

RELEVANCE OF CIRCUMSTANTIAL EVIDENCE IN A CRIMINAL TRIAL

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“Evidence is the one which demonstrates, make clear or ascertain the truth of the facts or points in issue either on one side or the other.”ⁱ

-Sir Blackstone

ABSTRACT

The word evidence has been derived from the Latin word “*evidens Evidera*” which means to show distinctly, to make clear, to discover clearly, to prove or to ascertain.

Under the Indian Evidence Act, Sec. 3 defines evidence. According to this definition, evidence means and includes:

“Oral evidence is defined as a statement of a witness made before a court in which the court permits or requires in relation to matters of fact under enquiry, All documents, including electronic records, produced for the inspection of the court, such documents are called documentary evidence.”

This is not an exact definition of term evidence but it is just a statement under which the term evidence includes any oral account of the happening of the event given by those who have personally witnessed the event like hearing and seeing the explosion, and it also includes a document in which the happening and seeing of the fact or event is recorded. According to this definition, there are only two types of evidence i.e. statement of witnesses and document but this does not mean that there is no other kind of evidence. The definition is definitely an

exhaustive one but it simply means that the evidences can ultimately be reduced to categories of Oral and Documentary evidence.

INTRODUCTION

Concept And Historical Background Of Evidenceⁱⁱ

Law is a word which can be used in a number of ways such as a rule, norm, regulation abide to human actions. There are two broad categorisation of *corpus juidis* or body of law-

1. Substantive laws
2. Adjective laws

The law of evidence is neither a considerable nor a procedural law, but it's adjective law. Adjective law is the policy of pleading through which substantive laws are applied in practice. Law of Evidence is about the proceedings before the court and to establish the claims before it. The Law of evidence concerns with rights and procedures.

In India the law of evidence is goes back to three periods:

1. Ancient Hindu period;
2. Ancient Muslim period;
3. The British period.

In Ancient Hindu period: the law of evidence which existed during this period originated from the Hindu dharma Shastras. The main purpose of Hindu dharma shastras was to discern the truth.

Three types of evidences which were accepted by *vasistas* are-

1. Lekhya (documentary evidence)
2. Sakshi (witnesses)
3. Bukhthi (possession)

Ancient Muslim Period:

The law of evidence in ancient muslim period was recounted by Sir Abdul Rahim in his book 'Muslim jurisprudence'. The evidence described in the Mohammeden law are broadly categorized as oral and documentary.

In the British Era the codification of the rules of law of evidence was a prerequisite .In 1835 the first venture was made by the Britishers to codify the rules of evidence by passing the Act, 1835. Between time period of 1835 and 1853 around eleven enactments were passed pertaining with the law of evidence and these enactments were found insufficient. In 1868 a commission was presided by *Sir Henry Mayne* when he proposed the draft which was written off as unsuitable to India. *James Fitz James Stephen* took the codification in the year 1870 where he proposed his draft referred to the select committee and at the same time to High Courts and members of Bar to extract the opinion, and once the opinion was gathered, the draft was placed in front of the legislature and it was enacted as "The Evidence Act" which came in to action *1st September*, 1872.

DIFFERENT KINDS OF EVIDENCEⁱⁱⁱ

1. **Oral Evidence:** Section 60 of Indirect Evidence Act prescribes the proper recording of the oral evidence .An oral evidence is any statement which the court permits or expects the witness to make in his presence regarding the truth of the facts. Oral evidence in simple words is any evidence that the witness personally sees or hears. The oral evidence is required to be direct or positive i.e. it should establish main facts and issues.
2. **Documentary Evidence:** Section 3 of Indirect Evidence Act 1872 defines Oral evidence which is presented in the court for inspection.
3. **Primary evidence:** Section 62 of Indirect Evidence Act clearly says that it is the topmost class of evidences. It is a kind of evidence that is itself produced for the evidence in a court.
4. **Secondary evidence:** Section 63 Indian Evidence Act talks about Secondary evidence. It has a secondary position. Even after producing this type of evidence, the need for primary evidence arises. It is an inferior type of evidence. If secondary evidence is produced in the court in place of primary evidence, then the parties are precluded from raising questions

5. **Real evidence:** It is also known as material evidence. It is brought to the court by inspection of physical object. E.g. - conduct of witness, contempt of court. It is afforded by human agents by disclosing or signing voluntarily.

