ADMISSIBILITY OF EVIDENCE IN LIGHT OF AARUSHI TALWAR

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INTRODUCTION

The Indian Evidence Act provides the rules of evidence and the admissibility of various documents and statements before the courts of law. The criminal justice is based on the presumption of the innocence of the accused and that the guilt must be proved beyond reasonable doubt. Thus, until all the charges against the accused are not proved completely, on the basis of clear, credible evidence, the accused cannot be convicted and punished for the crime.[1] Legal proof is essential and mere suspicion, no matter how strong it is, cannot form ground for conviction. The standard of proof is graver for graver offences.[2] High probability of guilt and no reasonable possibility of innocence is the test of guilt.[3]

Evidence can be classified into direct and circumstantial evidence. Direct evidence is that which expressly goes to the point in question and proves the same, without deductive reasoning or inference.[4]

Circumstantial evidence is also known as indirect evidence. Sir James Stephen described circumstantial evidence as facts relevant to the facts in issue. He observed that, *"Facts relevant to the issue are facts from the existence of which inferences as to the existence of the facts in issue may be drawn. A fact is relevant to another fact when the existence of the one can be shown to be the cause or one of the causes, or the effect or one of the effects, of the existence of the other, or when the existence of the one, either alone or together with other facts, renders*

[1] VEPA P SARATHI, LAW OF EVIDENCE, 6 (6th ed, Jain Book Agency).
[2] Ashis Bathan v State of MP, (2002) 7 SCC 317.
[3] Munshi Prasad v State of Bihar, (2002) 1 SCC 351.
[4] Sudershani Ray, Circumstantial Evidence, available at http://www.legalserviceindia.com/article/l136-Circumstantial-Evidence.html (last accessed on September 8, 2016).

the existence of the other highly probable, or improbable, according to the common course of events."[5]

Circumstantial evidence thus consists of statements which relate to relevant facts and when taken together they point towards the fact in issue and point towards the guilt or innocence of the accused. While it has been generally regarded that direct evidence is more powerful and reliable than circumstantial evidence, successful criminal prosecutions based entirely on circumstantial evidence have taken place. While emphasizing on the importance of circumstantial evidence as the basis for conviction, the Hon'ble SC, in the case of Ramavati Devi v State of Bihar[6] stated that the evidentiary value awarded to each statement depends on the facts and circumstances of each case and it is possible to convict the accused based on circumstantial evidence if the prosecution leaves no space for reasonable doubt. Similarly in the case of VC Shukla v State,[7] Fazl Ali, J noted, "*in most cases it will be difficult to get direct evidence of the agreement, but a conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.*"

Accordingly, it has been observed by Wadhwa, J that, "*the circumstances must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible*."[8]

The Supreme Court has laid down the situations in which cases based entirely on circumstantial evidence may be accepted:

1. The circumstances relied upon must be established firmly.
2. The circumstances must be precise and must point towards the guilt of the accused.
3. The circumstances must be of a conclusive nature.
4. Taking all the circumstances as a whole, a complete chain of events must be formed which establish the guilt of the accused and indicate that no one other than the accused could have committed the crime.[9]

[5] SIR JAMES STEPHEN, INTRODUCTION TO INDIAN EVIDENCE ACT,1872.
[6] AIR 1983 SC 164.
[7] 1980 SCR (2) 380.
[8] State of Tamil Nadu v Nalini and Ors., AIR 1986 AP 164.
[9] Chandmal v State of Rajasthan, AIR 1976 SC 917; Bodh Raj v State of Jammu and Kashmir, (2002) 8 SCC 45; Sathya Narayan v State, (2012) 12 SCC 627.

Thus, it cannot be said that conviction solely based on circumstantial evidence is not permissible. In practice, although direct evidence is more powerful, it is not always possible to have direct evidence and hence circumstantial evidence plays a pivotal role in the criminal justice system.

In this research paper, the authors will be examining the 2008 murders of Aarushi Talwar and Hemraj Banjade wherein the Ghaziabad sessions court convicted Nupur and Rajesh Talwar for the same solely on the grounds of circumstantial evidence.

