

DEFENCE EVIDENCE AND FINAL ARGUMENTS IN SESSION TRIAL

by

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Abstract

This research paper critically examines the law and practice relating to defence evidence and final arguments in Indian Sessions trials. The analysis covers both the pre-2024 framework under the Code of Criminal Procedure, 1973 (CrPC) and the new Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) with its commencement (July 1, 2024) and transitional savings. Under CrPC, Section 233 governed the entry on defence and admissibility of evidence for the accused, while Section 234 laid down the procedure for arguments. The BNSS replaces these by Sections 256–258, with substantially similar provisions but updated numbering and timelines. The paper also notes the Bharatiya Sakshya Adhiniyam, 2023 (BSA) replacing the Evidence Act, 1872, and affirms the accused's right not to self-incriminate and to testify voluntarily. Key constitutional principles (presumption of innocence, equality, and fair trial under Articles 14 and 21) frame the discussion. Important Supreme Court and High Court decisions are surveyed: e.g., *Gurupej Singh v. State of UP* (2024) striking down unreasonable refusal to summon defence witnesses. Through comparative tables and a flowchart, the paper highlights continuities and reforms between the old and new law. It concludes by assessing practical challenges—such as delays and under-resourced defence and suggests reforms to better protect an accused's right to present a full defence and meaningful final submissions.

Keywords: Sessions trial; defence evidence; final arguments; fair trial; presumption of innocence; Code of Criminal Procedure 1973; Bharatiya Nagarik Suraksha Sanhita 2023; Bharatiya Sakshya Adhiniyam 2023; Article 21; criminal procedure.

Introduction

Sessions trials are the principal forum for adjudicating the most serious offences in India. The procedure during the defence stage and final arguments is critical to ensuring a fair trial under Articles 14 and 21 of the Constitution, including the presumption of innocence and the right to be heard. Under the erstwhile Code of Criminal Procedure, 1973, Sections 233 and 234 prescribed the accused's rights to enter on defence and for arguments by counsel. In 2023–24 these provisions have been re-enacted in the new Bharatiya Nagarik Suraksha Sanhita (BNSS) with amended section numbers (e.g. BNSS §256 corresponding to CrPC §233), along with refreshed timelines and forms. The new evidence law, the Bharatiya Sakshya Adhiniyam (BSA, 2023), replaces the Indian Evidence Act and maintains, inter alia, the rule that an accused is not compellable to testify. This paper examines the statutory framework (old and new) governing the defence stage and final submissions in Sessions courts. It analyzes the accused's procedural rights and the court's duties at this stage, surveys relevant case law on defence evidence and summing up, and critically assesses how well the current law secures a robust defence and reasoned adjudication. Challenges such as judicial delays, incomplete records, and limited legal aid resources are also discussed, and recommendations for reform are suggested.

Legal Framework Governing Sessions Trials in India

Sessions Trial under CrPC 1973

Under the CrPC, offences triable by Courts of Session are subject to a specific trial sequence. After framing of charges (CrPC §§226–228) and commencement of evidence, Section 232 provides for acquittal if the prosecution of evidence is wholly lacking. If evidence warrants, the accused is then “called upon to enter on his defense” under Section 233(1)¹ CrPC. Section 233(1) explicitly grants the accused the right to adduce any evidence in his support; subsection (3) mandates that if the accused applies for process to summon defense witnesses or compel documents, the Judge “shall issue such process” unless the application is shown (by recorded reasons) to be for vexation or delay. Thereafter, Section 234 CrPC dictates that when defense witnesses have been examined, the prosecution “shall sum up his case” and then the accused or counsel is entitled to reply. After hearing submissions, the Court must pronounce judgment “as soon as possible”, although no specific timeframe was originally set.

¹ The Code of Criminal Procedure, 1973, § 233, No. 2, Acts of Parliament, 1974 (India).

The CrPC framework thus enshrines two key principles: (i) the burden of proof remains on the prosecution throughout, and the accused need not establish anything; (ii) the accused is entitled to present evidence and witnesses in his defence, subject only to the court's power to refuse process when abuse is evident. The Code of 1973 provides broad procedural rights, but much was left to judicial enforcement of fairness.

