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PAPER PRESENTATION ON

“Circumstantial Evidence and its Appreciation and Doctrine of Last Seen Theory.”

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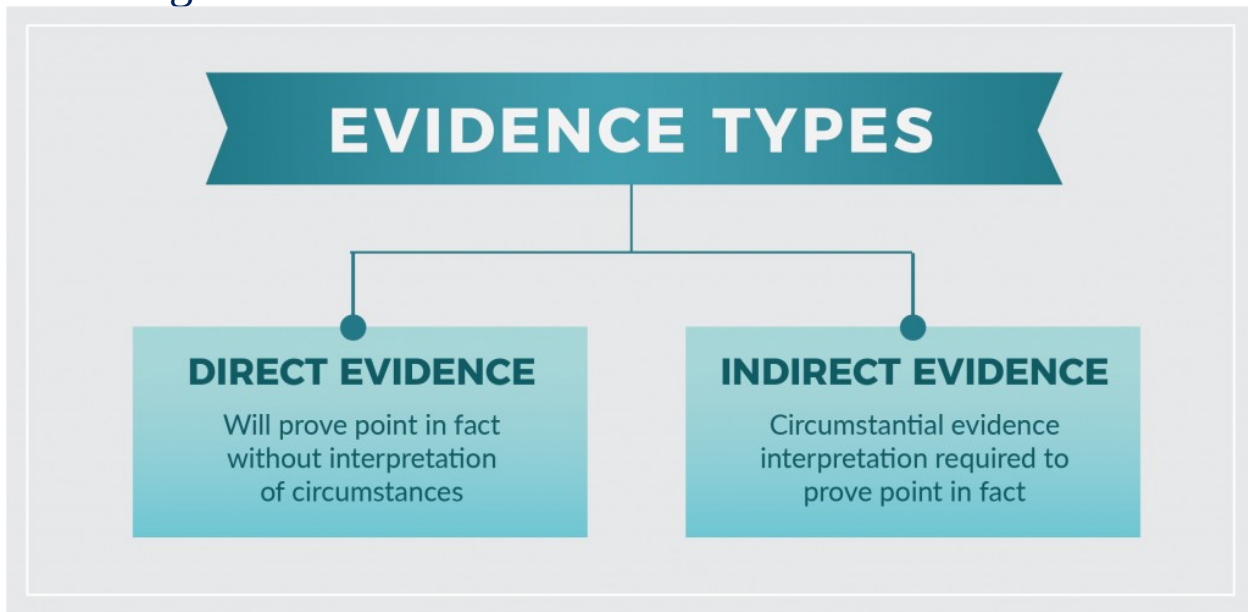
Circumstantial Evidence and its appreciation and Doctrine of Last Seen Theory

➤ Circumstantial Evidence and its appreciation

“Human agency may be faulty in expressing picturization of actual incident but the circumstances cannot fail. Therefore, many a times, it is aptly said that “men may tell lies, but circumstances do not”.

Witnesses are the "eyes and ears of justice". But testimony of witnesses is not always credible; therefore, facts are provable not only by witnesses but also by circumstances.

Circumstantial evidence is used in criminal courts to decide the fate of accused by establishing guilt or innocence through reasoning.



Circumstantial evidence is a very tricky thing.”

Under the Indian Evidence Act, 1872 the word “circumstantial evidence” has not been used directly but in Section 3 the definition of the word ‘Proved’ mentions that if the existence of any fact is so probable that the prudent man will believe it to exist then that fact is considered to be proved. This implies the admissibility of circumstantial evidence that is based on logical inferences in Indian law.

The direct evidence and circumstantial evidence are at par if the whole chain of events that happened collectively point towards the guilt of the accused cogently and unerringly. If there is any doubt that the accused is innocent or the chain of events is not complete then the benefit of the doubt will be given to the accused as there is a presumption in law that every person is innocent until proven guilty.

