RELEVANCY OF FACTS IN CRIMINAL CASES

i) Res gestae

ii) Relevancy of motive preparation and conduct

iii) Test identification periods

iv) Alibi

by

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IV Additional District Judge,
Kadapa

i) Res Gestae

Res Gestae has been derived from Latin words meaning “things done’’. It is mainly an exception to the hearsay rule of evidence which refers to ‘’an assertion other than one made by a person while giving oral evidence is inadmissible’’.

Originally the Romans used Res gestae to mean acts are done or actus. It was described by the English and American writers as facts forming the same transaction. Res gestae are the facts that form a part of the same transaction automatically or naturally. They are the acts that speak for themselves. Due to their association with the main transaction, these facts become relevant in the nature of the fact in question. Circumstantial facts are admitted to be part of res gestae, i.e. it is part of the original evidence of what happened. Statements can also accompany physical events such as gestures. Thing said or acts done in course of transaction amounts to res gestae.

Section 6 says:

"Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places."

Nature and scope of Section 6 of the Indian Evidence Act, 1872

As mentioned in Section 6, the facts must form a part of the same transaction, but what is meant by transaction in legal terms?

Transaction: it is defined as 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, pace 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

Mainly it is the test of continuity of actions and community of purpose that make it admissible in nature. If the human declaration is spontaneous but detached from the concerned issue, it wouldn't be admissible.

In Article 3 of his Digest of the Law of Evidence, Sir James Stephen defines a "transaction" as:

"a group of facts so connected together as to be referred to by a single legal name, as a crime, a contract, a wrong, or any other subject of enquiry which may be in issue."

The case of **R.V.Bedingfield**, shows how there can be an honest difference of opinion. In fact, Mr Justice Blackstone is said to have told an advocate struggling to introduce an irrelevant fact as relevant evidence, to try to bring it under res gestae, because the phrase can take in anything if the Judge is so inclined. One test, however, is accepted with respect to words uttered at the time of the happening of the fact in issue. That test is that the utterance must be spontaneous as well as contemporaneous with the fact in issue. If it is possible that it might have been thought out, and therefore not spontaneous, then it will not be relevant evidence under this section.

Moreover even though a fact is hit by the rule of hearsay, or forms parts of the res inter alias acta, still that fact will be relevant if it comes under Section 6.

Scope and ambit of Section 6 of the Indian Evidence Act, 1872. Facts that are so linked to a fact in question that they form part of the same transaction, although not in question, are relevant, whether they occurred at

different times and places at the same time. The principle embodied in law in Section 6, is usually referred to as the res gestae doctrine. The facts that can be proved as a part of res gestae must be facts other than those in question but must be linked to them. Although hearsay evidence is not admissible, it may be admissible in a court of law when it is res gestae and may be reliable proof. The reason behind this is the spontaneity and immediacy of such a statement that for concoction there is hardly any time. Such a statement must, therefore, be concurrent with the acts that constitute the offense or at least immediately thereafter. Res gestae contains facts that are part of the same transaction. It is, therefore, appropriate to examine what a transaction is, when it begins and when it ends. If any fact does not connect to the main transaction, it is not a res gestae and therefore inadmissible. Res gestae includes elements that completely fall outside the definition of modern hearsay, such as circumstantial evidence of a state of mind, so-called " verbal acts", verbal parts of acts, and certain non-verbal behavior. To know more about the doctrine of Res Gestae in brief, Because excited utterances are closely connected with the event in time and the excitement ows from the event, excited utterances have been considered part of the action and therefore admissible despite the rule of hearsay. The hearsay exceptions were also hired by Res gestae for present-sense impressions, excited utterances, direct evidence of a state of mind, and statements made to doctors. Illustrations:

- An injured or injured person's cry.
- The witness's cry to see a murder happen.
- The sound of a shot of a bullet.
- The person being attacked is crying for help.
- Gestures made by the person dying etc.

Definition of Transaction

A transaction, as the term used in this section, is defined as a crime, contract, error, or any other subject of inquiry that may be in question by a single name. It includes both the immediate cause and effect of an act or event and the other necessary antecedents of its occurrence at a reasonable distance of time, pace and cause and effect.

Continuity of action and community of purpose must be the key test. The condition for admissibility of a statement made by a person at the occurrence scene is time proximity, police station proximity, and continuity of action. The expression does not necessarily suggest time proximity as much as action and purpose continuity. A transaction may be a single incident occurring for a few moments or it may be spread across a variety of acts, statements, etc. All of these constitute incidents that accompany and tend to explain or qualify the fact in question, although not strictly constitute a fact in the matter. All these facts are only relevant when they are connected by time proximity, unity or location proximity, continuity of action and community of purpose or design.

Relevance of Evidence

As one and the same part of the transaction, evidence relating to the main subject matter is relevant. Two separate offenses may be so inseparably linked that the proof of one necessarily involves proving the other, and in such a case proving that one cannot be excluded from prosecution, as the other proves. Proof of other offenses by the accused would be relevant and admissible if a nexus existed between the offense charged and the other offenses or the two acts formed part of the same transaction to fall within Section 6. Simply because it occurred at or about the same time as the Trial offense res gestae, an offense that is completely separate and disconnected is not allowable.

Relevance of Facts

Facts which are, immediately or otherwise, the occasion, cause or effect of relevant facts or facts in question, or which constitute the state of affairs under which they occurred, or which provided an opportunity for their occurrence or transaction, are relevant. Facts forming part of the same transaction are admissible in the previous section. Evidence relating to collateral facts is admissible where such facts occur, where reasonable presumption as to the disputed matter has been established, and where such evidence is reasonably conclusive. The section provides for the admission of several classes of facts related to the transaction under inquiry which are-

1. As being the occasion or cause of a fact,
2. As giving an opportunity for its occurrence,
3. As being its effect, and
4. As constituting the state of things under which it happened.

Test for Admission of Evidence under

With regard to the possibility of reporting facts narrated in the statement if only the ordinary error of human recollection is relied on, this goes to the weight to be attached and not to the admissibility of the statement and is therefore a matter for the jury. The test to be used in deciding whether a statement made by a bystander or a victim indicating an attacker's identity is admissible can be submitted as-

In the case of Foster:

It was precisely in order to resolve this ambiguity that the Privy Council gave up the test of contemporaneity in Ratten's case and adopted the test of "spontaneity and involvement." In Ratten's case, Lord Wilberforce argued that the test should not be uncertain whether making the statement was part of the transaction in some sense. This can often be hard to establish, which is why he emphasized spontaneity as the basis of the test. He said that hearsay evidence may be admitted if the statement providing it is made under conditions of involvement or pressure (always of approximate but not exact contemporaneity) that exclude the possibility of concoction or distortion to the advantage of the manufacturer or the disadvantage of the accused.

Principle of Admissibility Declarations Accompanying Acts of

1. The statement (oral and written) must relate to the act in question or relevant to it; it is not admissible simply because it accompanies an act. Moreover, the statement must relate to and explain the fact that it accompanies, and not independent facts previously or subsequently unless such facts form part of a continuous transaction.
2. The statement must be substantially at the same time as the fact and not just the narrative of the past.
3. The statement and the act may be made by the same person, or they may be made by another person, e.g. victim, assailant, and bystander

statements. In conspiracy, it is admissible to riot the statements of all concerned in the common object.

4. Although it is admissible to explain or corroborate or to understand the meaning of the act, a declaration is not proof of the truth of the stated matters.

Cases

The test applied to make the evidence admissible in all the following cases was to consider that the statement was made in the spur of the moment without an opportunity to concoct and do anything. Where the judges are satisfied that the reaction was the most immediate result of the facts concerned being relevant to the circumstances, they have allowed such evidence to be admitted.

Vasa Chandrasekhar Rao vs Ponna Satyanarayana

His wife and daughter were killed by the accused. Deposition of the deceased's father that the father of the accused made a telephone call to him, saying his son had killed the deceased was not found admissible. The question before the court was that it was possible to admit the deposition of the accused father under Section 6 and is Res Gestae going to be a hearsay exception? Failing to find out whether the information given by the accused father to the deceased's father who killed his wife and daughter was refused to accept the evidence as relevant under Section 6 either at the time of the crime being committed or immediately thereafter to form part of the same transaction.

Gentela Vijayavardhan Rao And Anr vs State of Andhra Pradesh

Under res gestae, the appreciable interval between the act of carnage and the recording by the magistrate of the statement was found inadmissible.

Conclusion: The plea of alibi is a crucial defence in criminal cases, which can help an accused person establish their innocence. It is recognized under Section 11 of the Indian Evidence Act, 1872, and can be raised at the earliest stage of the case. The burden of proof lies on the accused to establish their presence elsewhere at the time of the commission of the alleged offence, and

the prosecution must prove the guilt of accused guilt beyond a reasonable doubt. Both witnesses arrived in an unconscious state immediately after the incident and found the dead body of Prankrishna and wounded Nepal. One of them found Prankrishna's and Nepal's mother weeping and heard from an eyewitness that their testimony was admissible under Section 6 of the Evidence Act about the whole incident and the role played by each of the appellants.

