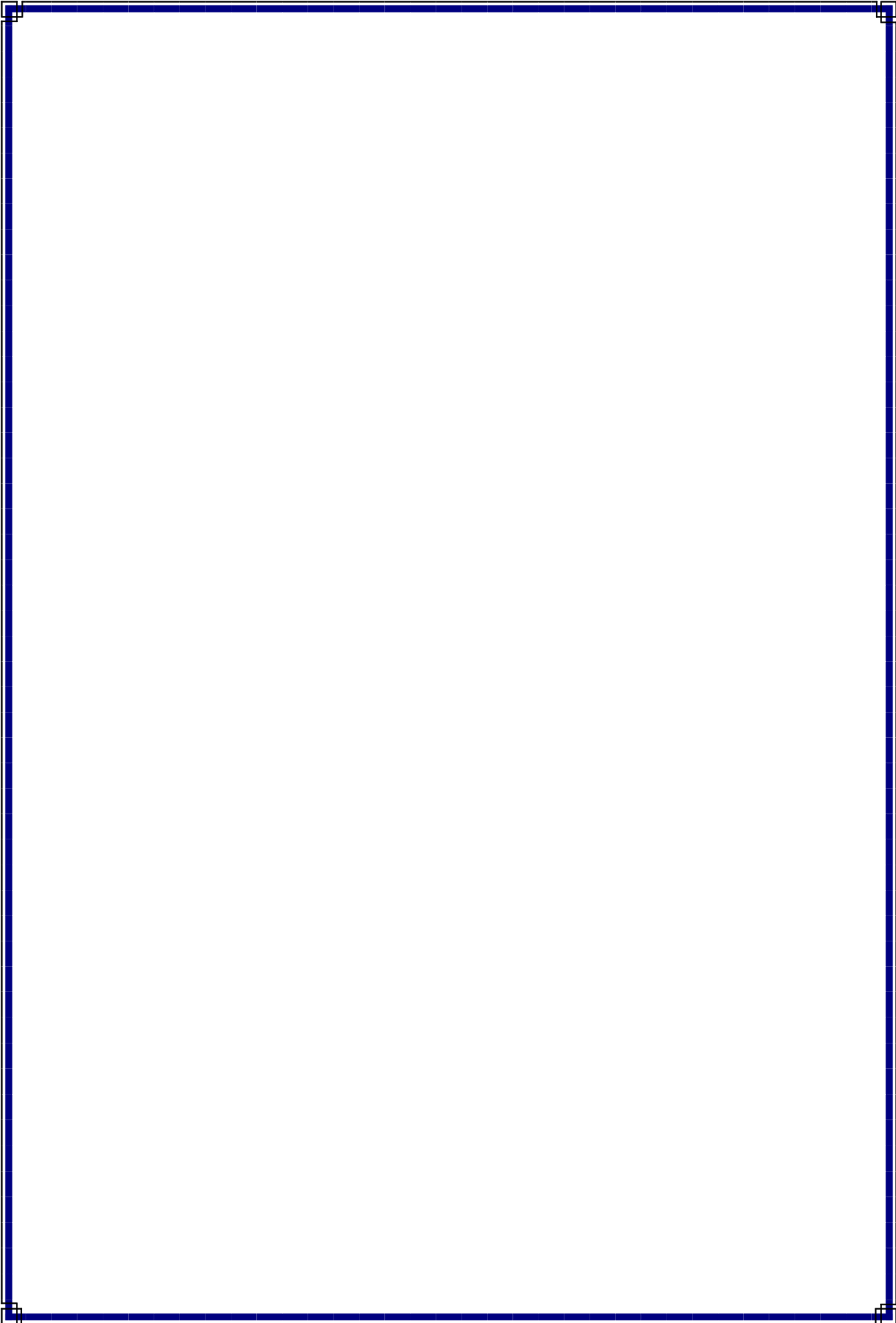


RES GESTE

Paper presentation by-
K.SRIDEVI
I Additional District & Sessions Judge
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RES GESTAE

One fact said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of the Indian Evidence Act relating to the relevancy of facts.