“It is like this, take a word, split it up into letters, the letters, may individually mean nothing but when they are combined they will form a word pregnant with meaning. That is the way how you have to consider the circumstantial evidence. You have to take all the circumstances together and judge for yourself whether the prosecution have established their case”

(Justice K Subbarao)

K M Nanavati v. State of Maharashtra

Circumstantial Evidence means the evidence which is not drawn from direct observation of a fact in issue but it is inferred from the relevant facts. In other words, it can be said that when there is no direct evidence in respect of principle fact but certain

circumstances are there which though not a fact in issue, but relevant to the fact in issue i.e., the principle fact and from the establishment of all such circumstantial evidence a safe inference of principle fact can be inferred or presumed., that is why it is termed as an 'Inferential Evidence'. Circumstantial evidence is indirect information or secondary facts that allow a reasonable inference of the principal fact, without actually proving the Principal Fact.

➤ **Golden principle of circumstantial evidence**

The five golden principles to proof a case based on circumstantial evidence are laid down in Sharad v. State of Maharashtra (AIR 1984 SC 1622)

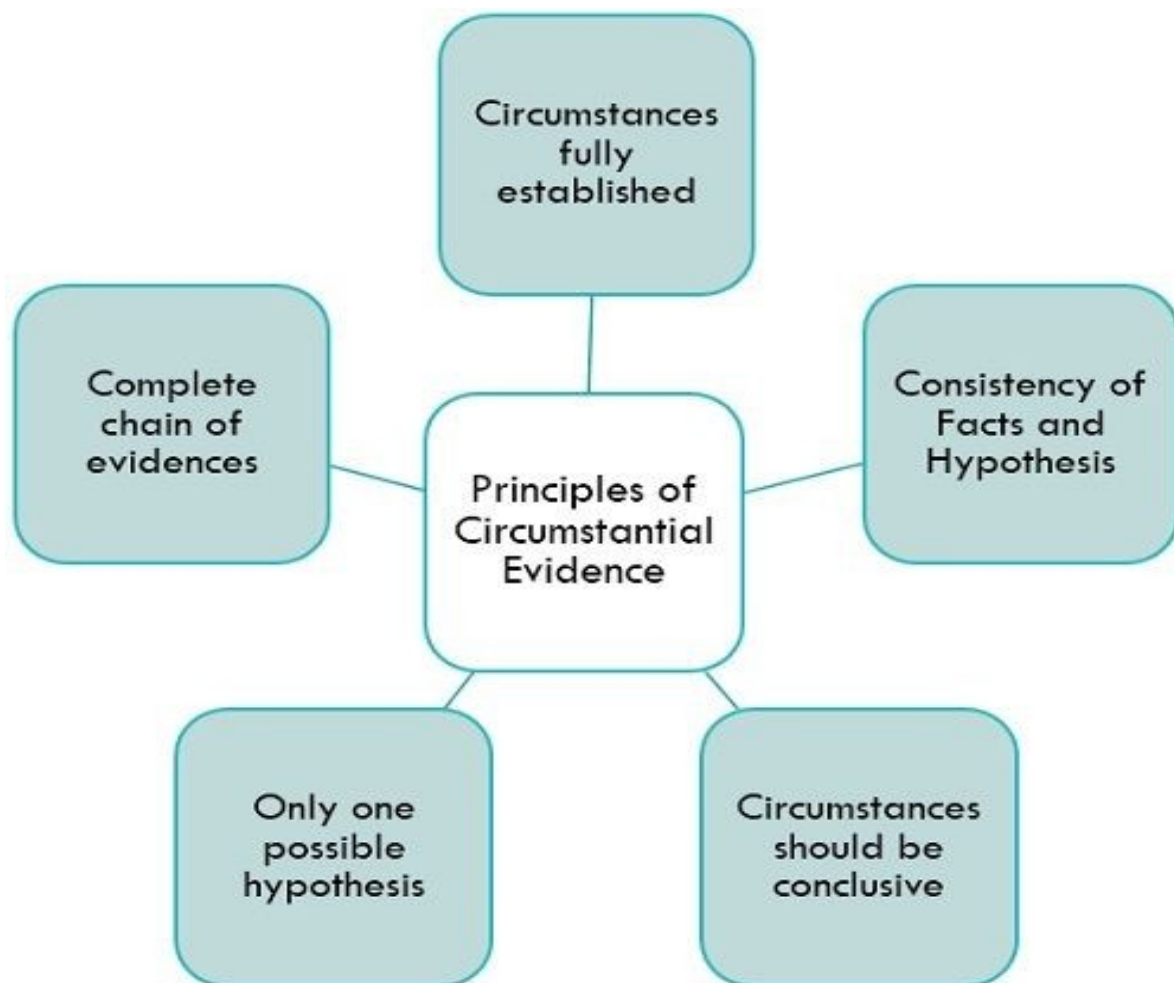
➤ **The five golden principles are:-**

- 1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- 2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- 3) The circumstances should be of a conclusive nature and tendency unerringly pointing towards the guilt of the accused.
- 4) They should exclude every possible hypothesis except the one to be proved, and
- 5) There must be a chain of evidence so complete as not to

leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The same principles are reiterated in the following judgment:

- a Shanti Devi vs. State of Rajasthan [CRIMINAL APPEAL NO. 954 OF 2005]
- b .Padala Veera Reddy v. State of Andhra Pradesh, (1989) Supp (2) SCC 706
- c C. Chenga Reddy v. State of A.P. (1996) 10 SCC 193.



➤ **APPRECIATION OF CIRCUMSTANTIAL EVIDENCE**

Appreciation of evidence is a matter of experience and knowledge of human affairs. It is a delicate task to be carried out by the adjudicating officer for weighing the evidence and drawing inferences. Each case presents its own peculiarities. Common sense and dexterity are also part of the tools. Basically, appreciation of evidence is subject to the knowledge of human dealings.

Although there can be no straight jacket formula for appreciation of circumstantial evidence but, to convict a person on the basis of circumstantial evidence, as laid down by Hon'ble Apex Court through a plethora of pronouncements, it must follow certain tests which are as follows:

- 1 Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- 2 Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;
- 3 The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; &
- 4 The circumstantial evidence, in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent

with his innocence- in other words, the circumstances should exclude every possible hypothesis except the one to be proved.