BACKGROUND

In what has also been referred to as the 'Noida Double Murder Case', 14-year-old Aarushi Talwar was found brutally murdered along with the 45 year old domestic help, Hemraj Banjade, who was found murdered in a similar manner. The twin murders took place on the intervening night of May 15-16, 2008 at the Talwars' residence. The case garnered immense attention in the media and was covered by the media thoroughly. The idea of a middle-class family being disrupted due to murder along with the idea of sex created huge waves of sensation in the country. The media raised various allegations on the characters of both, the accused and the deceased. In its judgment, the Ghaziabad sessions court held the parents, Rajesh and Nupur Talwar guilty of the double murders on the basis of investigation of two CBI teams and circumstantial evidence. They have been sentenced to imprisonment for life. The case has been appealed before the Allahabad HC by the Talwars.

FACTS

1. Aarushi Talwar, a student of Delhi Public School, Noida, the daughter of dentist couple Dr. Nupur and Rajesh Talwar, was found brutally murdered with her throat slit and a heavy blow to her skull in her own house on the morning of May 16 by her mother. Rajesh Talwar stated that the missing domestic help, Hemraj, was the primary suspect in the matter.
2. The next day however, the police found Hemraj's body (in a decaying state) on the terrace and the possibility of him being a suspect in the case was ruled out. Post mortem reports revealed that Hemraj's wounds were very similar to those of Aarushi.

3. Once the police ruled Hemraj out as a suspect, they formulated two theories (one regarding his finding Hemraj and Aarushi in a compromising position and the other alleged that Rajesh Talwar had an extra marital affair and was being blackmailed by the domestic help regarding the same) regarding Rajesh Talwar's decision to commit the murders and he was arrested for the same.
4. On May 31 2008, a CBI team headed by Arun Kumar took over the case and they suspected the three servants. Accordingly, narco tests were conducted on the three suspects and each one of them confessed to their involvement in the murders. Rajesh Talwar was released and the three accused were hence imprisoned.
5. However, due to the lack of evidence against them they were released.
6. The case was then transferred to another CBI team in September 2009. The team was headed by SP Neelabh Kishore.
7. It was then suspected that the murder weapon was a golf club belonging to Mr. Talwar as the set had one club missing and it was found in the attic opposite Aarushi's room while cleaning the flat. The club was also cleaner than the rest and hence the team concluded that the murder had been committed by the parents only and not by any outsider or the servants.
8. The team suspected the parents of having committed the murders but due to lack of evidence against them, it was suggested that the case be closed. Accordingly, a closure report was submitted which stated that the servants had been ruled out as there was no evidence incriminating them, apart from the narco analysis test.
9. The closure report was submitted in December 2010. The Talwars petitioned against the closure of the case. Accordingly, the Hon'ble judge of the Ghaziabad sessions court rejected the closure report and converted the same into a chargesheet and ordered that the case proceed to trial with the Talwars as the accused.
10. The trial began in 2012 as charges for murder were framed against Nupur and Rajesh Talwar. In November 2013, the couple was convicted for the murder of their daughter and their domestic help and was sentenced to life imprisonment.

ADMISSIBILITY OF NARCO ANALYTICAL AND SCIENTIFIC TESTS

The courts have recently started relying on scientific evidence in criminal trials which includes DNA, fingerprinting, ballistics, narcoanalysis, brain mapping, lie detectors, etc. In the case of

Smt. Selvi v State of Karnataka,[10] the Hon'ble Supreme Court held that the practice of narcoanalysis, brain mapping, and polygraph tests as unconstitutional and void as being in violation of Article 20(3) of the Constitution. While the case of Selvi does not outright reject the admissibility of such test results, it provides that if any further crucial evidence is revealed during the tests, the same would be admissible in accordance with section 27 of the Indian Evidence Act.