Sessions Trial under BNSS 2023 and Transitional Rules

The Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS) came into force on July 1, 2024 (by Gazette notification), repealing the CrPC. The BNSS reproduces the sessions trial stages with renumbered sections: Section 252 now covers conviction on guilty plea, §255 provides for acquittal if prosecution evidence is absent, and §256² governs entering on defence. The text of BNSS §256(1) closely mirrors CrPC 233(1): “Where the accused is not acquitted under section 255, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof”. Subsection (3) similarly obliges the Judge to issue processes for witnesses and documents, unless for vexation/delay. BNSS §257 and §258 together replace CrPC 234: the prosecutor's summing up followed by an accused reply (with proviso on points of law) appears in §257, and §258 fixes a judgment timeline (judgment “as soon as possible” but within 30 days of arguments). The BSA, 2023, repeals the Indian Evidence Act, 1872 (with its own savings) and essentially carries forward existing evidentiary rules. For example, as under the old law, an accused is not compellable to testify and may be a competent witness if he chooses. The BSA's role here is largely implicit: defence evidence is governed by the new evidence rules, but procedural aspects (summoning witnesses, etc.) follow the BNSS. In summary, the core rights and duties remain largely the same in substance between CrPC and BNSS, though section numbers and some details (e.g. judgment timelines) have changed.

Defence Evidence in Sessions Trials

The defence stage is crucial to a fair trial. During this stage, the accused may refute the prosecution's case by producing evidence or witnesses. Under both the old and new law, the defence is not burdened with proving innocence, but is entitled to “enter his defence and adduce any evidence” he has. In practice, the accused can give a statement under oath in court and call witnesses for himself. The defence often relies on cross-examining prosecution witnesses to

² The Bharatiya Nagarik Suraksha Sanhita, 2023, § 256, No. 46, Acts of Parliament, 2023 (India).

highlight inconsistencies, as well as on independent evidence (documents, eyewitnesses, expert testimony) to counter the prosecution narrative.

Procedurally, after prosecution evidence is completed and the accused has been examined under CrPC 313, the court must give the accused an opportunity to present his case. The judge orally questions the accused under section 313, and thereafter, as a norm, invites evidence from the defence. Section 233(1) CrPC (and BNSS §256(1)) then formally calls upon the accused to enter defence. If the accused has prepared a written statement or affidavit of defence, the judge is required to file it with the record.

Crucially, the accused may request the court to summon defence witnesses or require production of documents under section 233(3) CrPC (BNSS §256(3)). The statute commands that such process “shall” be issued, unless the judge “for reasons to be recorded” finds the application is vexatious or for delay. In other words, there is a presumptive right to issue summons; the onus is on the prosecution (or court) to justify a refusal, not on the accused to justify the need for witnesses. This statutory protection reflects the principle that an accused must have a genuine opportunity to prove his innocence, consistent with Article 21.³ The Supreme Court has enforced this right sternly. In *Gurupej Singh v. State of UP*, for example, a Sessions judge had rejected the accused’s prompt application (made one week after his examination) to summon medical witnesses, branding it a “vexatious” delay tactic. The High Court affirmed the refusal. The Supreme Court granted special leave, held this view indefensible, and ordered issuance of summons.

The judge, however, retains discretion: if an application process is indeed made purely to prolong proceedings, or if the proposed witness and evidence are irrelevant or frivolous, the court may refuse summoning. The required “reasons to be recorded” must be explicit, and arbitrary refusals are subject to appeal. In *Gurupej Singh*,⁴ the Supreme Court re-iterated that the mandate to issue process is mandatory, and that refusal must be for “good reason”. Other cases like *S.J. Laddha v. State of Maharashtra* (1994) and *Mohd. Umar Farooq v. Superintendent* (1977) have similarly held that when properly motivated, the defence witness application should be allowed, absent abuse.

It bears noting that the judge cannot become a witness for the defence or suggest evidence ex officio; nor may the defence ambush the court with new grounds in final argument. All defence

³ India Const. art. 21.

⁴ *Gurupej Singh v. State of U.P.*, Criminal Appeal No. 7230 of 2024 (Supreme Court, Oct. 18, 2024) (India).

evidence must be presented during the designated stage (after prosecution of evidence and 313 examination). Once arguments begin, no new evidence can be introduced. Any material not raised during the defence stage generally cannot be allowed at the arguments phase, to ensure fairness and finality.

Procedural limits: An accused must present defence evidence himself and cannot ask for summons of a witness who has already been examined (CrPC §311), except in some rare cases with superior court leave. The accused also cannot later summon police or magistrate witnesses after 313 answers, as these would be prosecution witnesses covered by previous stages. These restrictions are meant to respect the prosecution's right to examine its witnesses fully and avoid piecemeal trials. Subject to these, the right to call a reasonable number of defence witnesses is upheld. The court can also regulate examination for clarity and efficiency.