Two facts to be considered:

a) The Factum probandum, or say, the principal fact (the fact the existence of which is supposed or proposed to be proved; &

b) The Factum probans or the evidentiary fact (the fact from the existence of which that of the factum probandum is inferred).

➤ **FACETS OF CIRCUMSTANTIAL EVIDENCE**

- 1 DYING DECLARATION
- 2 EXTRA JUDICIAL CONFESSION
- 3 THEORY OF 'LAST SEEN'
- 4 MOTIVE
- 5 RECOVERY
- 6 IDENTIFICATION (OF PERSON & PROPERTY)
- 7 DEATH BY POISONOUS SUBSTANCE
- 8 DEATH BY HANGING OR STRANGULATION
- 9 INTENTION

The courts have laid down following principle to decide the facets of circumstantial evidence which are discussed under:

➤ **DYING DECLARATION:**

The Court has laid down in several judgments the principles governing dying declaration, which are:-

- 1 There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

- 2 If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
- 3 The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.
- 4 Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- 5 Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected.
- 6 A dying declaration which suffers from infirmity cannot form the basis of conviction.
- 7 Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected
- 8 Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted.

➤ **EXTRA JUDICIAL CONFESSION**

The Principles as to Extra Judicial Confession summed up as follows:

- 1 The extra-judicial confession is weak evidence by itself. It has to

be examined by the court with greater care and caution;

- 2 It should be made voluntarily and should be truthful;
- 3 It should inspire confidence, that to whom it has been made and when it has been made;
- 4 An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence;
- 5 For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities;&
- 6 Such statement essentially has to be proved like any other fact and in accordance with law;

➤ **MOTIVE**

For the relevancy and importance of motive in the criminal trial, there are certain principles which may be deduced. They are as follows:-

- 1 It is not incumbent on the prosecution to prove the motive for the crime. It often happens that only the culprit himself knows what moved him to a certain course of action;
- 2 But where the crime is alleged to have been committed for a particular motive, it is relevant to consider whether the pattern of the crime fills in with the alleged motive;
- 3 In serious offences like murder, the court always searches for the

motive and the motive always plays an important role;

- 4 Motive is of great importance in cases based on circumstantial evidence, and where there is absence of such motive, the court should carefully examine the absence of motive as a circumstance in favour of accused;
- 5 Where the motive is absent, it is always a circumstance in favour of the accused and against the prosecution;
- 6 Where there is clear, cogent and positive evidence connecting the accused with the crime, the question of motive is of no importance;
- 7 If motive is established, the adequacy of motive is not in all cases necessary;&
- 8 Motive, no matter how adequate, cannot sustain a criminal charge in the absence of clear and cogent evidence pointing to the guilt of the accused.