In the Aarushi Talwar case, the following were revealed during police investigation:

1. Hemraj's blood was not found on Aarushi's pillow and bed sheet and there was no evidence to prove that he had been murdered in her room. The blood stains on the apartment steps indicated that the murder had taken place elsewhere and the body had then been left on the terrace.
2. The police only found Aarushi's blood on Dr. Rajesh Talwar's clothes, but not Hemraj's blood. No blood was found on Dr. Nupur Talwar's clothes by the CBI.
3. The exact sequence of events in the intervening night of May 15-16 2008 is not known. There was no clear evidence to show that the murder had been committed by the parents. Since the offence took place in a closed flat, no eye witnesses were present.
4. The murder weapons were also not immediately recovered and experts found no traces of blood stains or the DNA of victims from Rajesh Talwar's golf stick which could link them directly to the crime.
5. While a board of experts claimed that the possibility of Aarushi's neck having been slit by a khukri could not be ruled out, doctors who conducted the post mortem noted that the slit could only have been carried out by a surgically trained person using a small surgical instrument.
6. The cloth in which Hemraj's body was dragged and carried to the terrace, the blood stained clothes of the offenders have not been found yet and hence raised a suspicion that the murder had been committed by the Talwars.

Hence, they were subjected to narco-analysis tests in order to confirm that they had committed the crime. The tests however yielded no results. No concrete incriminating evidence was found against the Talwars that could help in further investigations into the matter.

[10] AIR 2010 SC 1974.

Narco-Analysis of Servants in the Aarushi Talwar-Hemraj double murder investigation:

Among the servants in the Talwar household, a number were subjected to narco-analysis and brain mapping tests.

The first prominent narco-analysis to be conducted was on Mr. Krishna Thadarai, who was an assistant at Dr. Rajesh Talwar's dental clinic, along with two accomplices, Mr. Rajkumar and Mr. Vijay Mandal, who were both employed in households in the vicinity of the Talwar residence. Based on their narco-analysis tests, a number of possible versions of the story emerge:

The probable event timeline outlined by the CBI Joint Director Arun Kumar based on the suspects' narco tests was as follows:

1. Hemraj invites Krishna and Rajkumar to his accommodation at the Talwars' apartment, around midnight on the day of the murder.
2. The men after consuming alcohol began talking, Krishna told the others how Rajesh Talwar had humiliated him in the past, and expressed a desire to exact vengeance on him.
3. The next day, Aarushi Talwar's room was found unlocked. The following events are alleged to have occurred, and the facts vary with each narco-analysis.

Rajkumar's version:

1. Aarushi had heard what the men had said about her father, and threatened to report them to him. To protect themselves, Krishna killed her with his khukri.
2. The men had then intended to flee, but Hemraj became nervous, and contemplated exposing their crime.
3. Krishna and Rajkumar took Hemraj to terrace and murdered him.
4. They then got rid of Hemraj's and Aarushi's phones.

Krishna's version 1:

1. Rajkumar and Krishna went into Aarushi's room, where Rajkumar attempted to rape her. When Aarushi tried to resist his advances, Krishna killed her with his khukri.
2. Then the two men took Hemraj to the terrace and killed him for being a witness, and got rid of both Aarushi's and Hemraj's phones.

Krishna's version 2:

1. Rajkumar entered Aarushi's room and tried to rape her, following which Rajkumar killed her with the khukri.
2. They then attempted to clean the khukri with a tissue paper, and flush the same down the toilet.
3. They then lured Hemraj to the terrace and murdered him
4. The suspects then escaped from the house via the roof after locking the terrace door, with Hemraj's body still on the terrace, and destroying Aarushi's and Hemraj's phones.

Krishna's version 3:

1. Rajkumar walked towards Aarushi's room, closely followed by the others.
2. Rajkumar tried to rape Aarushi.
3. When she tried to prevent this, Krishna took out his khukri and slit her throat, which killed her.
4. Hemraj threatened to tell Aarushi's parents about the incident, as a result of which the others lured him to the terrace and killed him. They then got rid of Hemraj's and Aarushi's phones.

Thus, it is stated that these were facts which were not taken into consideration and the Hon'ble judge failed to appreciate the same. While results of narco analytic tests are not directly admissible, the courts have appreciated inferences regarding confessions made during these tests if the same can be proven. However, it is regrettable that the court has failed to appreciate the same in this case.