Expansion of the Doctrine of Res Gestae:

Slowly, courts have extended the scope of this section to cases like domestic violence, child witness, etc. Domestic violence and cases of assault necessarily involve a surprising event, often involving the issue of excited utterances. In these cases, only victims can identify the alleged culprit. Therefore, such testimony of victims must be admitted. Cases of rape usually occur in isolation. There is therefore no eye witness to an event like this. Cases of rape and domestic violence differ from any other crime.

YUSUFALLI v. STATE OF MAHARASHTRA

The Supreme Court held:

> *The dialogue is proved by the eyewitness to the offer. The tape record of the dialogue corroborates his testimony. The process of tape-recording offers an accurate method of storing and later reproducing sounds. The imprint on the magnetic tape is the direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape-record of a relevant conversation is a relevant fact and is admissible under Section 6 of the Indian Evidence Act. One of the features of magnetic tape-recording is the ability to erase and reuse the recording medium. Because of this facility of erasure and reuse, the evidence must be received with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with.*"

PRATAP SINGH v. STATE OF PUNJAB IO-

> *A public servant questioned the orders of the State Government revoking his leave, suspending him from service, and instituting a*

departmental enquiry against him on the ground of mala fides, and to prove the mala fides he relied upon certain tape-recorded conversations which passed between him and the Chief Minister and the members of the latter's family on the several matters which were the subject of allegations in his petition. On the admissibility of the tape-record in evidence, the Supreme Court held:

State of Maharashtra v. Praful B.Desaill

It was held that, documentary evidence, even in criminal matters could be by electronic records including video conferencing.

Arvind Kumar v. State (NCT of Delhi),

(2023) 8 SCC 208: 2023 SCC OnLine SC 845
Bench Strength 2. Coram : Abhay S. Oka and Rajesh Bindal, 3).
[Date of decision : 17/07/2023]

Ss.6 and 24 - Statement made by accused and response of witness to such statement both made immediately after the incident Whether met the requirements of S. 6 Whether such statements inculpatory in nature, even if they could be admitted under S. 6 Determination of - Deceased lost his life in incident of firing at certain police station, but intentional firing not proved against appellant as firing proved to have happened accidently - Appellant allegedly made a statement immediately after the occurrence to the Sub-Inspector (who was also present at the spot where the firing took place), wherein he blamed the Sub-Inspector for the alleged incident In response to this statement, the Sub - Inspector stated, "don't worry, I'm with you too, and will support you in court". The statement and response, held, are relevant under S. 6, and thus can be read in evidence as they show the conduct of the appellant immediately after the incident - However held, even assuming statement as well as response thereto were really made, it was the spontaneous reaction of the appellant by telling the Sub-Inspector what she got done from him i.e. what had resulted when appellant had tried to stop the deceased from using the telephone in the recording room, upon Sub-Inspector having instructed appellant to do so

thus, while implementing the direction issued by PW 12, the accidental firing took place and that is how the appellant became responsible for the death - It is in this context that the reaction of the appellant has to be understood By his statement, he blamed the Sub-Inspector PW 12 The statement attributed to PW 12 (that she would support the appellant in court) means that she would support the appellant before the court by telling the truth If the theory of accidental firing is accepted, the interpretation of the aforesaid statements (see para 17), becomes a possible interpretation which is consistent with normal human conduct Thus, neither the statement nor its response are inculpatory in nature, even if they are assumed to be proved In any case the said statement as well as its response do not stand proved by the witnesses relied upon by the prosecution, as their statements found inconsistent and contradictory.

Veerendra v. State of M.P.,

(2022) 8 SCC 668, 2022 SCCOnline SC 622

Bench Strength 3. Coram: A.M. Khanwilkar, Dinesh Maheshwari and C.T. Ravikumar)

[Date of decision: 13/05/2022]

Evidence Act, 1872 - S.6 Doctrine of res gestae - Essence of, held, is that a fact which, though not in issue is so connected with the fact in issue "as to form part of the same transaction" that becomes relevant by itself - Thus, conduct of the accused after the incident may becom admissible under S. 6, though not in issue, if it is so connected with the fact in issue.

A different approach in reappreciating the evidence would have defeated dispensation of justice, as in case based on circumstantial evidence also it is not the quantity of the evidence that counts, but it is its quality. I other words, the question is only whether a complete chain of circumstantial evidence of such a character the the same is wholly inconsistent with the innocence of the accused and is consistent only with his guilt, available. (Para 82) State of W.B. v. Dipak Halder, (2009) 7 SCC 288: (2009) 3 SCC (Cri) 392.

Neeraj Dutta vs. State (NCT of Delhi),

(2023) 4 SCC 731: 2022, SCC OnLine SC 1724

Bench Strength 5. Coram

S. Abdul Nazeer, B.R. Gavai, A.S. Bopanna, V.Ramasubramanian and B.V. Nagarathna

[Date of decision: 15/12/2022]

Ss.6 and 60-Hearsay evidence-Meaning and admissibility - Principles elucidated-Hearsay evidence held is also called derivative, transmitted, or second-hand evidence in which a witness is merely reporting not what he himself saw or heard, and not what has come under the immediate observation of his own bodily senses, but what he has learnt in respect of the fact through the medium of a third person - Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other witnesses, it would be admissible - Further, held, hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but it does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed such as evidence of an informant of the crime- Words and Phrases - "Hearsay" (Paras 52 and 58) - Section 61 deals with proof of contents of documents which is by either primary or by secondary evidence. When a document is produced as primary evidence, it will have to be proved in the manner laid down in Sections 67 to 73 of the Evidence Act. Mere production and marking of a document as an exhibit by the court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence. On the other hand, when a document is produced and admitted by the opposite party and is marked as an exhibit by the court, the contents of the document must be proved either by the production of the original document i.e. primary evidence or by copies of the same as per Section 65 as secondary evidence. So long as an original document is in existence and is available, its contents must be proved by primary evidence. (Para 60)

It is only when the primary evidence is lost, in the interest of justice, the secondary evidence must be allowed. Primary evidence is the best evidence and it affords the greatest certainty of the fact in question. Thus, when a particular fact is to be established by production of documentary

evidence, there is no scope for leading oral evidence. What is to be produced is the primary evidence l.e. document itself. It is only when the absence of the primary source has been satisfactorily explained that secondary evidence is permissible to prove the contents of documents. Secondary evidence, therefore, should not be accepted without a sufficient reason being given for non-production of the original.

(2013) 12 SCC 17: (2013) 4 SCC (Cri) 202 (2014) 1 SCC (Civ) 242: 2013 SCC OnLine SC 230 2013 Cri LJ 2069: AIR 2013 SC 1441

[Date of decision: 14/03/2013]

(1996) 6 SCC 241: 1996 SCC (Cri) 1290, applied Venkatesan v. State, 1997 Cri LJ 3854 (Mad), approved

(1896) 2 QB 167: (1895-99) All ER Rep 586 (CCR); Teper v. R., 1952 AC 480: (1952) 2 All ER 447 (PC)

(1937) 45 LW 580: AIR 1937 PC 69, cited

AIR 1929 Oudh 113; Bela Rani v. Mahabir Singh, ILR (1912) 34 All 341;

AIR 1934 All 406; AIR 1940 Mad 273

(1907) 9 Bom LR 1047; AIR 1923 Cal 290, impliedly approved

Criminal Appeal No. 972 of 2012, order dated 26-11-2012 (Bom), reversed.

"Res gestae" - Evidence Act, 1872

The test to determine admissibility of evidence under the rule of "res gestae" is embodied in the words "are so connected with a fact in issue as to form a part of the same transaction". It is therefore, that for describing the concept of "res gestae", one would need to examine whether the fact is such as can be described by use of words/phrases such as, "contemporaneously arising out of the occurrence", "actions having a live link to the fact", "acts perceived as a part of the occurrence", exclamations (of hurt, seeking help, of disbelief, of cautioning, and the like) arising out of the fact, spontaneous reactions to a fact, and the like. To be relevant under Section 6 of the Evidence Act, such statement must have been made contemporaneously with the fact in issue, or at least immediately thereupon and in conjunction therewith. If there is an interval between the fact in issue and the fact sought to be proved then such statement cannot be described as falling in the "res gestae" concept.

(2009) 6 SCC 450: (2009) 2 SCC (Cn) 1085: 2009 SCC OnLine SC 1096
[Date of decision: 08/05/2009]
(1996) 6 SCC 241: 1996 SCC (Cri) 1290, relied on

S.6 Scope - Rule of res gestae - Test for applying - Held, S.6 is an exception to rule o evidence that hearsay evidence is not admissible Test for applying rule of res gestae is tha statement (or fact) should be spontaneous and should form part of the same transaction ruling ou any possibility of concoction - Criminal Law - Criminal Trial - Hearsay Evidence - When admissible.