➤ **RECOVERY**

During the course of the investigation, in most of the cases, recoveries are said to be affected by the accused pursuant to the information furnished by him u/s 27 of the Evidence Act. Here, it is to be scrupulously appreciated that when the information was furnished and when the recovery was affected. The recovered article must be within the exclusive knowledge of the accused and if it is already in the knowledge of the other person then it would have no evidentiary value. Further, only the part of such information which distinctly relates to the fact discovered thereby may be proved.

➤ **IDENTIFICATION (OF PERSON & PROPERTY)**

The identification of person and property is also a relevant fact as per Section 9 of the Indian Evidence Act 1872, which states that, “Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant.” The fact of identification is essential to corroborate and to connect the fact of identification with the other relevant so that the court can reach on a just conclusion regarding the principal fact.

➤ **DEATH BY POISONOUS SUBSTANCE**

In the cases, of murder by administration of poison, the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

- There is a clear motive for an accused to administer poison to the deceased;
- That the deceased died of poison said to have been administered;
- That the accused had the poison in his possession;&
- That he had an opportunity to administer the poison to the deceased.

➤ **DEATH BY HANGING OR STRANGULATION**

Due care is required to be taken while appreciating the question to ascertain whether it is a case of hanging or strangulation. For the ascertainment of the fact whether the death is caused by hanging or strangulation the adjudicating authority should take assistance of the salient features enumerated in the 'Modi's Medical Jurisprudence some broad features are as under;

- Hangings cases are more suicidal while strangulations are mostly homicidal;
- In hanging, face usually pale and petechiae rare while in strangulation face congested livid and marked with petechiae.;
- Saliva, dribbling out of the mouth down on the chin and chest in hanging cases while no such dribbling in strangulation matters;
- External signs of asphyxia, usually not well marked in hanging cases while in strangulation it is well marked;
- In hanging the bleeding from the nose, mouth and ears are very rare in juxtaposition it may be found in strangulation cases;
- Ligature marks are found oblique, not continuous placed high up in the neck between the chin and larynx, the base of the groove or furrow being hard, yellow and parchment-like in hanging cases while in strangulation cases ligature marks are found horizontal or transverse or continuous round the neck, low down in the neck below the thyroid the base of the groove or furrow being soft and reddish;

- Fracture of the larynx and trachea are found very rare in hanging but in strangulation, it is found often; & also some other distinct features are to be taken note of.

➤ **INTENTION**

Since it's a mental state of the accused therefore there may be no physical evidence of it, it has to be inferred from the some of the circumstances given below;

- Number of injuries;
- nature of injuries;
- part of the body;
- kind of weapon;
- time and place of the incident;
- previous animosity;
- whether the accused acted in a cruel or in an unusual manner;
- the dominating position of the accused or the helplessness of the victim;&
- or, the other circumstances from which the mens rea can be attributed.

➤ **THEORY OF 'LAST SEEN'**

Circumstances of “last seen together” do not by themselves and necessarily lead to the inference that it was accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. The time gap between last seen alive and the recovery of a dead body must be so small that the possibility of any person other than the accused being

the author of the crime becomes impossible. The doctrine of “last seen together” shifts the burden of proof on the accused requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard would give rise to a very strong presumption against him.

➤ **Circumstantial Evidence: Soul Basis Of Conviction**

Ordinarily circumstantial evidence cannot be regarded as direct evidence, and with this regard, there have been a popular misconception is that circumstantial evidence is less valid or less important than direct evidence. This is only partly true: direct evidence is generally considered more powerful, but successful criminal prosecutions often rely largely on circumstantial evidence, and civil charges are frequently based on circumstantial or indirect evidence. In practice, circumstantial evidence often has an advantage over direct evidence in that it is more difficult to suppress or fabricate.