ANALYSIS OF APPLICATION OF THE POINT OF LAW BY THE COURT OF ADDITIONAL SESSIONS JUDGE IN AARUSHI TALWAR CASE

The judgment delivered in the case of State of U.P v. Rajesh Talwar created a legal paradox by applying various principles of law in differing manner. The principles relied on by the Judge and the ones being analyzed in this paper pertain to provisions laid down in the Indian Evidence Act, 1872 along with the factual matrix as presented in the judgment. The crux of the matter revolved around deriving the guilt of the accused from circumstantial evidence being produced by the Prosecution, and putting the same in juxtaposition to section 106 of the Act. A multitude

of case laws had been used by the Judge to support his legal finding and the end result led to conviction of the accused, viz. the parents, in the matter. With the extent of media coverage afforded to this trial and the debatable series of event which took place that night, it becomes imperative to look into how the legal principles developed through precedents led to the determination of the guilt of the accused and whether the legal principles were applied correctly. The extent of correct application of the point of law by the Judge to the factual scenario has been discussed in the following sections.

The issue which was raised by the opposing parties related to burden of proof as given under Section 106 which specifies that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. However, the same provision was put against the circumstantial evidence being produced by Prosecution. The admissibility of circumstantial evidence has been propounded by Hon'ble Apex Court in various decisions.[11] In the case of Padala Veera Reddy v. State of Andhra Pradesh[12], the Apex Court has laid down the essential criteria regarding circumstantial evidence which has been reproduced before.[13]

The point of law regarding appreciation of circumstantial evidence has always been focused on formation of a firmly established chain of events which point to the hypothesis of solely the guilt of the accused and towards no other hypothesis. The evidence should expressly exclude any hypothesis which is consistent with the innocence of the accused. Circumstantial evidence depends specifically on drawing of an inference from which a verdict of guilty might be passed. It requires carefully analysis and critical scrutiny on part of the Court. The New York Courts have propounded certain steps which are required to be followed. The Court is firstly required to determine which facts have been proven through the evidence adduced.[14] Any fact from which guilt of the accused is to be proven has to be proved beyond reasonable doubt. After the determination of the facts, what should be looked into are the reasonable inferences which can be drawn from the facts. Before the Court may draw an inference of guilt, that inference must be the only one that can fairly and reasonably be drawn from the facts, it must be consistent with the proven facts, and it must flow naturally, reasonably, and logically from them.[15] Every

[11] Gambhir v. State of Maharashtra, AIR 1982 SC 1157; Ram Nand and ors. v. State of Himachal Pradesh, [1965] 2 S.C.R. 837.
[12] AIR 1990 SC 70.
[13] Chandmal v State of Rajasthan, AIR 1976 SC 917; Bodh Raj v State of Jammu and Kashmir, (2002) 8 SCC 45; Sathya Narayan v State, (2012) 12 SCC 627.
[14] People v Cleague, 22 N.Y.2d 363, 367 (1968).
[15] People v Benzinger, 36 N.Y.2d 29, 31-32 (1974).

reasonable hypothesis of innocence of the accused must be excluded, and if a hypothesis of the innocence of the accused can be drawn from the proven facts, the accused must be found not guilty in such circumstance.[16]

The Additional Sessions Judge relied upon Essay on the Principles of Circumstantial Evidence by William Wills by T. & J.W. Johnson & Company 1872, to denote the basic principle of circumstantial evidence. The part which bears relevance has been reproduced below:-

"*The force and effect of circumstantial evidence depend upon on its incompatibility with and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of arguments resembling the method of demonstration by the reductio ad absurdum"*[17]

The Court has relied upon a plenitude of cases to depict that when circumstantial evidence is concerned, benefit of doubt to be afforded must be reasonable and not fanciful, trivial or imaginary.[18] It should be a fair doubt based upon reason or common sense and that mere suspicion as to the guilt of the accused would not form basis of the conviction if the case has not been proved beyond reasonable doubt.[19] With these precedents being cited by the Judge himself, the fulfilment of the grounds so mentioned above has not been discussed by the Court at all. The defects in Prosecution story, which was cogently established by the Defense Counsel, were not deliberated upon by the Court in light of the precedents mentioned above as the Court moved on to precedents depicting that the Prosecution is not required to prove the case with mathematical precision[20], neither are they required to prove what is impossible, but is required to prove the case to such an extent that a reasonable man may draw an inference as to guilt of the accused. Now the significant question which arises in this case is, whether the necessity of proving a case beyond reasonable doubt was extinguished by the Court by stating that mathematical precision and impossible circumstances could not be proved. To fully