Rattan Singh v. State of H.P., (1997) 4 SCC 161: 1997 SCC (Cri) 525: 1997 Cri LJ 833: AIR 1997 SC 768
Bench Strength 2. Coram: Dr. A.S. Anand and K.T. Thomas,]).
[Date of decision: 11/12/1996]

S.6 Res gestae - Accused intruding into courtyard of deceased at the dead of night- Recognised by the deceased who shouted that the accused was standing with a gun just before the fatal shots were fired at her by the accused-Held, such statement of the deceased admissible under S. 6 on account of its proximity in time to the act of murder - Practice and Procedure - Res gestae.

The statement of the deceased can be admitted under Section 6 of the Evidence Act on account of its proximity in time to the act of murder. Here the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act.

It is a piece of substantive evidence which can be acted upon with or without corroboration in finding guilt of the accused.

Conclusion:

Usually, evidence is brought to res gestae if it can not be brought to

any other section of the Indian evidence act. The intention of lawmakers was to avoid injustice where cases are dismissed due to lack of evidence. If any statement under Section 6 is not admissible, it may be admissible in accordance with Section 157 as corroborative evidence. Court has always believed that this doctrine should never be unlimitedly extended. For this reason, the “continuity of transaction” test was always considered by Indian courts. Any statement made following a long gap that was not a response to the event is not admissible under Section 6 of the Evidence Act. But courts allowed some statement that was spoken after a long gap from the occurrence of the transaction because there was enough evidence that the victim was still under the stress of excitement and so everything that was said was a reaction to the occurrence. The strength of Section 6 is its vagueness. There is no distinction in this section between the word ‘transaction’ used. It varies from case to case. Every criminal case on its own merit should be judged. The evidence is admissible under Section 6 if it is proven to be part of the same transaction, but whether it is reliable or not depends on the discretion of the judge.

ii) *Motive, preparation and conduct*

Section 8 says:

"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 offence 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 his 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."

Motive

Motive means that which moves a person to act in a particular way. It is different from intention.

Motive is a psychological fact and the accused's motive will have to be proved by circumstantial evidence. The following are illustrations to Section 8:

Illustration (a): "A is tried for the murder of B".

Explanation 2:-

The fact that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant."

Illustration (b): "A sues B upon a bond for the payment of money. B denies the making of the bond".

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant."

The illustrations show how motive is relevant; in the first case to show that A committed the murder and in the second, to show that B borrowed money and executed a bond.

Preparation

The following illustrations show how facts constituting preparation are relevant.

Illustration (c): "A is tried for the murder of B by poison".

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

Illustration (d): "The question is, whether a certain document is the Will of A".

The facts that, not long before the date of the alleged will, A made enquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of

other wills to be prepared, of which he did not approve, are relevant.

When the question is as to whether a person did a particular act, the fact that he made preparations to do it, would certainly be relevant for the purpose of showing that he did it.

Conduct.

The section makes the conduct of certain persons relevant. Conduct means behaviour. The conduct of the parties is relevant.

In Amina v. Hasan Koya, where concealment of pregnancy from husband was alleged, husband's conduct at the time of marriage and thereafter was held to be relevant.

In **R. v. Lillyman**, the accused was charged with an attempt to rape and kindred offences. The prosecution sought to give in evidence a complaint made by the girl to her mistress, in the absence of the accused but very shortly after the commission of the acts charged. It was held that the particulars of such complaint may, so far as they relate to the charge against the prisoner, be given in evidence on the part of the prosecution, not as being evidence of the facts complained of, but as evidence of the consistency of the conduct of the prosecutrix with the story told by her in the witness-box, and as negativing consent on her part.

(2016) 3 SCC

"To abscond" means, go away secretly or illegally and hurriedly to escape from custody or avoid arrest. It has come in evidence that the accused had told others that they were going from their place of work at Gangtok to their home at New Jalpaiguri. They were admittedly taken into custody from their respective houses only, at New Jalpaiguri on the third day of the incident. Therefore, it is difficult to hold that the accused had been absconding. Even assuming for argument's sake that they were not seen at their workplace after the alleged incident, it cannot be held that by itself an adverse inference is to be drawn against them as held by this Court in **Sunil Kundu v. State of Jharkhand. To quote para 28: (SCC pp. 433-34)**

"*It was argued that the accused were absconding and, therefore, adverse inference needs to be drawn against them. It is well settled that*

absconding by itself does not prove the guilt of a person. A person may run away due to fear of false implication or arrest. (See Sk. Yusuf v. State of W.B.) It is also true that the plea of alibi taken by the accused has failed. The defence witnesses examined by them have been disbelieved. It was urged that adverse inference should be drawn from this. We reject this submission. When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabilise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt."

(1952) 2 SCC 560: 1952 SCC OnLine SC 130: AIR 1954 SC 15: 1954 Cri LJ 230

Bench Strength 3. Coram : Mehr Chand Mahajan, S.R. Das and N.H. Bhagwati, 11.

[Date of decision : 03/12/1952]

S.8 Conduct of accused When relevant Where prosecution evidence as a whole is unreliable, held, the conduct of the accused can be of no avail to the prosecution Hence, conduct of silence of the accused when allegation of taking bribe was made, could not be permitted as substitute for proof by the prosecution in such circumstances - Criminal Law - Criminal Trial - Conduct of accused, complainant, witnesses, etc. Conduct of accused

If the prosecution evidence as a whole is unreliable and cannot be accepted as correct for specific reasons, the conduct of the accused can be of no avail to the prosecution, for such conduct of silence can never be permitted to become a substitute for proof by the prosecution. The substantive prosecution evidence being rejected as unworthy of credit, the alleged conduct must be referable to some innocent reason. Different persons react in different ways in similar circumstances and in the absence of satisfactory evidence the court ought not to treat the case as positively proved beyond reasonable doubt only by reason of the appellant's failure to put up his defence immediately when he was confronted with the bribe money, that is, currency notes in his front pocket.

K.H.AMULAKH D. STATE OF GUJARAT (Khanna, J.)

Another difficulty in relying upon the Gujrati version of the statement of

Dharamshi is that the question which was put to the accused when he was examined under Section 342 of the Code of Criminal Procedure related to his going inside his house along with Shiv Lal. No question was put to the accused in the course of that statement that he alone had gone inside the house. It would thus appear that the most crucial piece of incriminating evidence upon which the conviction of the accused is sought to be founded was not put to the accused and he was not called upon to explain that circumstance. On the contrary, what was put to the accused was that he had gone inside his house along with Shiv Lal. This fact, assuming it to be correct, would not warrant the conclusion that the accused was alone with the deceased at the time of the present occurrence.

As regards the prosecution evidence that the accused after the occurrence was seen running towards the police station with blood stains on his clothes, we are of the opinion that the accused has furnished a plausible explanation. According to the accused, when he came to his house and found his wife with a number of injuries on her neck, he tried to make her sit in order to find out whether she was alive or not. We find nothing unnatural or improbable in the above conduct of the accused. It is obvious from the Gujrati version of the statement of the accused, to which a reference has been made by the High Court, that the accused wanted to make sure at that time as to whether the deceased was alive or not. There was, in our opinion, no element of improbability in the above conduct of the accused or his subsequent conduct in running with the blood-stained clothes to the police station to immediately inform the police about the murder of his wife.

Coming now to the question of motive, we find that the evidence consists of the statement of Lakhmanji (P. W. 7) who has deposed that Thakari deceased used to complain to him that the accused was maltreating her. Lakhmanji, however, admits that he never stated before the police that the deceased had complained to him regarding maltreatment by the accused. In view of that, the statement in court of Lakhmanji about the complaint made by the deceased regarding maltreatment would smack of after-thought and not carry much weight. As regards the evidence of Lakhmanji that the accused was not on speaking terms with the witness and did not allow Thakari

deceased to go to Lakhmanji's house, we find that this circumstance, even if true, would not show estrangement between the accused and the deceased. On the contrary, this circumstance would point to the strained relations between the accused and Lakhmanji (P. W. 7). No motive on the part of the accused to murder the deceased can consequently be held to have been proved.

S.8 - Conduct - Enforcing conclusion of guilt
Kutuhal Yadav v. State of Bihar.
1954 Cri LJ 1802: AIR 1954 SC 720
Bench Strength 2. Coram: S.R. Das and N.H. Bhagwati, JJ.
[Date of decision: 13/01/1954]

Where there was no direct evidence as to the murder of the deceased, accused was one of the persons suspected of the crime, and the established facts showed that the accused had not only a strong motive but also the opportunity of killing the deceased and that he was insistent on cremating the dead body as early as possible.

Held that conduct of the accused far from establishing his innocence certainly showed that he was aware of the manner in which the deceased had met with her death and was most anxious to dispose of the dead body so as to avert any suspicion or proof of her having met with an unnatural death as it was finally found by the Civil Surgeon on a post-mortem examination of the dead body.

iii) TEST IDENTIFICATION PARADE

Section.9 says:

"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, 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.