Sections 5 to 55 of Indian Evidence Act, 1872 provides several ways in which one fact may be connected to the other fact.

As per Section 60 of Indian Evidence Act oral evidence must be direct. The person who give evidence must directly hear, see or sense the fact and hearsay evidence is no evidence. But, Section 6 of Indian evidence act is an exception to the general rule where under the hearsay evidence becomes admissible.

The principle embodied in law in Section 6, is usually referred to as the res gestae doctrine. The term res gestae has not been defined or used in Indian Evidence Act. Res gestae is a Latin word which means things done.

But, Section 6 of The Indian Evidence Act, 1872 deals with facts connected with the fact in issue so as to form part of the same transaction regardless of whether occurred at the same time and place.

As mentioned in Section 6, the facts must form a part of the same transaction and the term "fact" shall includes statements.

Transaction as mentioned in Section 6 of the Indian Evidence Act is a crime, contract, error or any other subject of enquiry that may be in question by a single name, which includes both the immediate cause and effect of an act or event and also its collection of relevant circumstances, the other necessary antecedents of its occurrence, connected with it, at a reasonable distance of the time, place and cause and effect. To resolve what forms a transaction, the following points need to be taken into consideration:

- Unity or proximity of the place
- Proximity of time
- Continuity of actions
- Community of purpose

The provisions of Section 6 of the Indian Evidence Act has been explained by the Apex court in *Gentela Vijayavardhan Rao And Anr vs State Of Andhra Pradesh* on 28 August, 1996 as follows:

The principle or law embodied in [Section 6](#) of the Evidence Act is usually known as the rule of *res gestae* recognised in English Law. The essence of the doctrine is that fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction-becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under [Section 6](#) of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*.

Again applying the above ratio, the Apex court in *Sukhar vs State Uttar Pradesh, 1999 (4) Crimes 191*, the Apex Court held that the statement of witness indicating the injured holding that his nephew had fire attempt would become admissible under Section 6 of Evidence Act.

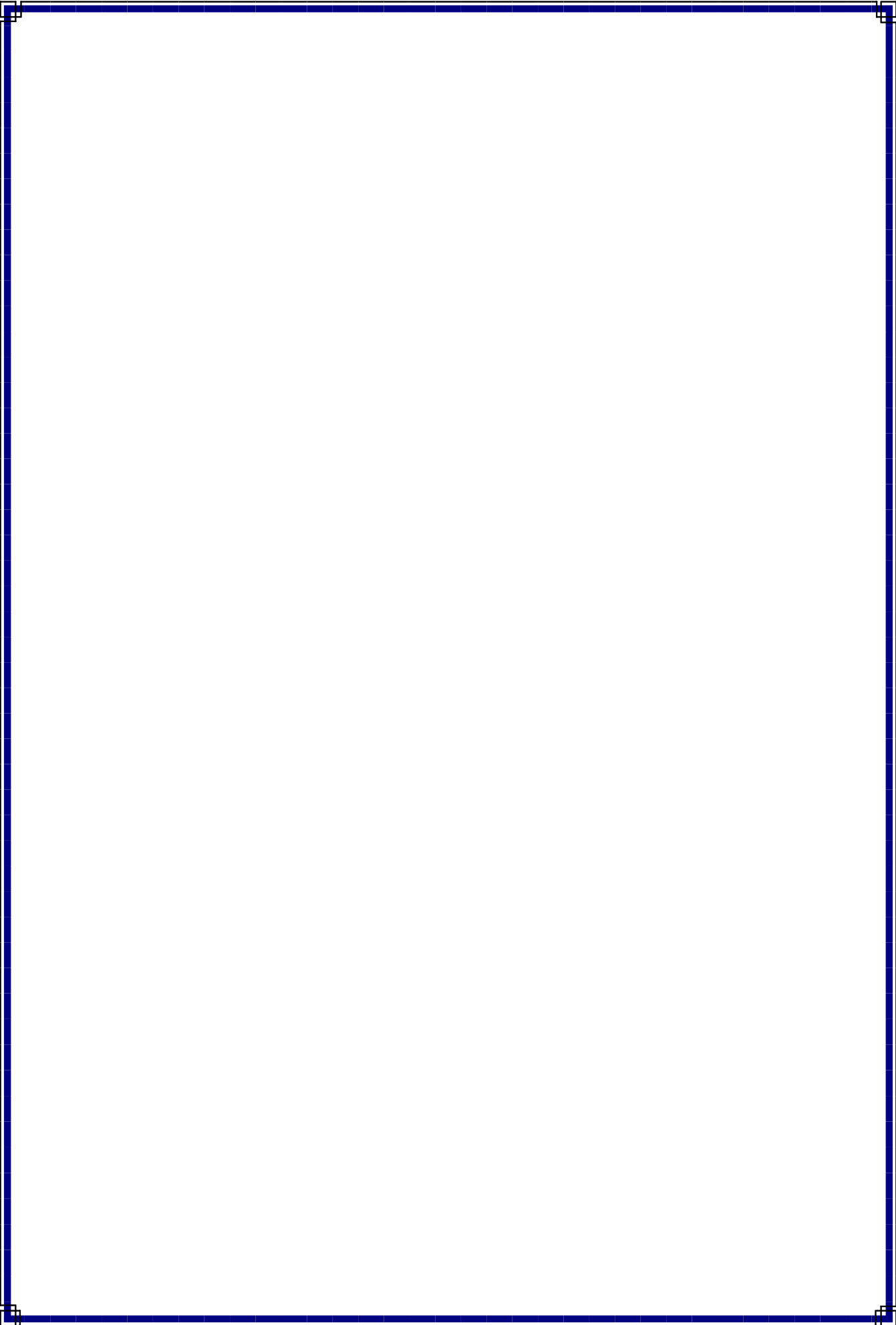
Indian judiciary has interpreted *res gestae* as only those statements made contemporaneous with the event or immediate effect but, not at such interval of time as to allow fabrication.