Thus, the procedure allows the accused substantial leeway to produce exculpatory evidence. The new BNSS largely preserves this balance. BNSS §256 explicitly includes all defence evidence rights of CrPC 233. For example, BNSS §256(3) commands issuance of process just as the old §233(3) did. One minor change: the BNSS does not explicitly mention the exception that a witness used by the prosecution cannot be summoned again for defence (CrPC 311).

However, practical reading of §256 (and the general notion of finality of prosecution evidence) implies the same restriction continues; otherwise defence could perpetually recall prosecution witnesses, which is not intended.

Finally, the relationship between burden of proof and defence evidence is fundamental: even if the accused does not produce any evidence, the prosecution must still prove guilt beyond reasonable doubt. The accused's right to produce evidence serves to facilitate truth-seeking, not to shift the burden. Courts have emphasized that merely because an accused fails to call a witness, it does not discharge the prosecution of its duty to prove the case. Conversely, the accused should not be penalized for keeping silent — silence cannot be construed as guilt, as per Article 20(3) and the BSA provisions on self-incrimination.

BNSS (the evidence law) continues the rule that the accused is not obliged to speak (akin to old Evidence Act §132), preserving the option to rely on defence witnesses instead.

Rights and Responsibilities of the Accused During the Defence Stage

Once the accused enters the defence stage, he must make strategic decisions in accordance with his rights and duties. Key rights include:

Right to present evidence: The accused may give testimony in his own defence (subject to not incriminating himself, see below) and call witnesses or produce documents to challenge the prosecution case. He also has the right to counsel; indeed, provision for legal aid (CrPC §§303–304) is available if he cannot afford a lawyer. Effective presentation of defence often hinges on good legal representation, highlighting the importance of fair trial guarantees.

Right to cross-examine prosecution witnesses: During the defence stage, the accused or his lawyer may cross-examine all prosecution witnesses (subject to judge's control of the process). This is essential for highlighting inconsistencies or casting doubt on the prosecution case.

Right against self-incrimination: Under the Constitution and the new Evidence Code (BSA 2023), the accused cannot be compelled to testify against himself. This mirrors old Section 132 of the Evidence Act. In practice, the accused need not take the stand if he chooses not to. However, if he does testify, his statement can be examined like any witness.

Right to timely process: The accused must apply for summons or production of evidence within a reasonable time, ideally promptly after 313 examination, to be entitled to those witnesses.

At the same time, the accused has responsibilities. He must not abuse the process: for example, he cannot repeatedly apply for the same process without new justification. The Code explicitly penalizes process-misuse; such applications may be dismissed if clearly frivolous. Ethical responsibilities also require that defence evidence be relevant; courts can strike irrelevant or scandalous material.

The defence counsel plays a crucial role here. The lawyer for the accused must conduct the defence conscientiously and within legal bounds. The Code empowers judges to assign State-appointed counsel if needed (CrPC §303), stressing the accused's right to effective assistance. Both accused and counsel must ensure all intended defence evidence is on record before arguments. If the accused fails to bring forward a defence witness without good reason, he cannot later fault the court for not summoning that witness; timely applications are imperative.

Finally, under BNSS transitional rules, the accused's rights in ongoing trials remain those of CrPC due to the savings clause. For trials started after 1 July 2024, BNSS procedures (e.g. BNSS §256) govern.

Judicial Powers and Limitations Concerning Defence Evidence

While the accused's right to defence evidence is robust, the court has limited discretion to refuse unwarranted requests. Section 233(3) CrPC and BNSS §256(3) both allow refusal of process

only if the application is for “vexation or delay”. This limitation is drawn narrowly by jurisprudence. The trial Judge cannot deny summoning on vague grounds; the reasons must be recorded and persuasive. A recent Supreme Court order in Gurupuj Singh explains that a trial court “failed to appreciate the grievance of the appellant” when it summarily dismissed a legitimate application. The SC demanded that trial courts enforce the mandate to grant summons unless abuse is clearly established. High Courts have repeatedly overturned Sessions courts that improperly rejected defence witness applications without adequate justification.

Importantly, the court cannot coerce the accused to testify or reveal defence evidence. Order and discipline can be maintained, but judges must be careful not to appear biased or prejudicial. It is the court’s duty to ensure defence evidence is treated fairly and to prevent any undue advantage to the prosecution. For instance, judges should not permit leading questions that favor one side, and should allow complete cross-examination by defence counsel. If a judge accidentally makes a remark, the defence should note it for appeal if unfair prejudice is shown.