"What is Test Identification Parade and its Purpose? It is a process that is mostly used in criminal cases to identify the accused before the court. The

role of the witness is very important in the test identification parade because it is the responsibility of the witness to identify the accused through the parade. The idea of this process is to check whether the witness can identify the accused among the various several individuals. This will establish the fidelity of the witness in identifying an unknown person related to the context of the offense. Law enforcement often uses this mechanism to establish the credibility of the witness and it is mostly used in cases where the witness has never seen the accused except on the crime scene. Law governing the Test Identification Parade

Section 9 of the Indian Evidence Act, 1872 and Section 54A of the Code of Criminal Procedure, 1973 deal with the procedure and the legality of the Test Identification Parade.

Section 9 of the Evidence Act makes the test of identification of proper accused and properties admissible and relevant facts in a court of Law, but this act does not make it obligatory for the accused to present for the Test.

Identification Parade by the investigating officer:

The problem of Section 9 of the Evidence Act is tackled in Section 54A of the Code of Criminal Procedure, 1973. This section says that when the identification of an accused by the witness is considered necessary for investigation of such offense in which the accused is arrested, the Court, having jurisdiction, may on the request of the Officer in charge of a police station, direct the accused so arrested to subject himself to identification by witness or witnesses in such manner as the Court may deem fit.

Procedure to Follow For Identification of accused by Parade

As mentioned above Witness plays an important role in the Test Identification Parade when the witness informs the Officer in Charge that he can identify the accused or other persons connected with the offense then the officer in charge will arrange for the Test Identification Parade. Officer In-charge should ask the following questions to the witness to create nearly the same environment in which the witness has seen the accused and should mention it in the case diary. These questions are:

a. Accused description.

b. the extent of prevailing light at the time of the offence (daylight, moonlight, quashing of torches, burning kerosene, electric or gas lights, etc).

c. details of opportunities of seeing the accused at the time of the offense;

d. anything outstanding in the features or conduct of the accused which impressed him (identifier).

e. distance from which he saw the accused.

f. the extent of time during which he saw the accused.

- Officer in charge or any other police officer should be expunged from the real Test Identification Parade.
- The judicial Magistrate shall commence the Test Identification Parade.
- If Judicial Magistrate is not available then arrange for two or more respectable members of the society. But this Officer in charge has to make sure that these people don't have any link to the accused or any witness.
- An identification parade should be commenced immediately after the arrest of the accused without any delay.
- If a case has more than one accused and only one or few accused got arrested then the identification parade of the arrested accused shall be arranged don't postpone the parade. And as the remaining accused got arrested Identification parade should be arranged for them as well. Inform the accused person that he/she will be put up for the Identification Parade. Witnesses or Witnesses should be kept out of the sight of the accused. And make sure that witness and people standing for the parade have no mode of any communication or signals. Accused should be mingled with the different look-alike in the ratio of 1:5 or 1:10 and they all should stand in a line. In the case of many witnesses, they should be call one by one and asked to point out the accused if any. There should be a complete record of the proceeding even the mistake committed by the witness or the witnesses in identifying the accused. Care should be taken that the two-

witness won't mingle with each other. Especially if identification is already done by one witness and another witness is still yet to go for identification. This will beat the whole purpose of the Identification Parade. If officials doubt that witnesses had talked to each other then they have to reshude the whole parade and the accused is made to take different positions. If the accused has any objection while the parade it should be well recorded. After the Test Identification Parade is over a duly sign certificate must be given by the Magistrate who has conducted the Parade. Because identification is done in jail jailor should be informed about the Identification Parade on the admission of the suspect. And clear instruction should be given to the jailor to not change the appearance of the admitted accused or his clothes before the identification parade. If the witness is injured then the officer should take written permission from the concerned medical authority before bringing the witness for the Test Identification Parade to identify the assailant. If permission is given by the medical authority, then the officer should arrange the transport of the witness immediately.

- If the witness is not fit and cannot be taken to the nearest court, police station, or jail then the Identification Parade can be organized on the premises of the hospital.
- If the witness is declared unfit to be present at the Identification Parade, then the Officer In-charge should wait until the medical authority gives the proper certificate that the witness is fit for the identification parade. And if the witness can't attain the parade and identify his assailant because he is unwell then the officer in charge should submit the evidence which suffices the reason why the parade can't be held. A witness can be asked to identify the accused from the photograph when the accused is not in custody. Every police station has a photographic record of the history sheets. These photographs can be shown to the witness for identification. A bunch of photographs should be shown to the witness among which there is the real photograph of the accused. And the witness should be asked to identify the accused from among these photographs. It should also be ensured that the photograph of the accused does not become

public through media or some other channels. But after the accused is arrested regular identification parade should also

- In criminal cases sometimes identification of the object used in the crime becomes necessary, for this purpose Identification of Property is done. When a witness claim that he can identify the properties connected with the case under investigation Police Officer In charge of the case should ask the following questions:
    a. Description of the property.
    b. If it has any unique identification mark.
    c. If the witness has seen this property earlier under any circumstances.
    d. If the witness has handled the property earlier.
    e. Or any other relevant circumstances.
- An object which does not have any special Identification Mark has more evidential value than the object that bears Special Identification Mark.
- Find out whether or not bargaining struck at the time of the purchase.
- Reason- The purchase of the property at the lower or the higher price from the market value on that particular day without any bargain will share some light on the nature of the transaction and the intention of the buyer or seller. The date, Time, and Place of such purchase should be mentioned and registered in the dairy.
- Reason- The date will help in establishing the timeline between the time of purchase and the time of theft. And the time and place will help in finding whether the transaction was bonafide or not.
- Officer in charge should make a clear record of the following thing in the case diary:
    a. the nature of the article
    b. age of the seller,
    c. his status in life
    d. his social group,

e. age of the receiver,

f. his status in life.

- Reason- These circumstances will help to find that the transaction was honest or dishonest. If a normal person makes a sale of a valuable article like jewels which is not even worn by anyone in his social group also then this looks suspicious on the part of the seller. If a young person makes a sale of something really valuable then it's suspicious too. It should be mention clearly in the case diary by the officer in charge of the places search to find the stolen property and how it was recovered. Evidence that the stolen property was buried underground or was concealed in the walls or secreted in back yards or houses etc., will help to establish the nature of the property.

Process after Test Identification Parade is finished:

After the Identification Parade of person or property is over it should be verified and ensured by the investigation officer that the proceeding of the parade matches the details recorded by him/her in the case diary. The Investigating Officer should remember that the Magistrate who recorded the Identification Parade of the accused person is cited as a witness in the memo of evidence to speak about the conduct of the Identification Parade and to mark the report of the parade.

Evidential Value of Test Identification Parade Identification of the accused by the witness in the Test Identification Parade is a shred of primary evidence but not substantive evidence it is used to support the identification of the accused by the witness in a court of law. On the other hand, if the witness identifies the accused in the court of the law, then it is substantive evidence. Interestingly if the Test Identification Parade is not held earlier and the witness identifies the accused for the first time in the court of law then the Identification Parade is no longer required if the court found it trustworthy. The general rule is that the witness identifying the accused in the court alone is not the basis of the conviction of the accused unless it is ratified by the previous Test Identification Parade. But there are some exceptions to this rule.

Exception for Test Identification Parade:

Identification Parade is not necessary when the witness already knows the accused and identifies the accused in the court of law. This judgment was again upheld by the Apex Court in the case of *Ramesh Kumar v. State of Punjab* where it again clarifies that the Test Identification Parade is not necessary when the witness already knew the accused. Supreme Court in the case of State of A.P. v. V.K. Venkata Reddy held that the testimony of a witness in the court of law is the substantive testimony and identification of an accused in the Test Identification Parade is only the confirmatory of the testimony made before the court. Supreme Court in the case of Dana Yadav V. State of Bihar upheld its decision and again made it clear that the sole purpose of TIP is to lend corroboration to the court identification of the accused.

Landmark judgments on Test Identification Parade:

Supreme Court in the case of **Hare Kishan Singh V. State of Bihar [8] held that** the Court identification of the accused by the witness is useless when the witness has already failed to identify the accused at the Test Identification Parade.

Supreme Court in the case of **Kishore Prabhakar Sawant V. State of Maharashtra** [9] held that if the accused is caught red-handed from the Crime Scene, then no question of Test Identification Parade arises. The Supreme Court, in the case of, **Kiwan Prakash Pandurang Mokash V. State of Maharashtra** held that if the accused refuses to appear for Test Identification Parade, then an adverse inference of guilt can be drawn against him under Section 54A of the Criminal Procedure Code, 1973. Supreme Court in the case of Suraj Pal Singh V. State of Haryana [11] held that the accused can't be compelled to line up for Test Identification Parade and if the accused refuses to submit himself for Test Identification Parade, he does so at his own risk.

Supreme Court in the case of **State of Maharashtra V. Suresh** said that the Test Identification Parade is done for the benefit of the investigation they are not primarily held for the court.