The intention of the Law makers was to avoid injustice in case of acquittal due to lack of evidence. Court should be cautious and this doctrine can be expanded to limited extent only. Each case should be judged according to its own merits. When it is proved that the evidence forms part of the transaction, it is admissible under Section 6 of the Indian Evidence Act, 1872.

RELEVANCY OF MOTIVE, PREPARATION, AND CONDUCT

Paper presentation by-
K.SRIDEVI

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RELEVANCY OF MOTIVE PREPARATION AND CONDUCT:

Section.8 of the Indian Evidence Act, 1872 lays down the provisions relating to the relevancy of three principal facts, which are very important in connection with every kind of civil or criminal cases...they are as follows :

- 1) Motive
- 2) Preparation
- 3) Conduct

Section 8 runs as follows:

"Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offense against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.

The word "conduct" in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.

When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Salmond describes motive as " the ulterior intent". It may be good or bad.

Motive is the cause that moves people to induce a certain action. In criminal Law it is not an element of any given crime and not required to reach a verdict.

Motive is not a type of mens rea.

Motive differs from intention. Intention refers to immediate consequences, whereas, motive refers to ultimate purpose with which an act is done. An act may be

done with bad intention but good motive. It is a reason or the driving force behind doing a particular act. Almost in majority of Criminal Cases, the presence of motive cannot be denied. Where evidence is direct in nature and there are eye witnesses to the occurrence, motive become insignificant. When a criminal case is based on circumstantial evidence, motive acts as an additional link in a chain of circumstances. In cases where there are no eye witnesses to the incident, motive supports all the incriminating circumstances against the accused and lends circumstantial corroboration. Motive can only supports the case but, the absence of motive is not fatal if the circumstantial evidence is established with cogent evidence and under the direct testimony.

Proof of Motive: Motive cannot always shown directly. It has to be inferred from the facts and circumstantial in evidence.

1) Motive has been defined by the Apex Court in several cases:

Kundula Bala Subramanyam & another vs. State of A.P 1993 SCC (2) 684 that in a case based on circumstantial evidence, motive assumes a great significance as its existence in an enlightening factor in process of presumptive reasoning.