[16] People v Morris, 36 N.Y.2d 877 (1975).
[17] Page 60, State of UP v. Rajesh Talwar.
[18] Municipal Corporation of Delhi v Ram Kishan Rohtagi (1983) 1 SCC 1; Takhaji Hiraji v Thakur Kuber Singh Chaman Singh & others, (2001) 6 SCC 145 (3 JJ); Chhotanney & others v State of U.P. & others, AIR 2009 SC 2013; Valson and others v State of Kerala, (2009) 2 SCC (Crl.) 208; Bhaskar Ramappa Madar & others v State of Karnataka, 2009 Cr.L.J. 2422 (SC).
[19] Sharad Birdhichand Sarda v State of Maharashtra, (1984) 4 SCC 116 (3JJ) ; Padala Veera Reddy v State of A.P., 1989 Supp (2) SCC 706 (3JJ).
[20] Collector of Customs v D. Bhoormall, (1972)2 SCC 544.

appreciate the stand taken by the court, the meaning of the term "beyond reasonable doubt" needs to be looked into.

The standard of proof used by Courts to determine the guilt of the accused depends upon the principle of beyond reasonable doubt. The principle of proving beyond reasonable doubt has been relied upon in English justice delivery system along with U.S justice delivery systems. If the decision maker perceives that the probability the defendant committed the crime as charged (based on the evidence) is equal or greater than their interpretation of BRD, than he/she will decide to convict. Otherwise, the decision maker will acquit the defendant.[21] Proof beyond reasonable doubt does not mean proof to rigid mathematical demonstration, because that is impossible, it must mean such evidence as would induce a reasonable man to come to the conclusion.[22] The probative value of evidence was looked into by the Hon'ble Apex Court and they held that a reasonable doubt is that quality or kind of doubt which when you are dealing with matters of importance in your own affairs allow to influence you one way or another.[23] Furthermore, the degree of certainty to be arrived at before giving the status of proved to the fact is determined through Section 3 of the Evidence Act, 1872. What is required to prove a fact beyond reasonable doubt is to produce such material on which the court can reasonably act to reach the supposition that a fact exists.[24] The Apex Court has also highlighted the necessity of looking into the standard of proof by stating that it is necessary to occasionally remind one of this interpretation clause in the Evidence Act lest they act on artificial standard of proof not warranted by the provisions of the Act.[25] However in matters of doubt, it is safer to acquit than to condemn, since it is better that several guilty persons should escape than that one innocent person should suffer.[26]

The burden of proof shifted without reasonable doubt being discharged. The SC has held that cases cannot be disposed of by blindly following precedents and even the slightest change in facts could make a lot of difference.[27] The evidence of the maid, Bharti Mandal and of the

[21] Beyond Reasonable Doubt, available at http://www.crim.cam.ac.uk/research/beyond_reasonable_doubt/ (last accessed on September 9, 2016).
[22] Hawkins v. Powells Tillery Steam Coal Company Ltd., (1911) 1 KB 988; Bhano v. Babu Singh, 1998 CriLJ 766.
[23] Ram Bihari Yadav v. State of Bihar, AIR 1998 SC 1850.
[24] RATANLAL AND DHIRAJLAL, THE LAW OF EVIDENCE, 32 (21st ed, Wadhwa & Co., 2005).
[25] Murlilal v State of M.P., AIR 1980 SC 531, Yogendra Morarji v State of Gujarat, AIR 1980 SC 660.
[26] BEST, 12th ed, 439-451.
[27] Narmada Bachao Andolan v State of Madhya Pradesh, AIR 2011 SC 1989; Rajeshwar v State of Maharashtra, 2009 CriLJ 3816.

driver had been tutored as was argued by the defence but the court has failed to take the same into account. The courts have held that in cases of tutored testimony, the same should be discarded and not taken account.[28] It was argued that the testimony given by the driver and Bharti Mandal had been tutored and yet the same was taken into account by the court. The legal consequence is that such testimony should have been invalidated but the same was not done.