Facts which explain the fact in issue are really facts which form part of the transaction. For example in R. v. Lord George Gordon's the accused was tried for a riot and was proved to have marched at the head of a mob. Evidence of the cries of the mob was received as the cries were relevant, because they explained the nature of the transaction as to why the accused was so marching. This is illustration (f) to the section.

Even hearsay evidence is admissible if it explained the conduct of the witness. It is respectfully submitted that only facts explanatory of facts in issue or relevant facts that would be relevant under Section 9.

Examples of cases where the question of the identity of one person with another known person has come up are: (**1) Tichborne case, and (ii) Dr Crippen case**. In the first one, a person claimed to be the missing heir to the Tichborne estates. The identity of the claimant with a known person, namely the missing heir, was the fact in issue. In the second case it had to be established by the prosecution that the mutilated remains of a dead body found under the flooring of the house occupied by Dr.Crippen were those of Mrs.Crippen.17 Unless this was established, Dr.Crippen could not be found guilty of the murder of his wife. The prosecution did this by showing that a portion of the skin found, came from the abdominal region. There was a scar like mark found on the skin. That the mark was left by a surgical operation, that Mrs.Crippen had undergone a surgical operation and bore a similar mark were established. In establishing the identity with a known person, all such relevant physical characteristics can be relied upon. The combination and arrangement of the human features are so unique in each particular person, that peculiarities of expression, gesture, carriage, tone of voice, arrangement or colour of hair, colour of eyes, etc., are all marked and striking. These facts and those showing mental equipment, identification marks on the body, and facts within the special knowledge of a husband or wife, would all be relevant for establishing or repudiating the identity of a person with a known person. An interesting Indian case arose in Bengal known as the Bhowal Sanyasi case, where the identity of a person with a known person who had disappeared, was denied by the wife and asserted by the mother.

As regards the test of identification on the basis of recognition of the

voice it is no doubt a test which must be carefully applied. There are two instances which happened during the Second World War. After the British withdrawal from Dunkirk and Sir Winston Churchill became the Prime Minister of England it became his duty to bolster the British morale. He had to deliver his speech from the BBC and all day long he was working at it and he finally dictated the speech to his stenographer. It contained those famous words "We shall defend our island, whatever the cost may be, we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender." As he said those words he collapsed from strain. He was rushed to the hospital and it was decided by the doctors that Sir Winston should not exert himself as otherwise it may be fatal. Therefore, a person named Norman Shelley who could imitate the voice of Churchill perfectly was chosen and it was he who delivered the speech of Churchill from the BBC. The words no doubt were those of Churchill but the voice was that of Norman Shelley impersonating Churchill. But this fact was not known to anyone except the director of the BBC, Norman Shelley and Churchill. It was not even known to the King of England, George VI, till it was revealed by Sir Winston Churchill in his war memoirs.

The second instance was when a British soldier after the occupation of Normandy recognized the voice of a person as that of Lord Haw who was broadcasting from the Berlin Radio against Britain and its allies. He immediately arrested him and Lord Haw Haw turned out to be an American citizen William Joyce who was later on tried and convicted for treason and was hanged by his neck till he was dead.

Though the female relatives of a deceased woman are more competent to identify the ornaments or jewellery of a deceased woman, it is not fatal if such a witness was not examined and could not be considered as a serious flaw affecting the prosecution. 18

One of the methods used for establishing the identity of a person as the doer of a particular act is by means of identification parades. A crime is reported to the police. Some description might have been given of the suspect. In any event, the police investigate and arrest a particular person as

the culprit. Then the complainant is taken to the police station to identify him, i.e., to pick him out of a group of persons of similar complexion and stature. If the complainant picks him out then the police know that the witness is telling the truth and also that they are on the right track. This is the main purpose of an identification parade, to confirm the identity of the accused and help the police in their investigation. But where the eyewitness knew the accused to be his uncle and had seen him when he came to his house on the preceding day, as well as on the day of occurrence and clearly identified him in the court, 19 the Supreme Court held that there was no need to hold the TI parade.' There is, however, a subsidiary but very important use of such parades. A trial takes place long after the commission of the crime, and, if the accused is a person unknown to the witness, naturally a question arises as to how the witness is able to identify the accused in court as the man who committed the crime. He had only a casual and fleeting glimpse of a man whom he had seen for the first time on the day on which the crime was committed, and long afterwards, during the trial in court, he gives evidence that the man in the dock, the accused, is the man who committed the crime. This is the evidence, the oral evidence in the case, on which the court has to act, and quite rightly it is suspect. To support the identification in court, i.e., to corroborate the oral evidence in court, evidence of identification at an identification parade will be given. Within a few days after the commission of the crime, when the identity of the culprit was still fresh in his mind, he was able to identify him at the parade. When this evidence is placed before the court, the court can safely act upon the oral evidence. But evidence of an identification parade held by the police cannot be given because the identification amounts to telling the police: "This is the man who committed the crime", and, under Section 162 of the Code of Criminal Procedure, evidence of a statement made to the police during investigation cannot be given, generally. So, in order to make such evidence of identification parades admissible in court, so as to corroborate the oral evidence that would be given, the identification parades are held in the presence of a Magistrate, who is a judicial officer. At the trial, after the witness who identified at the parade gives evidence, the Magistrate will be called as a witness. He will tell the court the various steps he took to see that the witness really picked out the accused at the parade without any police

help, and then corroborate the witness by saying that the witness did pick out the accused at the parade. In other words, to put it more clearly, identification of accused in court is substantive evidence whereas evidence of identification in TI parade is though primary evidence but not substantive one and the same can be used only to corroborate identification of the accused by a witness in court. But if TI parade is not held and witnesses identify the accused for the first time before court, evidence regarding identification in court does not become inadmissible and cannot be discarded on ground of not being preceded by TI parade, when court finds the same to be trustworthy. But evidence of identification of accused before court should not, ordinarily, form the basis of conviction unless corroborated by previous identification in TI parade or any other evidence, though there may be exceptions to this rule. Identification before court should not normally be relied upon if the name of accused is neither mentioned in FIR nor before police.20

Evidence of the test identification parade is not substantive evidence whereas evidence given in court, is.21 However, when a witness correctly identified the accused at the parade but not in court the evidence of the magistrate, who conducted the test parade that the witness correctly identified the accused at the parade, supported by the remarks of the trial judge regarding the demeanour of the witness that he was frightened and was unable to recognize the accused at the trial, was sufficient to convict the accused.

In **Binay Kumar Singh v. State of Bihar,** the identification of some of the accused from a large number of accused was accepted.

When the accused was arrested on the spot no question of identification arises.

In a case where the photograph of the accused was shown to the identifying witnesses and also the same was published in local newspapers, the identification at a parade was worthless. When the witness, identifying at a parade, failed to identify in court, the TI parade identification lost its importance.

Where reasons for gaining an enduring impression of the identity on the

mind and the memory of the witnesses, are brought on record, it is no use magnifying theoretical possibilities and arrive at conclusions especially in the present day social environment infested by terrorism. In such cases, the not holding of an identification parade is not fatal to the prosecution. The purpose of an identification parade is twofold. First, it is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Secondly it is to satisfy the investigating authorities that the suspect is the real person whom the witness had seen in connection with the occurrence.

One of the accused was not known to the prosecution witness and with respect to that accused no identification parade was held and he was identified in court for the first time. The other accused in the case was known to the witness but no part was attributed to that accused in the incident. In such circumstances the identification in court cannot be accepted.

The accused were taken on foot from the police station to the place where the parade was conducted without their faces being covered during such transit. The executive magistrate, however, stated the steps adopted by him. Seven persons were kept ready in the room and the witnesses were kept in another room from where they could not see the suspect. Thereafter, the suspect was brought from the lock-up with the help of two respectable persons and all precautions were taken to see that the witness could not see the suspect during the transit. Then the suspect was permitted to stand anywhere among the seven persons. It was only then that the witnesses were brought with the help of the same respectable witnesses and asked to identify the person whom they saw on the crucial day. The safeguards adopted by the executive magistrate were quite sufficient for ensuring that the parade was conducted in a reasonably foolproof manner.

Where the witness says that he identified the accused at the parade and the Magistrate corroborates him, there is no complication. But if the witness says: (a) that he did not identify at an identification parade, but is able to identify the accused in court, or (b) that he identified at an identification parade, but is unable to identify in court, or (c) that he did not identify at the parade, nor is he able to identify in court, can the Magistrate

give evidence of the parade held by him at which the witness identified the accused?