In Sakharam v. State AIR 1992 SC 758, held, that absence of Motive may not be relevant in a case where the Evidence is overwhelming but it is a plus point for the accused where the Evidence against the accused is only Circumstantial.

2) Preparation:

There are four stages in Commission of Crime

- 1) Intention
- 2) Preparation
- 3) Attempt
- 4) Accomplishment / complete act.

The first, intention is not punishable. The second stage in commission of a crime is preparation, is punishable in certain cases. The third stage attempt is exempted

from criminal liability in rare cases in respect of minor offences. Preparation is the act of process of devising the means necessary for commission of an offence.

Preparation consists in arranging the means necessary for the commission of a crime. Every crime is necessarily preceded by preparation.

The fact that a day prior to the murder of B, A went to the druggist shop and obtained a particular poison, is relevant to show that he made necessary preparation for committing the crime.

The preparation on the part of the accused may be, to accomplish the crime, to prevent discovery of crime or it may be to aid the escape of the criminal and avert suspicion.

3) Conduct:

The conduct is the external behaviour of a person and it is different from character.

The second paragraph of Section 8 deals with the relevancy of conduct it says that , " The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offense against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

In Criminal Cases the conduct of accused before or after the crime is also very relevant as circumstantial evidence.

Relevance of conduct under the Act:

The conduct of a person concerned in a crime would become relevant if his conduct is related with the incident and if it is closely connected with the incident concerned.

The conduct of any person, is relevant under section 8, is admissible only against himself and not against any other person. The conduct of an accused is not, therefore, Admissible, against a co-accused.

Conditions for admissibility

The conduct is admissible only if the following conditions are satisfied:

- 1) It must be in reference to the suit or proceeding or in reference to any fact in issue therein or relevant thereto.
- 2) It must directly influence or be influenced by any fact in issue or relevant fact.

The conduct remains inadmissible if any one of the other two conditions is not satisfied.

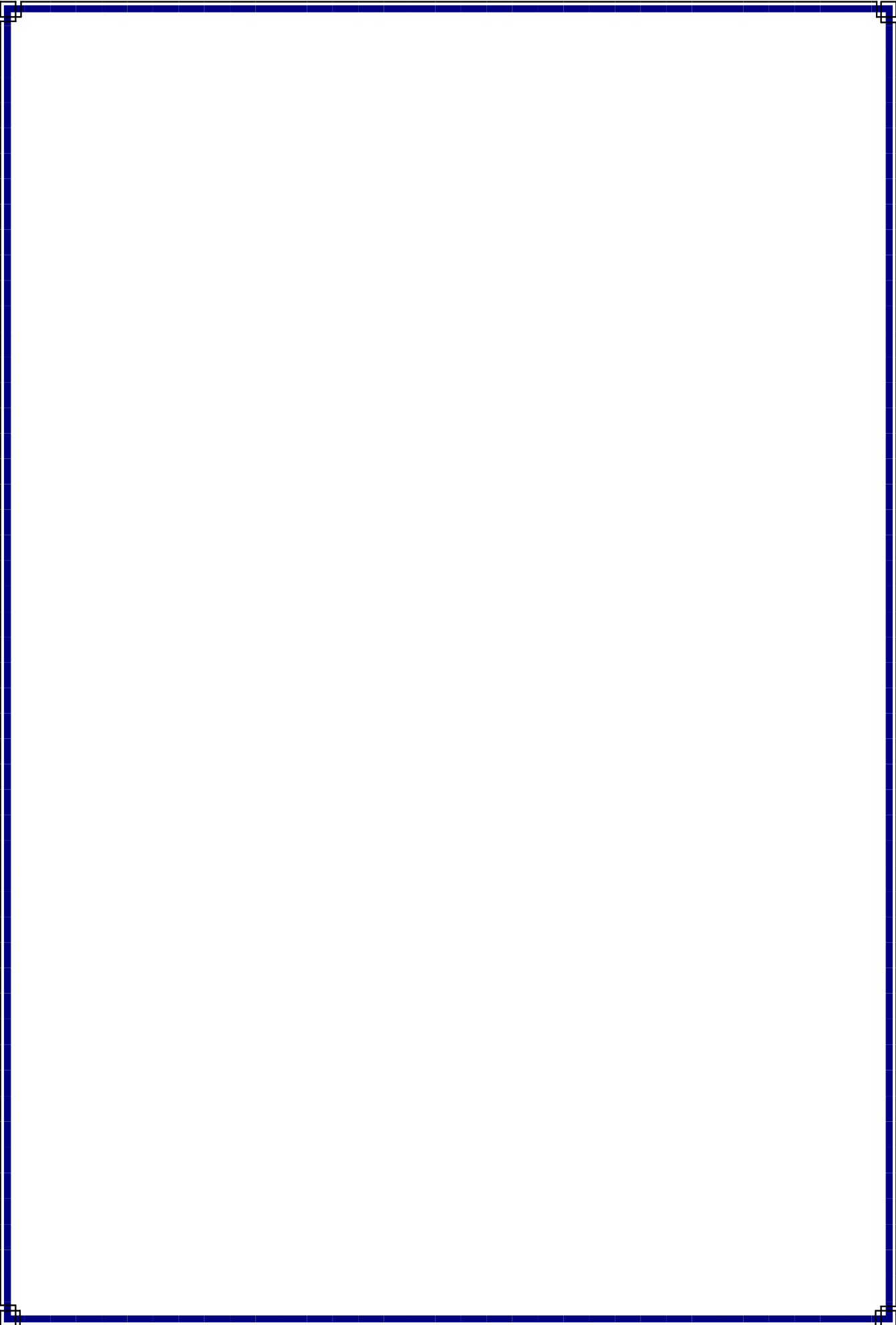
The relevancy of conduct has been explained by Hon'ble High Court of Himachal Pradesh in *Indru vs State Of Himachal Pradesh* on 21 March, 1989 that the statement made by the complainant to her mother narrating the circumstances and the manner in which he had been subjected to rape by the accused immediately after the incident is legally admissible and the relevant as evidence of conduct under Section 8 of the Indian Evidence Act.

