence to accused or his pleader

361.(1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. [Omitted by the Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

Remarks respecting demeanour of witness

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Examination of accused how recorded

364.(1) Whenever the accused is examined by any Magistrate, or by any Court other than High Court Division the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English: and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

365. ¹[The Supreme Court] shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the evidence shall be taken down in accordance with such rule.

Record of
evidence in
High Court
Division

CHAPTER XXVI OF THE JUDGMENT

366.(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained—

Mode of
delivering
judgment

- (a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and
- (b) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

¹ The words "The Supreme Court" were substituted, for the words "Every High Court" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).