The large distance between 'may be true' and 'must be true', must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution before an accused is condemned as a convict and the basic golden rule must be applied. The Court assumed certain facts to "may be true" in order to support prosecution story wherein they relied upon conjectures like, "It is but natural that the door of Ms. Aarushi's bedroom must have been locked by the parents and key remained with them".[29]

In the present case, the Prosecution relied upon Section 106 to depict that it was incapable of proving facts as they were within the special knowledge of the accused. With this contention, the burden of proving a fact beyond reasonable doubt was not discharged by the Prosecution as the Court discharged them of this duty by holding that a presumption may be drawn from whatever facts have been adduced.[30] Therefore, the burden of proving the case beyond reasonable doubt was therefore eradicated by importing the provision of Section 114 of the Evidence Act. The Court stated that in order to reach a conclusion the Court can draw inferences from the facts produced. As per the provision, the Court has been empowered to assume existence of any fact it thinks likely to have happened.[31] Thereafter the Court has relied upon presumption which it can draw from proven facts[32]. It stated that unless the presumption is disproved or dispelled or rebutted the court can treat the presumption as tantamounting to proof.[33]

Section 114 was read together with Section 106 in order to shift the burden of proof from the Prosecution to the Defence. The Court reiterated - "*Section 106 would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special*

[28] Re v A Pleader, AIR 1942 Mad 701; Changam Dame v State of Gujarat, 1994 CrLJ 66 (SC).
[29] Page 69.
[30] Pg 80.
[31] Page 80 of judgment.
[32] Suresh Budharmal Kalani v State of Maharashtra, (1998(7) SCC 337).
[33] Page 81.

knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference."[34]

The Court in this instance went against its own earlier reiterated judgment which stated that the prosecution has to prove its own case beyond the reasonable doubts and cannot take support from the weakness of the case of defence and hence there must be proper and legal evidence to record the conviction of the accused.[35] Furthermore, an implication of convicting on the basis of mere suspicion and not clinching evidence was depicted in the following words - "*Grave violence to basic tenets of criminal jurisprudence would occur if in absence of any credible evidence, criminal courts are swayed by gravity of offence and proceed to hand out punishment on that basis*"[36] The implication under Section 106 has been held by the Hon'ble Apex Court to not exclude the burden on Prosecution to prove his case, as only after Prosecution had proved his case will the question of proving matter specially in the knowledge of the accused arise.[37] Thereafter the cases relied upon by the Court depicted that if under Sec 106 no evidence is adduced by the accused, he will have to face the consequences if prosecution establishes his guilt.[38]

The important point to be noted here is that in a criminal case even where the facts lie peculiarly within the knowledge of he accused the burden of proof lies on the prosecution though very slight evidence may be sufficient to discharge the burden.[39] Mere difficulty or inconvenience in discharging a burden of making proof does not displace it, and as a matter of principle, the difficulty only relieves a party having the burden of evidence from the necessity of creating positive conviction entirely by his own evidence, so that when he produces such evidence as it is in his power to produce, its probative effect is enhanced by the silence of his opponent. The prosecution must prove facts establishing a prima facie case against the accused. The existence of facts within special knowledge of the accused does not mean that the onus of proving his innocence is cast on the accused. It is not sufficient for the prosecution to establish facts which only give rise to a suspicion and then rely on S. 106 to throw onus on the accused to establish