In *Sardul Singh v. State of Bombay (1957 SC)*, it was held that conduct of the party alone and it is only admissible and a person cannot be made responsible for the acts of others unless they have been instigated by them or done with his knowledge or consent.

In *Nagesha V. State of Bihar, AIR, 1996 SC119*, it was held by the Court if the first information is given by the accused himself, the fact of his giving information is admissible against him as an evidence of his conduct.

TEST IDENTIFICATION PARADE

Paper presentation by-
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TEST IDENTIFICATION PARADE

Section 54-A of the Code of Criminal Procedure, 1973 and Section 9 of the Indian Evidence Act, 1872 govern Test Identification Parade. According to section 54A of the Code of Criminal Procedure, 1973 vide criminal Law (Amendment Act), 2005 & 2013, the court having jurisdiction may on the request of the office in charge of a police station direct the arrested person to subject himself to identification by any person or persons in such manner as the court may deem fit, if identification of the arrested suspect by any other person is considered necessary for the purpose of investigation in a crime committed by the arrested person.

If the person identifying the arrested suspect is mentally or physically disabled, the judicial magistrate holding the Test Identification Parade shall take appropriate steps to ensure that such person identifies the arrested suspect using methods that person is comfortable with and the identification process shall be video graphed.

The identification of accused and properties are admissible and relevant facts in a court of Law, as per section 9 of the Indian Evidence Act, 1872.

Section 9 of the Indian Evidence Act, 1872 reads as follows:

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 any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened , or which show the relation of parties by whom any such fact was transacted, are relevant insofar as they are necessary for that purpose.

T.I. Parade was an acceptable practice in the courts even before insertion of section 54A CrPC. The courts insist on test identification parades to ensure that innocent persons are not implicated in criminal cases.

Test Identification Parade is one way to find out the identity of the accused. The purpose of the Test Identification Parade is to allow an eyewitness to the event to identify the accused in front of a judicial magistrate. The purpose of the identification test is to evaluate the memory of the eyewitness and for the prosecution to find out who can be called an eyewitness. The object is to test the evidence given by the

witnesses and to know whether they could really identify the accused as claimed by them.