6. **Hearsay evidence:** It is very weak evidence. It is merely a reported version of an incident which the witness has not himself seen, heard or experienced.

7. **Direct evidence-** It is very important for deciding a matter in issue. It is basically a fact produced or presented by witness or a thing which is direct and main facts are established by persons who have actually seen the crime and also describe the crime.

8. **Circumstantial evidence-** This is a type of evidence which relies on inference to connect it to conclusion of a fact like a fingerprint in the scene of crime. It is also known as indirect evidence. A series of facts by reason and experience need to be closely associated with the fact to be proved.

CIRCUMSTANTIAL EVIDENCE

Circumstantial evidence is used in criminal courts for conviction and acquittal of the accused with the help of reasoning. Actually, more or less, circumstantial evidence is a logical principle of deduction. As Bentham quoted “witnesses are the eyes and ears of the justice “, we all know the importance of witnesses in any legal case. On the other hand, witness may be malicious or fake or non accountable. ^{iv}

In very few cases direct evidence of facts is available. ^v

The idea of circumstantial evidence is dealt with in the act in detail. Circumstantial evidence means the evidence of circumstances and is sometimes referred to as presumptive evidence. Suppose A is charged with the murder of B and the trial of witness C on behalf of the prosecution gives evidence that he saw that A stabbed B or makes a statement that he saw A running away from place where B’s corpse was found with the blood stained knife in his hand. In the first case the evidence given by C is usually referred to as direct evidence and in the second as circumstantial evidence. Because in the first case C makes a statement about the very question which the court has to decide namely, whether A stabbed B, and in the second case,

C makes a statement about that circumstance a relevant fact which if believed may convince to guilt of A. therefore we might say that when evidence is given of the very fact in issue that is of the matter in controversy, it is called direct evidence, and when evidence is given of circumstances or relevant fact from which an inference may be drawn about the fact in issue, then it is called circumstantial evidence. Circumstantial evidence is a series of facts. It is a chain of evidences. The correct inference can be drawn from all these series of facts. Persons may tell lie, but the facts of circumstances will not.^{vi}

In cases like road accidents or fully planned and plotted crimes the criminals take measures to remove all direct evidences. In such cases the entire crime scene is reconstructed in the court with the help of surrounding circumstances. It also needs to be proved beyond reasonable doubt. This is where circumstantial evidence comes into play.

For example - In a remote village a truck driver comes occasionally for night rests. The night when he arrived in the village, a man was found dead on the side of the road. The position of his body and the abrasion marks of truck tyre on his body strongly suggested that he was dragged by the vehicle for some distance and ran over by a wheel. These facts proved beyond doubt that it was the work of that truck driver and he could be booked for death due to negligence.

On hearing a gunshot, a neighbor comes running to find the husband standing over the corpse of the wife with the smoking pistol in his hand. The evidence is circumstantial that the husband shot his wife.^{vii}

A witness deposes that he saw A inflict on B a wound, of which he instantly died; this is the case of direct evidence.

In practice, circumstantial evidence can have an advantage over direct evidence in that it can come from multiple sources that check and reinforce each other. Eyewitness testimony can be inaccurate at times, and many persons have been convicted on the basis of perjured or otherwise mistaken testimony. Thus, strong circumstantial evidence can provide a more reliable basis for a verdict. Circumstantial evidence normally requires a witness, such as the police officer who found the evidence, or an expert who examined it, to lay the foundation for

its admission. This witness, sometimes known as the sponsor or the authenticating witness, is giving direct (eye-witness) testimony, and could present credibility problems in the same way that any eye witness does.