Thus the judiciary in following landmark judgment has ruled the important role played by circumstantial evidence which can later become the sole bases of conviction.

In Ramawati Devi vs. State of Bihar wherein it has been held as follows:-

What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case.....”
As pointed out by V.C. Shukla vs. State”

“ in most cases it will be difficult to get direct evidence of the agreement, but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

Similarly in the famous case of *Bodh Raj V. State of Jammu & Kashmir*, Court held that circumstantial evidence can be a sole basis for conviction provided the conditions as stated below is fully satisfied. Condition are:

1) The circumstances from which guilt is established must be fully proved;

2) That all the facts must be consistent with the hypothesis of the guilt of the accused;

3) That the circumstances must be of a conclusive nature and tendency;

a. That the circumstances should, to a moral certainty, actually exclude every hypothesis except the one proposed to be proved.

➤ **Burden of proof and circumstantial evidence**

In *Sharad Birdhichand Sarda v. State of Maharashtra*, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. (SCC p. 185, para 153)

➤ **Section 313 Of Code of Criminal Procedure ,1973**

The Hon'ble Supreme Court bench comprising of Justices J M

Panchal and T S Thakur . Aftab Ahmad Anasari and one Mumtaz were prosecuted for commission of rape and murder of Yasmeen aged five years. daughter of Nayeem Ahmad and for causing disappearance of evidence of those offences.

In this case the appellant merely denied the averments raised and failed to explain the circumstances proved. Therefore such a failure will have to be treated as an additional link in the chain of circumstances to charge the Ansari, the appellant.

In Ganeshlal Vs. State of Maharashtra, 1992 3 SCC 106 in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

In Chhattisgarh High Court *Ramnarayan vs State Of Chhattisgarh on 18 January, 2023* . that chain of circumstances should be complete and lead only to one conclusion that it was the accused/appellant who caused the death of the deceased .

➤ *The Doctrine of Last seen theory*

The foundation of this theory lies on the principle of probability, cause, and connection as no fact takes place in isolation. Basically, it means that if an event takes place then other events also take place which are the probable consequences of a major event or is related to it either retrospectively or prospectively. These inferences or

presumptions are drawn logically according to how a reasonably prudent man will connect the dots in the particular scenario.

This theory derives its relevance from Section 7 of the Indian Evidence Act which is called the “Doctrine of Inductive Logic” in which it is stated that if any fact related to the occasion, cause, or effect lead to the circumstance in which that thing occurred or it provided an opportunity for the occurrence of that thing then those facts will be relevant. And in the last seen theory also the person who was the last present with the victim would have a reasonable opportunity to commit the crime.

This presumption of fact is taken under Section 114 of the Indian Evidence Act under which the court can presume that certain facts exist if some other facts are proved to be existing in the cases of natural events, human conduct, and public and private business.

But this presumption is not considered as conclusive proof for the guilt of the person and these presumptions are rebuttable by the accused. It only shifts the onus on the person to prove that he is innocent which is an exception in the criminal law as the burden of proving the guilt of the accused is on prosecution according to the principle laid down in the case of *Woolmington v. Director of Public Prosecution* (1935). In this case, the instances that occurred while he was last seen with the victim are exclusively known by him as this law is laid down under Section 106 of the Indian Evidence Act where the burden of proving the fact is on the person who has especially known about that particular fact or circumstance.

➤ **IMPORTANCE OF TIME GAP AND RECOVERY OF THE CORPSE.**

The ‘last seen together’ theory is the last resort of the prosecution

in a case where there is no direct evidence against the accused. The prosecution has to prove that the accused who was last seen with the deceased have committed the crime. In this theory, the time gap between the time of death and the person last seen with the deceased should not be very long as it weakens the theory. The prosecution should prove that there is no chance of any third person committing the crime and should prove that there was a minimum time gap between the death of the deceased and the person last seen with the deceased. The time gap plays a vital role in proving the guilt of the accused in the theory of 'last seen together' as the foundation of this theory is based on the principle of probability, cause, and connection.