When a First Information Report is lodged against unknown person, a test identification parade is conducted in terms of Section 9 of the Indian Evidence Act, 1872. This process aims to check whether the witness can identify the accused among the several individuals.

The points for consideration to conduct test identification parade are:

- The accused was unknown to the witness or the victim before the commission of crime.
- When the witnesses in the F.I.R. or in their statements gave vivid description of the accused persons.

Precautions to Be Taken by the Judicial Magistrate Holding Test Identification Parade

- The parade should not be held in public view; privacy should be observed.
- No police officer should be present.
- If held in jail, the prison officials should not be present at the place of parade.
- If any accused wears any conspicuous garment, the magistrate shall, if possible, arrange for similar wear to others and if not possible induce the suspect to remove such garment.
- The accused shall be allowed to state whether he has any objection to the persons present.
- The witnesses summoned for the parade shall be kept out of view of the parade and should not have a chance to see suspects before the parade.
- The witnesses one after the other shall be called in to identify. The witness who has completed the process of Test Identification Parade shall not be allowed to meet the other witnesses who are yet to identify.
- The witness shall be asked whether he has prior acquaintance with any suspect whom he proposes to identify.
- Every other circumstance connected with the identification parade shall be carefully recorded.

By compelling an accused to stand up and show his face for the purpose of identification, Article 20(3) of the Constitution of India is not violated. The accused while subjecting himself to test identification parade does not produce any evidence. It may be a positive act and even a volitional but only to limited extent. Accused cannot resist facing test identification parade but it is always open to the accused to raise any legal grounds available to him relating to the legitimacy of test identification parade or evidentiary value of the same during the trial.

Evidentiary Value of Test Identification Parade

The test identification parade conducted during investigation is admissible under Section 9 of the Indian Evidence Act but it cannot be considered as primary evidence. It can only be used to corroborate the substantial evidence presented by the witness in Court regarding the identification of the accused. It means the primary value of test identification parade lies in supporting and strengthening the witness testimony during the trial. The earlier identification made by the witness during the test identification parade has no independent value in the absence of identification made by the witness in the Court. The identification made by the witness in the court holds substantiate value. A test identification parade conducted in the course of an investigation cannot be considered primary evidence, and guilt cannot be based solely on the results of test identification; the witness must identify the accused in court to convict. And since the same person who is identified in the test identification parade is also identified in the court, it is no added value; it is merely a corroboration of the testimony presented in court and has secondary value. Identification made during trial is not of much value unless it is corroborated by prior identification.

In general, the accused cannot request a T.I. Parade as a matter of law, but if it is requested, the request should never be refused. It runs the risk of the veracity of the eye-witnesses being impugned on that ground, if the prosecution rejects the accused's request for Test Identification Parade, as decided in *Lajjaram v. State*, 1955 CrLJ 1547.

The purpose of the T.I. Parade is to test the truthfulness of the witness as to his ability to identify from several persons lined up together with an unknown person whom the witness claims to have seen at the time of the event. *Kanan v. State of Kerala*, 1979 Cr LJ 919 *Kanan v. State of Kerala*, 1979 Cr LJ 919