However, there is sometimes more than one logical conclusion inferable from the same set of circumstances. In cases where one conclusion implies a defendant's guilt and another conclusion implies his innocence, the "benefit of the doubt" principle would apply. Indeed, if the circumstantial evidence suggests a possibility of innocence, the prosecution has the burden of disproving that possibility.

Circumstantial Evidence Distinguished From Presumptive Evidence

The term presumptive is frequently used as synonymous with circumstantial evidence but it is not so used with strict accuracy. The word "presumption", *ex vi termini* imports an Inference from facts ("a belief deducted from facts or experience" is one of the meanings given in Murray's Dictionary) and the adjective "presumptive", "giving reasonable grounds of presumption or belief or warranty inference" Murray, as applied to evidentiary facts, implies if not the certainty at least the great probability of some relation between the facts and the inference.^{viii}

Proof Of Circumstantial Evidence

The leading case law under this type of evidence is *State of U.P. v. Ravindra Prakash Mittal*^{ix}-

The accused was a medical practitioner and the deceased was the second wife of the accused. The accused was an alcohol addict as well. He used to come home late in a drunken state which was not approved by his wife. The accused thought that she was interfering in his private affairs and thus threatened her often to shoot or kill her. Then one day a large amount of smoke was visible which was coming out of his house. A large number of people gathered there. The next day the brother of the deceased came to the house for bayna when he saw the dead body of his sister. The body was burnt extensively. The accused told him that she had committed suicide

by burning herself. He then informed the SP. Investigations took place where it was observed that the accused had murdered her.^x

It was held by the court that there is no direct evidence in this case and the case rests only on circumstantial evidence. In this case, it was the accused that had access to the room of the deceased. There were certain injuries observed on her body which clearly reflected that she was first strangled and then burnt alive.

“The essential elements to prove the guilt of the accused person from circumstantial evidence are-

1. The circumstances from which the conclusion is drawn should be fully established.
2. The circumstances are required to be conclusive in nature.
3. All the facts which are established should be consistent with the hypothesis of guilt and inconsistent with innocence of accused.
4. The circumstances should exclude the guilt of any other person other than the accused.”

He was thus convicted under section 302 and 201 of I.P.C, 1860.

Circumstantial Evidence As Sole Basis Of Conviction^{xi}

There is a generalized misconception that since circumstantial evidence is indirect evidence and hence is less valid or less important than direct evidence in the court. On the contrary many successful prosecutions have heavily relied on the circumstantial evidence to build up a case. An advantage of this kind of evidence is that it is difficult to fabricate them; the judiciary has played a pivotal role in convicting the accused solely on the basis of circumstantial evidence.

It was held in *Ramwati v. State of Bihar*^{xii} that the evidentiary value must depend on the facts and circumstances of a particular case. In some cases, a person can be convicted solely on the basis of dying declaration in the light of facts and circumstances of case.

In *V.C. Shukla v. State (Delhi Admn.)*^{xiii} it was observed that that in most of the cases it is difficult to obtain direct evidence but a conspiracy can be inferred even from circumstances.

In the very famous case of *Priyadarshani Matoo*^{xiv}, circumstantial evidence had a very important role to play in the conviction of the accused for rape and murder of the lady. Initially when the case was being tried in the Additional Session Judge court, the accused was acquitted

on the basis of lack of direct evidence presented by the investigation authorities. However, the judgment was overruled by Delhi High Court based on the critical analysis of the circumstances proved beyond reasonable doubt and the evidence was unquestionable that Singh was responsible for rape and murder of the victim.