Identification proceedings are facts which establish the identity of an accused person as the doer of a particular act, and would be relevant under Section 9; but only if evidence of such identification is given by the witness. When such evidence is given, the Magistrate can corroborate him. Thus, in the cases mentioned in (a) and (c) above, there is no substantive evidence by the witness to be corroborated by the Magistrate. In case (b), it has been held in Abdul Wahab v. Emperor that the evidence of the Magistrate is admissible to show whom the witness identified at the parade. Identification after going near the accused was held not to render testimony of identification doubtful, in **Simon v. State of Karnataka In Deep Chand v. State of Rajasthan** the accused was convicted for the offences of abduction, etc. One of the items of evidence consisted of the evidence of a Magistrate who prepared a memorandum recording his own observations of a room in which the victim was confined as also the statement made to him by a prosecution witness. The Magistrate proved the memorandum in court when he gave evidence. On the question of the admissibility of the evidence, the Supreme Court held:

> *"If a Magistrate speaks of facts which establish the identity of anything, the said facts would be relevant within the meaning of Section 9 of the Evidence Act; but if the Magistrate seeks to prove statements of a person not recorded in compliance with the mandatory provisions of Section 164, CrPC, such part of the evidence, though it may be relevant within the meaning of Section 9 of the Evidence Act, will have to be excluded."*

Facts which fix the time and place at which a fact in issue or relevant fact happened are clearly relevant. If A is charged with the murder of B, then the prosecution will have to establish when and where B was murdered, and that A was at that place at the time when the murder was committed. Then only A's guilt would be proved beyond all reasonable doubt.

Gireesan Nair v. State of Kerala,

(2023) 1 SCC 180: 2022 SCC OnLine SC 1558
Bench Strength 2. Coram : B.R. Gaval and P.S. Narasimha,)).
[Date of decision : 11/11/2022]

S.9 Test identification parade (TIP) Delay in holding Effect of Accused arrested on 13-7-2000, but instead of filing an application for holding TIP at the earliest, the IO filed a remand application, pursuant to which the accused remanded to police custody - Evidence indicated accused being shown to the witnesses during their police custody period and application for conducting TIP filed on 23-7-2000 i.e. the very next day after the police custody period ended Held, it leads to the inevitable conclusion that the accused were taken into police custody to facilitate their easy identification during the TIP Resultantly, the delay in - holding the TIP coupled with other circumstances, held, cast a serious doubt on the credibility of the TIP witnesses Government Grants, Largesse, Public Property - and Public Premises Adverse Possession and Destruction of/Harm to Government Land/Public Property Destruction of/Harm to Public Property/Prevention of Damage to Public Property Act, 1984 Prevention of Damage to Public Property Act, 1984 S. 3(2)(e) Criminal Law - Penal Code, - 1860 Ss. 143, 147, 148 and 149 Criminal Law Criminal Trial Identification Test Identification Parade (TIP) -

It is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that a TIP is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses before the test identification parade. This is a very common plea of the accused, and therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. But reasons should be given as to why there was a delay. (Para 30)

Undue delay in conducting a TIP has a serious bearing on the credibility of the identification process. Though there is no fixed timeline within which the TIP must be conducted and the consequence of the delay would depend upon the facts and circumstances of the case, it is imperative to hold the TIP

at the earliest. The possibility of the TIP witnesses seeing the accused is sufficient to cast doubt about their credibility. (Para 50) It is a matter of great importance both for the investigating agency and for the accused and a fortior for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards were effectively taken so that the Investigation proceeds on correct lines for punishing the real culprit. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time and places which fact may do away with the necessity of a TI parade.

In the present case, Accused 1-16 were arrested on 13-7-2000. Instead of filing an application for conducting a TIP at the earliest, the IO (PW 84) filed a remand application, pursuant to which the accused were remanded to police custody. There is strong evidence that the accused were shown to the witnesses during their police custody period. The fact that an application for conducting a TIP was filed on 23-7-2000 i.e. the very next day after the police custody period ended, leads to the inevitable conclusion that the accused were taken into police custody to facilitate their easy identification during the TIP. Otherwise, there is no reason why an application for conducting a TIP was not filed immediately after the arrest of the accused. In such circumstances, the delay in holding the TIP coupled with other circumstances has cast a serious doubt on the credibility of the TIP witnesses.

Gireesan Nair v. State of Kerala,

(2023) 1 SCC 180: 2022 SCC OnLine SC 1558
Bench Strength 2. Coram : B.R. Gaval and P.S. Narasimha, JJ.
[Date of decision: 11/11/2022]

S.9 Test identification parade (TIP) opportunity to see the accused before holding TIP Witnesses having ample - Effect of Not only - witnesses themselves deposed having seen the suspects before the TIP, but

the accused also from the very beginning, claimed that suspects were all photographed, videographed and were shown to the witnesses Resultantly, the TIP, held, a mere formality, having no legal value and, therefore, in absence of any other incriminatory material, conviction, held, not sustainable and set aside and Public Premises Government Land/Public Government Grants, Largesse, Public Property Adverse Possession and Destruction of/Harm to Property Destruction of/Harm Property/Prevention of Damage to Public Property Act, 1984 Damage to Public Property Act, 1984 S. 3(2)(e) Criminal Law 1860 to Public Prevention of Penal Code, Ss. 143, 147, 148 and 149 Criminal Law - Criminal Trial Identification - Test Identification Parade (TIP) -

In cases where the witnesses have had ample opportunity to see the accused before the Identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence. (Para 31) If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even identification in a court during trial is meaningless.

Sufficient precautions have to be taken to ensure that the witnesses who are to participate in the TIP do not have an opportunity to see the accused before the TIP is conducted. A trial would be adversely affected when the witnesses have had ample opportunity to see the accused before the identification parade is held. The prosecution should take precautions and establish before the court that right from the day of his arrest, the accused was kept "baparda" to rule out the possibility of his face being seen while in police custody. Where the accused has been shown to the witness or even his photograph has been shown by the investigating officer prior to a TIP, holding an identification parade in such facts and circumstances remains inconsequential.

The statement of witnesses in the Court identifying the accused in the

Court lost all its value and could not be made the basis for recording conviction against the accused.

Insofar as evidence of PW 8 is concerned, who has stated that he identified the accused in the TIP based on pictures published in newspapers, the position of law is clear and, thus, the Supreme Court does not attach much importance to the identification made at the identification parades.

Having considered the evidence of crucial eyewitnesses and the material indicating the conduct of the TIP, the witnesses had the opportunity of seeing the accused before the conduct of the TIP. Not only have the witnesses deposed that they had seen the suspects before the TIP, even Accused 2, at the end of the 1st TIP, had raised a grievance that the suspects were all photographed, videographed and were shown to the witnesses from the cabin of the 10 (PW 84). At the end of the 2nd TIP, he had also stated that when Accused 1 -19 were taken to court for the purpose of remand, and the presence of all the witnesses was arranged in the court by the police. In fact, all the accused collectively stated that they were wearing the very same dress, straight from their arrest, till the date of the TIP to Indicate that the TIP did not serve its purpose. There is no reason to disbelieve the truthfulness of the statement of the accused because they had raised this contention right from the beginning and have maintained it all along.

In view of the above, there existed no useful purpose behind conducting the TIP. The TIP was a mere formality, and no value could be attached to it. As the only evidence for convicting the appellants is the evidence of the eyewitnesses in the TIP, and when the TIP is vitiated, the conviction cannot be upheld.

State of Maharashtra v. Sukhdev Singh,
(1992) 3 SCC 700: 1992 SCC (Cri) 705: AIR 1992 SC 2100
Bench Strength 2. Coram : A.M. Ahmadi and K. Ramaswamy,]).
[Date of decision: 15/07/1992]

S.9 Identification of accused persons in court for the first time after a long lapse of time- No Test identification parade held Accused altering - their appearance during the course of time Accused also total strangers to -

witnesses who got only fleeting glimpse of the accused Witnesses not entirely - independent and unbiased Held, it would be risky to place reliance on such identification without proper corroboration-Great care must be exercised before acting on a belated identification in court by a witness who cannot be said to be an independent and unbiased person. In the case of total strangers, it is not safe to place implicit reliance on the evidence of witnesses who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court. In the present case it was all the more difficult as indisputably the accused persons had since changed their appearance. Test identification parade, if held promptly and after taking the necessary precautions to ensure its credibility, would lend the required assurance which the court ordinarily seeks to act on it. In the absence of such test identification parade it would be extremely risky to place implicit reliance on identification made for the first time in Court after a long lapse of time and that too of persons who had changed their appearance.

Suraj Pal v. State of Haryana,

(1995) 2 SCC 64: 1995 SCC (Cri) 313
Bench Strength 2. Coram : G.N. Ray and Faizan Uddin, JJ.
[Date of decision : 09/11/1994]

S.9 Accused declining to submit themselves for test identification parade Dock identification can be accepted if otherwise found to be reliable Plea of the accused that they had been shown to the witnesses found to be baseless and unfounded Presence of light at the time and place of occurrence - established Number of injuries on accused showing that he had sufficient time to look at the miscreants Held, in the circumstances, conviction for dacoity with murder on the basis of dock identification justified - Criminal Law - Criminal Trial - Identification Test Identification Parade - In the present case the prosecution was anxiously taking steps to hold the test identification parade but the appellants themselves declined to submit themselves for test parade. It is true that they could not have been compelled to line up for test parade and so if they refused to submit for it they did so on their own risk for

which the prosecution could not be blamed for not holding the test parade. The reason given out by the appellants for declining to stand the test of identification was that they were shown by the police to the witnesses but this allegation has been found to be baseless and unfounded by both the courts below. There is absolutely no basis to say that the appellants or any of them were shown to the witnesses. If the appellants in exercise of their own volition had chosen not to stand the test of identification without any reasonable cause, they did so on their own risk for which they cannot be heard to say that in the absence of test parade, dock identification was not proper and should not be accepted, if it was otherwise found to be reliable.