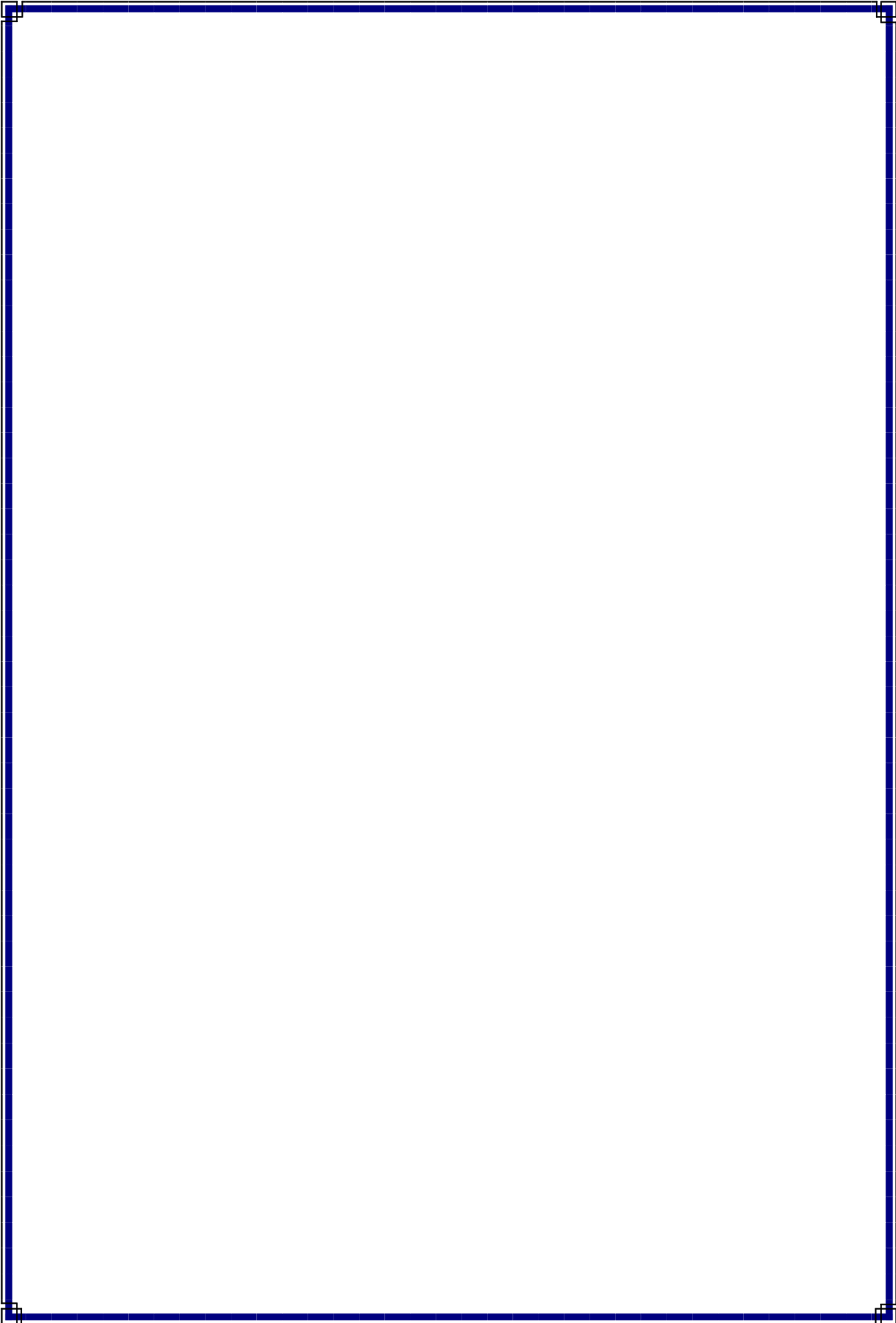
The Test Identification Parade becomes necessary for the investigating officer, if the eyewitnesses questioned by him had not given any indication of the identity of the assailants, or the accused persons were not previously known to witnesses. *Mahabir v. State of Delhi*, AIR 2008 SC 2343, 2346 (para 11): 2008 Cr LJ 3036.

In the case of *Heera v. State of Rajasthan* (2007), it was held that the following principles are established for holding the Test Identification of Parade:

- The Test Identification of Parade is not considered significant evidence. These are used to verify the information.
 - The major goal is to put the witness's memory to the test during the inquiry stage.
 - The Test Identification of Parade procedure begins as soon as the accused is arrested.
 - Appreciation will be based on the authenticity of the eyewitnesses.
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ALIBI

Paper presentation by-
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ALIBI

Introduction

The Latin word 'Alibi' meaning 'elsewhere' or 'somewhere else'. The term 'Alibi' is not defined either in the Indian Penal Code, 1860, or the Evidence Act, 1872. It is a Rule of evidence that was recognized in Section 11 of the Evidence Act. It is the best evidence that can be used by a man to prove his innocence. Whenever a plea of alibi is raised by an accused, it means the accused is trying to convince the Court that he/she was not at the crime spot at the time of commission of crime owing that he/she was somewhere else at that same time.