Circumstantial Evidence- Insufficient To Prove Guilt

1. “Based solely on the circumstance of the accused to be seen with the buffalo of the deceased could not be enough proof to convict him for murder of the victim”; *Joga Gola v. State of Gujarat*.^{xv}
2. “In a case where there is no evidence to prove exactly the circumstances in which the victim sustained injuries, the accused cannot be convicted”; *Kuleshwar v. State of U.P.*^{xvi}
3. Based on the fact that the accused and deceased were present together in the field before the occurrence cannot lead to the inference that the accused was responsible for murdering the deceased”; *Lakhanpal v. State of M.P.*^{xvii}.
4. “In the same way circumstances where the accused fails to give reliable explanation about the injuries on him and the fact that he was present at the site of crime are not sufficient enough to lead to conviction of the accused in a serious felony which can lead to death penalty;” *Jagta v. State of Haryana*^{xviii}
5. “The hearsay evidences which are not protected by law became the grounds of the examination of the accused which has resulted in delivering justice. The learned Court before should have taken into consideration the circumstantial evidence” ; *Jahed alias Jiadsha v State*.^{xix}

Exclusion Of Circumstantial Evidence By Direct Evidence^{xx}

As regards admissibility, direct and circumstantial evidence stand, generally on the same footing, and testimony, whether to the *factum probandum* or *facts probantia* is equally as original and direct. It has been said that evidence of circumstantial nature can never be justifiably resorted to, except where evidence of a direct and, therefore, of a superior nature is unattainable^{xxi}. But in the present day it is not true that the evidence must, or even may, always be given, though its non-production may be a matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally accepted. Thus, circumstantial

evidence is no longer excluded by direct, and even in criminal cases, the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of court.^{xxii}

In a far flung place, where much of experience and efficiency is not expected, the lacuna of not getting the knife and clothes recovered from the accused, examined by the chemical examiner, is of no consequence in view of the overwhelming direct and circumstantial evidence (case of murder).^{xxiii}

Circumstantial Evidence, When To Be Availed Of

Every evident circumstance is a probative link, strong or weak, and must be made out with certainty. Link after link forged firmly by credible testimony may form a strong chain of sure guilt binding the accused. Each link taken separately may just suggest but when hooked on to the next and on again may manacle the accused inescapably. Only then can a concatenation of incriminating facts suffice to convict a man. Short of that is insufficient.^{xxiv}

Circumstantial Evidence In Murder Case

The Supreme Court has ruled out recently in many murder cases that where there is lack of direct evidence, circumstantial evidence has an important role to play. In a murder case the trial court can convict an accused provided that the chain of events was complete. Also the motive behind the crime should be fully established before leading to conviction.

In *Har Dayal v. State of U.P.*^{xxv}, where there was a murder of a child, the SC sustained the conviction and the death sentence on the basis of circumstantial evidence only. There was no eye witness to the fact of the murder, but the chain of circumstances was complete and excluded any possible hypothesis that he was innocent.

When there is a circumstantial evidence in a murder case, in which a complete chain is not formed pointing at guilt of accused then accused cannot be convicted.^{xxvi} Where the accused was injured but there was non-explanation of injuries by prosecution it was Held that such non explanation had assumed significance where there was other material circumstance which had made prosecution case doubtful.^{xxvii}

Circumstantial Evidence In Adultery Case

In adultery cases direct evidence cannot be expected in most cases. The circumstantial evidence is the only source.^{xxviii} “If an unrelated person is found alone with a young lady after midnight in her bedroom in an actual juxtaposition, unless there is some explanation forthcoming for this, which is compatible with some innocent interpretation, the only interpretation that a court can draw must be that that the two were committing adultery together.”^{xxix}

CIRCUMSTANTIAL V. DIRECT EVIDENCE^{xxx}

Direct Evidence

1. Direct evidence is evidence that supports the truth of an assertion directly.
2. Under direct evidence the commission of the offence is established directly.
3. Direct evidence is also known as positive evidence.
4. Example: When A murdered B, C and D saw the incidence of murder and deposed before the court about the murder. The evidence given by A and B is direct evidence.
5. Direct evidence is considered to be superior to the circumstantial evidence.
6. Direct evidence is basically what the witness saw the incident with their own eyes, or heard with their own ears, and perceived with their own senses.
7. With the help of direct evidence, the court can easily and safely come to a conclusion regarding a case.
8. Direct evidence is considered to be safer if compared to circumstantial evidence.
9. There are two chances of mistakes in direct evidence:
 - Inaccuracy or omission by the witnesses;
 - Dishonesty on the part of witnesses.