Suraj Pal v. State of Haryana,

(1995) 2 SCC 64: 1995 SCC (Cri)313
Bench Strength 2. Coram : G.N. Ray and Faizan Uddin, JJ.
[Date of decision : 09/11/1994]

S.9-Test identification parade Object, purpose and importance of - The holding of identification parades has been in vogue since long in the past with a view to determine whether an unknown person accused of an offence is really the culprit or not, to be identified as such by those who claimed to be the eyewitnesses of the occurrence so that they would be able to identify the culprit if produced before them by recalling the impressions of his features left on their mind. That being so, in the very nature of things, the Identification parade in such cases serves a dual purpose. It enables the investigating agency to ascertain the correctness or otherwise of the claim of those witnesses who claimed to have seen the offender of the crime as well as their capacity to identify him and on the other hand it saves the suspect from the sudden risk of being identified in the dock by such witnesses during the course of the trial. This practice of test identification as a mode of identifying an unknown person charged of an offence is an age-old method and it has worked well for the past several decades as a satisfactory mode and a well-founded method of criminal jurisprudence. It may also be noted that the substantive evidence of identifying witness is his evidence made in the court but in cases where the accused person is not known to the witnesses from

before who claimed to have seen the incident, in that event identification of the accused at the earliest possible opportunity after the occurrence by such witnesses is of vital importance with a view to avoid the chance of his memory fading away by the time he is examined in the court after some lapse of time.

Conclusion:

Test Identification Parade might not be substantive evidence but it plays a very vital role in the investigation. It helps the investigating officer to ascertain that the investigation is going in the right direction and help me to tailor the course of further investigation. Like any other law or test this test also has its disadvantages like some critics say that human memory can be easily manipulated and everyone has their way to analyze the scene. So, witness identifying the accused might not always be accurate and it affects the course of the investigation and also interrupt the process of justice. This can be improved by implementing strict and clear guidelines for the investigation officers which will be fair for both the accused and the witness. Improved process will help the court in delivering the just judgment.

iv) Alibi

The Latin word alibi means elsewhere.

1. Section 11

This section is as follows:

"Facts not otherwise relevant are relevant-

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) 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.

An alibi is not an exception envisaged in the IPC. It is a rule of evidence recognized by Section 11 of the Evidence Act, that facts inconsistent with the fact in issue are relevant. It is used when the accused takes the plea that

when the occurrence took place he was elsewhere, and that it is extremely improbable that he could have committed the crime. The burden is on the prosecution to prove that the accused was present at the scene and participated in the crime. But when the presence of the accused at the scene has been established satisfactorily by the prosecution through reliable evidence the court would be slow to accept evidence that he was elsewhere. The burden is on the accused and it is heavy and strict proof is required for establishing the plea of alibi. The term “alibi” originates from the Latin word meaning “elsewhere” or “somewhere else.” In the Evidence Act, the defence of a plea of alibi is employed by an accused individual to refute their alleged involvement in a crime. The accused claims that they were present at a different location when the crime was committed, and therefore could not have been present at the crime

1. Essentials of the Alib in Evidence Act
2. Who Can Use the Plea of Alibi?
3. When to Raise the Plea of Alibi in Evidence Act?
4. Failure to Establish the Plea of Alibi
5. Sections of Evidence Act Relevant to Plea of Alibi
    i. Section 11: When Facts Not Otherwise Relevant Become Relevant
    ii. Section 103: Burden of Proof as to Particular Fact
6. Examples of Plea of Alibi in Evidence Act
7. Case Laws on Plea of Alibi
8. Conclusion

Essentials of the Alibi in Evidence Act

To establish the defence of plea of alibi, certain requirements must be met, including: A crime must have been committed that is punishable by law. The accused must be charged with committing the crime. The accused must prove that they were not present at the crime scene when the crime was committed. The accused must demonstrate that they were at a different location which would have made it impossible for them to be present at the

crime scene. The defence of plea of alibi must be raised as early as possible in the legal proceedings.

Who Can Use the Plea of Alibi?

The accused typically takes the plea of alibi in a criminal case. The accused must assert that they were physically present somewhere else at the time of the case, such as during the framing of charges or at the preliminary hearing.

Failure to Establish the Plea of Alibi

If the accused fails to establish the plea of alibi, it does not automatically imply that they were present at the scene of the crime. The prosecution still needs to provide positive evidence to prove the accused's presence at the crime scene. Simply failing to establish the plea of alibi cannot be considered evidence of guilt.

Sections of Evidence Act Relevant to Plea of Alibi

The plea of alibi is recognized under Section 11 and Section 103 of the Indian Evidence Act, 1872. Section11: When Facts Not Otherwise Relevant.

Become Relevant Section 11 of the Indian Evidence Act, 1872 provides for the rule of evidence regarding the relevance of facts that are not otherwise relevant. According to this section, such facts become relevant if they are inconsistent with any fact or relevant fact or if they make the existence or non-existence of any fact in an issue or relevant fact highly probable or improbable. Example of the Plea of Alibi: If the question is whether A committed a crime at Calcutta on a certain day, the fact that A was in Lahore on that day is relevant. Additionally, the fact that A was at a distance from the place where the crime was committed, making it highly improbable (but not impossible) that he committed the crime, is also relevant.

Example: If the question is whether A committed a crime at Calcutta on a certain day, the fact that A was in New Delhi on that day is relevant. The burden of proving this fact lies on the person who asserts it.

Examples of Plea of Alibi in Evidence Act

A defence of a plea of alibi can be used in various criminal cases. For instance, if a man named Bill is accused of selling drugs to a minor two blocks from a school, he can present evidence that he was at work at a construction site at the time of the sale. He can call witnesses, including his boss, co-workers, or the property owner, to testify that he was at the site and did not leave around the time of the crime. Video footage or photographs taken at the time of the crime can also be used to support the defence. In some cases, records of the card swipes can help prove the defendant's presence at a particular location.

Case Laws on Plea of Alibi Munshi Prasad v State of Bihar 2001 (SC) The Supreme Court held in this case that the accused's presence at a reasonable distance from the place of occurrence is necessary to prove a defence of plea of alibi, and the distance should be at least 500 meters.

Mukesh v. State of N.C.T. of Delhi, AIR 2017 SC 2161

In this case, the accused claimed that he was attending a musical program with his family at a park at the time of the incident. However, the court rejected the plea of alibi, considering the contradictory evidence, such as the dying declaration of the victim, DNA analysis, and fingerprint analysis. The evidence from the authorities of the park also revealed that no permission was granted for any musical program on the date of the incident. The court emphasized that a defence of plea of alibi should be raised at the earliest opportunity and not belatedly at the stage of defence evidence. The accused failed to provide any reason or explanation for not raising the defence earlier.

Binay Kumar Singh v. The State of Bihar

The court held that alibi is not an exception under the Indian Penal Code or any other law; it is only a rule of evidence recognized under Section 11 of the Evidence Act. The defence argues that facts inconsistent with the fact in the issue are relevant.

In Hari Chand v. State of Delhi

The defence witness stated that the accused was present at the office and proved certain challans allegedly issued by the accused but there were no dates, and the witness never told the police about it or to the higher authorities when he knew about the arrest of the accused. In such circumstances the court was justified in refusing to accept the plea of alibi.

In Rajesh Kumar v. Dharmvi.

The plea of alibi was not accepted (advocate's evidence that the accused was in his office at the time of the occurrence); and in **Mithilesh Upadhyaya v. State of Bihar** (accused claiming to be inmate of hospital, when no documents were produced).

It was not impossible for the accused to be at the place of occurrence and also at the panchayat meet because the distance between the two places, namely, the place of occurrence and the place where the panchayat met was only four to five hundred yards. The plea of alibi is based on physical impossibility of being at the scene of crime and so the distance is a very material factor.

In fact, it would look as if the two conceptions of logical and legal relevancy are the same for the purposes of the Act. Sir James Stephen has explained the section thus:

> "It may possibly be argued that the effect of the second paragraph of Section 11 would be to admit proof of such facts as these.
>
> 'No statement shall be regarded as rendering the matter stated highly probable within the meaning of this section unless it is declared to be a relevant fact under some other section of this Act.'

This exposition of Sir James Stephen has provoked criticism from two eminent authorities, Mr Field and Mr Justice West. The latter had said:

"This section (Section 11) is expressed in terms so extensive that any fact which can, by a chain of ratiocination, be brought into connection with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. As the connexions of human affairs are so

infinitely various and so far reaching, that thus to take the section in its widest admissible sense would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties. One of the objects of a law of evidence is to restrict the investigations made by the courts within the bounds prescribed by general convenience, and this object would be completely frustrated by the admission, on all occasions, of every circumstances on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and a determination of fresh collateral issues, growing up in endless succession, as the inquiry proceeded.