[34] Tulsi Ram Sahadu Suryavanshi v State of Maharashtra, (2012) 10 SCC 373.
[35] Narendra Kumar v State (N.C.T. of Delhi), (2012) 7 SCC 171.
[36] Mohd. Faizan Ahmad v State of Bihar, (2013) 2 SCC 131.
[37] Vikram Jeet Singh v. State of Punjab, (2006) 12 SCC 306; Rishipal v. State of Uttarakhand, 2013 Cr.L.J. 1534.
[38] Radhey Lal and others v Emperor, AIR 1938 All. 252; Krishan Kumar v Union of India, (1960) 1 SCR 452
[39] Provincial Government, Central Provinces and Berar v. Champalal, (1946) Nag 504; Krishna Reddy v. State, (1992) 4 SCC 45.

his innocence.[40] The main condition for applicability of this section is that the fact should be 'especially' within the knowledge of the person. Thus section 106 does not shift the burden of proof to the accused, it just lays down that if the accused fails to prove knowledge specially within his knowledge, it could be considered as an additional link which completes the chain.[41] In this case however, facts specially within the knowledge of the accused could not be proved because of the fact that the air conditioning was loud and they were unable to hear anything over the sound of the AC (the same had been proven during investigation). Silence does not amount to guilt and the onus of proof did not shift to the defense.

CONCLUSION

"Si vis pacem, cole justitiam."[42]

The double murder of Aarushi Talwar and her family's domestic help Hemraj sent shockwaves throughout India. As with any high profile murder case, trial by media and public attention has been common. What is more regrettable than people taking the considerations of justice into their own hands, however, is the public pressure exerted on the investigating authorities to reach a conclusion. In fact, more often than not, the investigation and the course of the administration of justice can be seen shaping the perception of the investigating authority and the course of the investigation towards a particular goal.

In these researchers' opinions, the intrusion of the media into the private life of Aarushi Talwar, and the daily habits and routines of Hemraj were thoroughly unnecessary. News reports such as interviews with her friends and teachers were designed specifically to gain readership by capitalizing on an already trending news story, and further appealing to emotion. Such a biased portrayal of facts, especially irrelevant information such as Aarushi's social circle and hobbies, can only – regrettably – be a classic example of how the media attempt to garner readership, and how television channels try to gain TRP ratings.

[40] Emperor v. Santa Singh, 205 IC 161 (FB).
[41] State of Rajasthan v Kashi Ram,, AIR 2007 SC144.
[42] *"If you want peace, cultivate justice"*, is the motto of the International Labor Organization, and these researchers find it difficult to believe that a saying could be more suited to the Indian socio-legal system today than the aforesaid.

Through the course of this paper, we have examined the facts of the Aarushi-Hemraj double murder case. We have seen the gross violation of procedure, as well as the sheer incompetency with which the investigation into the same was conducted. It has also been seen that the prosecution has failed to prove its case beyond reasonable doubt and the Talwars have been convicted by the court, that both the CBI teams have had conflicting opinions and the teams had themselves suggested that the case be closed due to the lack of evidence. We see that the sessions court has erred in admitting the evidence and that the facts, though based on circumstantial evidence fail to establish the guilt of the Talwars beyond reasonable doubt.

Furthermore, the judgment delivered by the Sessions Judge has been widely criticized as it did not appreciate the evidences available from the defense side and heavily produced precedents which could be seen to support only the story of prosecution side. The points of law have been seen time and again to have been applied in two different way for two different situations, wherein once the law has been used to nullify the burden of proof placed on prosecution and in the other instance it has been interpreted in the manner to increase the burden of proof placed upon the defense. The facts which have been mentioned in the judgment also vary considerably from the ones which was made available through various CBI reports. There were also conflicting reports of the version of events given under narco-analysis by the servants in the Talwar household, due appreciation of which was not done by the Sessions Judge.

Which brings us to our concluding remarks, it is seen that the judgment had glaring loopholes and despite this, the accused have been declared guilty on the basis of incomplete facts. The court has failed to look into relevant facts and has failed to regard the evidence produced by the defence. Laws and facts have been misconstrued to support and protect the prosecution.

"Si vis pacem, cole justitiam." If you want peace, cultivate justice. In a society dominated largely by the actions and beliefs of radical activists, appallingly misinformed masses, and prejudices that are laughable at best and terrifying at worst, the Aarushi-Hemraj murder case continues to stand at the pinnacle of the mountain of shame that is the criminal investigative system.