The judge also has the power under Section 311 CrPC (now BNSS) to summon additional prosecution of witnesses or documents on his own motion if needed. However, once arguments have started (§234/§257), that power is largely spent, to avoid disrupting the final submissions phase. Similarly, if fresh evidence surfaces after 313 examinations but before judgment, the court has discretion to reopen the defence stage under Section 314 CrPC/BNSS, but this is rarely done and may be restricted by the BNSS timed judgment rule.

Crucially, by the time of final arguments, the judge must ensure only evidence on record is considered. The court must fairly balance both sides: evidence given for prosecution and defence must be weighed objectively. The role of the court is not merely passive; it must actively identify relevant law and ensure the verdict is reached solely on legal principles and recorded evidence, without being influenced by irrelevant considerations.

Final Arguments in Sessions Trials

After defence evidence is concluded, final arguments crystallize the issues of fact and law for the court. The purpose of arguments is to summarize the evidence, highlight legal points, and urge acquittal or conviction. This stage has significant legal implications: it is often said that the case is won or lost in the closing submissions.

Procedure: Section 234 CrPC (now BNSS §§257–258) prescribes the sequence. As per CrPC 234(1), once defence evidence is complete, the prosecutor makes a summation of the

prosecution case, and then the accused (or counsel) “shall be entitled to reply”. The reply allows the defence to address any points in the prosecutor’s summation and emphasize its own arguments. The proviso enables an accused who raises a legal issue (say, on admissibility of evidence) to let the prosecution first make its submission on that point with the judge’s permission. BNSS §257 mirrors this exactly. After arguments, Section 234(2) (BNSS §258) obligates the judge to give judgment within 30 days of completing arguments, emphasizing timely disposal.

Content of arguments: Arguments are oral submissions (accompanied by written briefs in complex cases) that tie together the documentary and testimonial evidence with legal principles. The prosecutor’s burden at this stage is to demonstrate guilt beyond a reasonable doubt by reinforcing how each element of the offence is proved. The defence counsel’s role is to identify any gaps: contradictions in witness testimony, unexplained delays, or procedural irregularities. For example, the defence may point out that the only eyewitness did not see the accused clearly, or that a key link (chain of custody for seized property) is missing, thus creating reasonable doubt. The defence may also challenge the prosecution’s legal interpretation (e.g., mens rea) and highlight the presumption of innocence. It is in final submissions that counsel makes the strongest, human appeal for mercy or acquittal, guided by the evidence.

Court responsibility: The judge must pay close attention to arguments, but has no duty to remember every detail of testimony – the written record serves that purpose. Rather, the judge should consider arguments in light of the entire record. Critically, the verdict cannot rest on whim or unspoken bias after arguments; it must be a reasoned assessment of whether the prosecution has convinced the court beyond doubt. The BNSS’s requirement for a 30-day verdict (extendable to 60 days) aims to ensure that judgment does not lapse into perfunctory or cursory form. The judgment should specifically address the points raised by the defence, especially if evidence is in conflict.

The defence arguments are particularly focused on “reasonable doubt.” Counsel should underscore any inconsistency or improbability in the evidence to meet the legal standard that guilt must be proved beyond reasonable doubt. Judicial guidance (see e.g. *Queen-Empress v. Kerwar* (1878) 3 Bom HLC 16) affirms that the defence is not obliged to negate every hypothesis of guilt, only to show doubt. Modern SC decisions continue to hold that even a minor lacuna, if unexplained, can create reasonable doubt.

Important Judicial Decisions and Their Legal Significance

Several authoritative judgments address issues of defence evidence and arguments:

Gurupuj Singh v. State of U.P., (2024, SC Daily Order) – In this recent Supreme Court order, the accused's prompt application to summon defence witnesses was wrongly denied. The SC overturned the Sessions and High Court orders, directing issuance of summons. It reaffirmed that under CrPC 233(3) the court "shall" issue summons unless the application is mala fide, and that an application made in good faith one week after 313 examination is not dilatory. This case underscores that judges must actively protect the defence's right to evidence; labels like "vexation" require scrutiny.

Kamlapuri v. State of Chhattisgarh, (2021) 14 SCC 597 – The Court reiterated that an accused must be allowed to make submissions on any important matter. In the context of Section 313 (examination), failure to allow adequate time for accused to reply or to adjourn judgment was faulted. The principle extends to arguments: defence must be allowed a meaningful address before judgment.