Obviously the learned Judge has missed the whole point of Section 11. It is not "any fact which can by a chain of ratiocination, be brought into connexion" or "every circumstance on either side having some remote and conjectural probative force" mentioned by the learned Judge that is included in Section 11; but only facts, which make the existence of a fact in issue highly probable or improbable, that are contemplated by the section.

Mr Field had stated:

"The section (Section 11) can hardly be limited as has been suggested to those facts which are relevant under some other provisions of the Act, for this would render the section meaningless."

Vutukur Lakshmaiah Vs State of A.P.

Binay Kumar Singh v. State of Bihar.

"We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

(a) The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

The Latin word alibi means 'elsewhere' and that word is used for convenience when an accused takes recourse to a defence line that when the

occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi."

(2016) 3 SCC

The word alibi means "elsewhere". The plea of alibi is not one of the General Exceptions contained in Chapter IV IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case, the said condition is fulfilled. 18. After scrutinizing the entire evidence on record, we do not find any illegality in appreciation of evidence, or in arriving at the conclusion as to the guilt of the present appellant by the High Court.

Jitender Kumar v. State of Haryana,

(2012) 6 SCC 204: (2012) 3 SCC (Cri) 67: 2012 SCC OnLine SC 419: 2012 Cri LJ 3085: (2012) 115 AIC 257 (SC): AIR 2012 SC 2488

Bench Strength 2. Coram: A.K. Patnaik and Swatanter Kumar, JJ. [Date of decision : 08/05/2012]

Alibi Plea of alibi - Burden on accused to prove with certainty - Accused examined witnesses and adduced documents to establish their presence at another place at the time of occurrence Trial court held that none of those - documents related to presence of accused at another place - Instead, statements of PWS showing accused's participation in crime, believed by courts below In the circumstances, held, plea of alibi was not established Accused failed to discharge the burden Evidence Act, 1872 S. 11 -

The burden of establishing the plea of alibi lay upon the appellant-accused, but 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.

Vijay Pal v. State (Govt. of NCT of Delhi),

(2015) 4 SCC 749 (2015) 2 SCC (CH) 733: 2015 SCC OnLine SC 191: 2015 Cri LJ 2041: AIR 2015 SC 1495 Bench Strength 2. Coram: Dipak Misra and N.V. Ramana, 3],

[Date of decision: 10/03/2015]

Plea of Burden and onus of proof - Held, when a plea of alibi is taken by accused, - burden is upon him to establish the same by positive evidence after onus as regards presence on the spot is established by prosecution -Burden on accused is rather heavy and he is required to establish plea of alibi with certitude, so as to raise a reasonable doubt regarding the prosecution version - Plea can succeed if it is shown that accused was so far away at the relevant time that he could not be present at the place where crime was committed- Herein, evidence adduced by appellant-accused to prove plea of alibi is sketchy and in fact does not stand to reason Bald utterance by defence witness that accused was with her at

time of incident not enough to disbelieve cumulative effect of evidence as regards the presence of the accused at the scene of occurrence Hence, plea of alibi rejected - Evidence Act, 1872-S. 11 Ill. (a) - Criminal - Law Penal Code, 1860 Sections 299-304- Culpable Homicide And Murder - Trial, Sentencing And Other Issues Circumstantial Evidence - Defence - Alibi S. 302

Vutukuru Lakshmaiah v. State of A.P.,

(2015) 11 SCC 102: (2015) 4 SCC (Cn) 299: 2015 SCC OnLine SC 382: (2015) 151 AIC 265 (SC): AIR 2015 SC Supp 1180

Bench Strength 2. Coram: Dipak Misra and N.V. Ramana, J).

[Date of decision: 24/04/2015]

S.11 Plea of alibi - How to be established Prosecution clearly established presence of prime accused A-1 at the scene of occurrence - Initial onus put on prosecution having been discharged, burden shifted on A-1 to establish his plea of alibi with certainty No evidence adduced by accused regarding distance of municipal office where he purportedly was from the scene of occurrence; or that it was impossible to reach there; and alleged minutes book was not one maintained in discharge of public function -Both courts below elaborately dealt with plea and rightly rejected it- Criminal Law - Penal Code, 1860 Sections 299-304-- Culpable Homicide And Murder - Trial, Sentencing And Other Issues - Defence - Alibi Ss. 302 and 148 - Criminal Law- Criminal Trial- Defence – Alibi.

Darshan Singh v. State of Punjab,

(2016) 3 SCC 37: (2016) 1 SCC (Cri) 702: 2016 SCC OnLine SC 7: (2016) 158 AIC 223 (SC): AIR 2016 SC 253

Bench Strength 2. Coram : Dipak Misra and Prafulla C. Pant, JJ. [Date of decision: 06/01/2016]

S.11 Plea of alibi Nature of When to be proved-Held, word alibi means "elsewhere"-Plea of alibi is not one of the General Exceptions contained in Ch. IV IPC- It is rule of evidence recognised under S. 11, Evidence Act However, plea of alibi taken by defence is required to be proved only after prosecution has proved its case against accused - Criminal Law Criminal Trial Defence Alibi Plea of alibi Nature of When to be proved Held, word alibi means "elsewhere"

- Plea of alibi is not one of the General Exceptions contained in Ch. IV IPC-It is rule of evidence recognized under S. 11, Evidence Act - Criminal Law - Penal Code, 1860 Ch. IV (Ss. 76 to 106) Plea of alibi - Nature of When to be proved-Held, word alibi means "elsewhere" - Plea of alibi is not one of the General Exceptions contained in Ch. IV IPC It is rule of evidence recognized under S. 11, Evidence Act - Criminal Law - Penal Code, 1860 Sections 299-304 Culpable Homicide and Murder - Trial, Sentencing and Other Issues Defence Alibi Ss. 302 and 324- Plea of alibi Nature of When to be proved Held, word alibi means "elsewhere"- Plea of alibi is not one of the General Exceptions contained in Ch. IV IPC- It is rule of evidence recognized under S. 11, Evidence Act Criminal Law - Penal Code, 1860-Sections 299-304-- Culpable Homicide and Murder Trial, Sentencing and Other Issues Defence Generally Ss. 302 and 324 - Plea of alibi Nature of - When to be proved - Held, word alibi means "elsewhere" - Plea of alibi is not one of the General Exceptions contained in Ch. IV IPC- It is rule of evidence recognized under S. 11, Evidence Act Criminal Law - Criminal Trial - Circumstantial Evidence - Defence - Generally- Plea of alibi - Nature of When to be proved - Held, word alibi means "elsewhere" - Plea of alibi is not one of the General Exceptions contained in Ch. IV IPC- It is rule of evidence recognized under S.

Asharam v. State of M.P.,

(2007) 11 SCC 164: 2007 SCC Online SC 566: (2007) 56 AIC 180 (SC) AIR 2007 SC 2994

Bench Strength 2. Coram: S.H. Kapadia and B. Sudershan Reddy, 11.

[Date of decision: 25/04/2007]

As regards the plea of alibi taken by one of the accused on ground that during the period of the incident he was il and was undergoing treatment for typhoid under a government doctor, the High Court found that the Medical Officer had not proved his having treated the said co-accused for typhoid during the period of the mide document or register of the hospital was produced to show that the accused was an indoor patient in the hospital. There was nothing to show that he was treated in a private hospital. The Medical Officer had deposed that he had issued the certificate on the demand

of the accused. The doctor did not maintain any register of the certificates issued by him, particularly when he says that he had private practice also In the circumstances, the High Court was right in disbelieving the doctor.

M Dasari Siva Prasad Reckly v. Public Prosecutor, High Court of A.P...

(2004) 11 SCC 2821 2004 SCC OnLine SC 922: AIR 2004 SC 4383
Bench Strength 2. Coram: P, Venkatarama Reddi and B.P. Singh, 33.
[Date of decision: 20/08/2004]

Evidence Act, 1872 -5, 11-Alibi Falsity of - Effect Fact that the accused failed to establish that on the said night he remained at the house of his parents in another village does not necessarily lead to the inference that he must have remained at his house (place of incident) on the night in question- Criminal Law Criminal Trial- Defence - Alibi

If the evidence of PW 4 is excluded, there is no evidence whatsoever to establish the presence of the accused in the house on the crucial night. The fact that the accused could not establish by cogent evidence that on the night of 19-4-1996 he remained at the house of his parents in another village does not lead to the necessary inference that he must have remained at his own house on that night.

Conclusion:

The plea of alibi is a crucial defence in criminal cases, which can help an accused person establish their innocence. It is recognized under Section 11 of the Indian Evidence Act, 1872, and can be raised at the earliest stage of the case. The burden of proof lies on the accused to establish their presence elsewhere at the time of the commission of the alleged offence, and the prosecution must prove the accused's guilt beyond a reasonable doubt.

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