Section 11 of the Indian Evidence Act, 1872 deals with plea of Alibi: "When facts not otherwise relevant become relevant: facts not otherwise relevant are relevant (i) if they are inconsistent with any fact in issue or relevant fact, (ii) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable."

Plea of Alibi should be taken at the earliest possible opportunity and not be an afterthought. The plea of Alibi should be taken at the initial stages of the preliminary hearing or framing of the charge; therefore, it will have more weightage.

If the accused delays in filing a plea of Alibi then the credibility of the Alibi decreases because as time goes the possibility of forgetting the details, what happened a week or month or year ago, are high.

When the prosecution has proved the charges against the accused and has discharged the burden then the accused can raise a plea of Alibi to prove his/her innocence.

As per Section 103 of the Indian Evidence Act, 1872: "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

The accused has to prove his/her presence at a place that is far away from the crime site. The time when the plea of alibi is raised ensures its reliability whereas an unreasonable delay in raising the plea creates doubts and suspicion. If the Court feels that at some point the Alibi was thought of and planned then the Court can reject the

plea as per the facts and circumstances of the Court. A plea of Alibi is always accepted provided that the accused is able to make the Court believe that his alibi is true.

Admissibility of Alibi: The plea of Alibi is supported with evidence and witnesses which means witnesses who testify and evidence such as photos, GPS, videos, etc. will strengthen or weaken the Alibi. The credibility of the evidence and witnesses is decided by the judges after hearing the testimonies. Friends and families of the accused could also testify. However, it weakens the evidence but that could not be wholly discarded. A failed attempt to prove the Alibi does not ensure that the person was present at the crime spot during the commission of crime.

Provision under Section 11 of the Indian Evidence Act, 1872 has been explained in the Apex Court in the following cases:

In *Binay Kumar v. State of Bihar* it was observed that strict proof is required for establishing the plea of Alibi but with the evidence adduced by the accused is of such a quality and such a standard that the Court may entertain some reasonable doubt regarding his presence at scene where the occurrence took place and the accused is entitled to benefit of reasonable doubt.

Darshan Singh vs. State of Punjab (2016)

The accused herein was convicted by the High Court and sentenced to imprisonment of life with a fine of 5000 rupees for committing murder. After carefully going through the statements of defence witnesses and other evidence, it was determined that the accused took a false plea of alibi. Also, it was determined that the plea of alibi of the accused was vacillating. The Supreme Court said, "The plea of alibi is not one of the General exceptions contained in Chapter IV of IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, the plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused." It added that after scrutinizing all the evidence, no illegality was found in the appreciation of evidence, and the appeal was dismissed.

Pappu Tiwary vs. State of Jharkhand (2022) on 31.01.2022

In this case, the Supreme Court observed that the burden on accused is rather heavy and he is required to establish the plea of Alibi with certitude and also discussed the observation made by the Apex Court in Jitender Kumar v. State of Haryana.

“The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives.”

CONCLUSION

Section 9 of the Indian Evidence Act, 1872 outlines specific facts that holds relevance. Section 11 addresses circumstances where ordinarily insignificant facts become significant if they contradict relevant truth or make the presence or absence of a pertinent fact more likely or probable. Section 6 encompass both actions and omissions which need not be continuous but should contribute to the border contest of the concerned transaction. Section 8 encompass facts closely connected to the issue. And all the above sections deals with relevancy of facts. It is relevant to mention here that relevancy and admissibility are different. Relevancy encompass a broader scope, signifying that facts connect in a way that makes the existence or non-existence of other facts likely according to common human behavior or events. In contrast, admissibility occurs when facts receive legal recognition as relevant under the Indian Evidence Act, 1872. Evidence has gained increase significance in shaping case out comes and the courts should be cautious while exercising discretion in assessing relevancy during trial and deciding admissibility while deciding case.

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