In **'Bodhraj V. State of J&K' – 2002 (9) TMI 858 – SUPREME COURT**, the Supreme Court held that the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

➤ **How can the person prove his innocence and rebut the last seen theory?**

It is not necessary that the person accused is always considered guilty once it is established that he was last seen with the person. He is given a fair chance to rebut this presumption because it is not necessary that the same situation existed as the Court predicted based on logic because every coin has two sides. These are some defence laid down in the case of Satpal Singh v. State of Haryana (2018) that can be taken by the accused to dismiss the presumption because last seen theory is not a strong piece of evidence:-

If the accused can produce an alibi that he was with the other

person at the time of the commission of the offence, then his guilt could be disproved.

If it is proved that he was not the last person with the victim as another person interfered in between them and the accused thus shifting the guilt on the third person .If the accused can prove that there was a reasonable time gap between the commission of wrong and when they were seen together, the Court can presume that there are chances of intervention of any other factor because of which this particular offence was committed.

If it is proved by the accused that the person who last saw him with the victim is not a reliable witness because of any reason that he may be a child witness or stock witness thus Court cannot rely on their statements.

➤ **Important case laws related to the doctrine of Last seen Theory**

1. Surajdeo Mahto v. State of Bihar (2021), where the appeal was filed by the accused that the conviction cannot lie only based on last seen theory but the Court observed that the prosecutor has rightly relied on the case of the State of Rajasthan v. Kashi Ram (2006) where it was said that if the following conditions are fulfilled then the person can be convicted on the basis of the last seen theory only:if the fact of last seen theory is established then the accused need to prove and provide sufficient explanation under what circumstances he departed the deceased; and if there was no explicit description of the circumstances, the Court can take adverse inference in this scenario; and if the motive for the murder is also proved then it establishes a vital link in the chain of

evidence.

2. Digamber Vaishnav & Anr. v. State of Chattisgarh

In the case of Digamber Vaishnav & Anr. v. State of Chhattisgarh (2019), it was held that there should be reasonable proximity between the time of seeing the person and recovery of the body to point the needle towards the person last seen with the deceased. And in this case, it was upheld that only the fact that they were last seen together cannot be the sole criteria to convict the accused. Last seen theory plus all other circumstances negating the innocence of the accused should be established to convict the accused on the basis of the doctrine of last seen.

➤ **3. Krishna Mahadevan Chavan v. State of Maharashtra**

In the case of Krishna Mahadev Chavan v. State of Maharashtra (2021), it was held that even if the last seen theory was established but when the entirety of circumstances was considered, they portray suspicions then the judgment cannot be delivered solely on the basis of the last seen theory. In this case, as a fact of homicidal death was unclear and uncertain, so the accused was acquitted because guilt was not established beyond a reasonable doubt.

➤ **SUGGESTIONS**

- The police have to be very cautious while investigating cases related to 'last seen together' theory as it cannot avoid any connection related to the case.
- There should be proper training of the Police Officers

regarding scientific investigation.

- Joint training of police officers and other related or concerned scientific agencies should be conducted in National as well as State level for entirety of circumstances of the cases .
- **Conclusion**

It may be stated that ‘last seen together’ principle has been applied by the courts so cautiously that unless there is any corroborative or circumstantial evidence, the conviction has not been given. Any mistake or misrepresentation of fact can cause the life of an accused who pleads innocent. The circumstance of the theory of last seen together does not lead to the inference about the fact that it was the accused who committed the crime. The connectivity between the accused and the crime must be something more establishing. However, the principles help the Courts to shift the burden the proof to the accused and the accused might establish an interface in the chain of circumstantial evidence. Otherwise, he will not get any benefit of the doubt. The latest tendency of the court is to take the aid of section 106 of the Indian Evidence Act, in addition to the ‘last seen together’ principle to hold an accused person guilty whenever there is no evidence available. A situation was based on the close proximity of place and time between the event of accused and the factum of death, a rational mind may be persuaded to conclude that either the accused should explain that how and in what circumstances the victim suffered the death or own the liability for the homicide.

Thank You

Submitted By
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