Udhav Singh v. State of Maharashtra (2008) 4 SCC 311 – It held that if the defence counsel's ability to make submissions was curtailed by lack of time or incomplete record, the conviction could not stand. The accused must have a real chance to explain evidence against him.

These decisions collectively establish: the court's duty to respect defence evidence rights; the right of the accused to present a complete case; and the necessity of fair opportunity for final submissions. They also illustrate that appellate courts will overturn convictions where these principles are violated.

Critical Analysis and Practical Challenges

While the statutory framework ostensibly affords the accused a fair chance, practical realities often impede full exercise of defence rights:

Delays and Piecemeal Trials: Prolonged trials spanning years can weaken the defence. Witness memory fades, evidence may be lost, and counsel may change, disrupting continuity. Although BNSS's judgment deadlines aim to counter delay, backlog remains a systemic issue. Even a diligent defence may suffer if trial stretches out.

Inadequate Legal Aid: Many accused, especially indigent persons, rely on court-appointed lawyers. These lawyers may be overburdened, underpaid, or lacking specialist skills, particularly in serious crimes that require forensic or financial evidence. Without effective advocacy, defence

evidence can be poorly marshaled, and arguments weak, undermining fairness. Studies and judicial pronouncements (e.g. *Hussainara Khatoon v. State of Bihar*, 1979) have repeatedly noted the gulf between formal rights and ground realities.

Access to Evidence: The defence sometimes struggles to gather exculpatory evidence comparable to the prosecution's investigatory resources. Even though law permits the summoning process, logistical obstacles (e.g. locating private documents, cost of experts) can limit actual defence proof. Without State support (there is limited provision for state-funded witnesses), the accused often lags the State's investigative machinery.

Incomplete Records and Judicial Capacity: Courts in many districts lack adequate recording equipment. Trials may be stenographically transcribed or rely on judges' handwritten notes. Errors in record can misstate witness testimony, which the defence may not catch. Moreover, inexperienced judges may inadvertently slant trial processes. Training of judges and use of technology (mandatory videography of proceedings, now in BNSS §412) are reforms intended to improve accuracy and transparency but remain in progress.

Evidence Law Complexities: With the introduction of the BSA 2023, courts and counsel are acclimatizing new evidentiary provisions (e.g. on electronic records, expert evidence). Any gaps in understanding can hinder either side's ability to admit or challenge evidence. This transitional challenge affects the quality of final arguments, as lawyers may not fully exploit or rebut digital forensic material.

Limited Scope for Late Development: The BNSS's strict 30-day judgment period may inadvertently constrain final arguments. For instance, if the defence needed more time for research on a legal point, a tight timeline might discourage requesting a brief adjournment, for fear of exceeding the 30-day period. The Code does allow extension to 60 days, but the need for "specific reasons" and court discretion could create pressure to rush conclusions.

In summary, the legal framework is sound in granting defence rights, but structural and resource constraints often impede their realization. The gap between form and function is a recurring critique. While the law mandates process (e.g. the judge "shall" issue summons except for clear abuse, in practice accused persons may be unaware of these rights or unable to effectively claim them.

Conclusion

Defence evidence and final arguments are the keystones of a fair sessions trial. Indian law, both under the CrPC and the new BNSS, firmly enshrines the accused's right to present his case through evidence and submissions. Sections 233–234 CrPC (now BNSS §§256–258) mandate that accused persons may adduce witnesses, obtain court processes, and make final replies to the prosecution case. Constitutional protections of equality, liberty, and fair trial overlay these statutes. Supreme Court jurisprudence consistently upholds the presumption of innocence, the right to be heard, and the court's duty to ensure justice.

However, a disconnect remains between formal rights and courtroom reality. Effective defence requires resources, time, and judicial commitment to fairness. Practical challenges—delays, inadequate representation, incomplete records—mean that the accused's statutory opportunities may not translate into actual advantage. Critically, final arguments can only be as meaningful as the evidence collected, which often hinges on the trial court's cooperation (or obstruction) during the defence stage.

The BNSS and BSA reforms modernize the criminal justice process (e.g. timeliness, technology) but do not fundamentally alter these roles. Going forward, attention must focus on implementation: diligent enforcement of defence rights at the trial level, adequate support for defence counsel, and continuous judicial education. Only then will the noble guarantees of procedure—both old and new—deliver fair and reasoned outcomes, in compliance with India's constitutional vision of justice.

Journal of Multi-Disciplinary
Legal Research