In direct evidence, the witness deposes the evidence only after taking oath but still there are chances of them misleading the court.

Circumstantial Evidence

1. Circumstantial evidence is the one which relates to a series of other facts in issue, which have been found to be very closely associated with that fact in relation to the cause and effect that ultimately leading to some conclusion.

2. The circumstantial evidence places the circumstances in such a manner, which ultimately lead to irresistible inference of guilty.
3. Circumstantial evidence is also known as presumptive evidence.
4. Example: B was murdered at 5-pm in his own house. C perceived A coming from the house of B at 5-15pm with blood shredded knife in his hand. D, on the other hand gave the evidence that A and B had a quarrel on the day before the occurrence of murder. E, police officer seized the blood shredded knife from the almirah in the house of A. F-expert deposed that the blood of the deceased and blood shredded knife of A was the same. This type of chain of evidences is referred to as “circumstantial evidence”.
5. Circumstantial evidence is considered to be inferior than the direct evidence.
6. Under the Indian Evidence Act, 1872 the “circumstantial evidence” is included under the expression “relevant facts” and it clearly lays down that all “relevant facts” require to be proved by some evidence oral or documentary, that is to say, by direct evidence.
7. Circumstantial evidence if to be relied upon, is required to not only point to the inference to be drawn by the court, but also it must be of such a nature that it cannot possibly lead to any other inference.
8. Circumstantial evidence acts as a substitute, in the absence of the direct evidence.
9. There are three chances of mistakes in circumstantial evidence:
 - a. -Fault of the witnesses;
 - b. -Deceit on the part of witnesses;
 - c. -The inference from which fact is proved might be erroneous.

MUNISH MUBAR V. STATE OF HARYANA 10 SCC 464^{xxxii}

Facts

On 27.12.2002, Krishan Pal, who was residing in Village Bhonsdi (Gurgaon) found a dead body lying in a vacant plot. He discovered many injuries on the corpse and then he immediately informed Inspector Shamsheer Singh and other policemen. The dead body was then photographed by the inspector and also recovered blood stained vest, boarding pass from Jet Airways, a button, blood stained hammer and knife. FIR was registered.

The corpse was eventually identified to be that of Mr Ashok Jain son of Shri Mehar Chand Jain, resident of Mehardeep, 1/9, Sarojni Road, Santa Cruz, Mumbai.

During the investigation, the investigating officer got hold of records of one Santro car no. UP-32-AG-9991 from the parking lot of New Delhi Airport. He also got records of Hotel Suji International, Paharganj, Delhi. Shivani Chopra was taken in custody by the investigating officer on 10.1.2003 and he also recovered from her one cell phone. After this, the appellant Munish Mabar was arrested on the same day.

Then Dr. Renu Saroha conducted the post mortem. The injuries were identified as ante mortem in nature i.e. they were inflicted prior to death. The Doctor stated the cause of death to be hemorrhage (blood loss) and shock which were a result of severing of major blood vessels, as a result of injuries, which eventually led to death. The duration of time taken to deliver these injuries was approximately 24 hours. Dr. Renu Saroha also mentioned during cross examination, that the injuries found on the victim could have been inflicted by a sharp edged weapon and most likely a result of stabbing. The likelihood of use of two separate weapons could not be ruled out completely, nonetheless, the said injuries could also have been caused by a single weapon. Hence, it was clear from the aforesaid evidence that, the deceased was a victim of homicidal death.

Prayer By The Petitioners

It was submitted by Mrs Kawaljit Kochar, who was pleading on behalf of the appellant that-

- The court has committed a mistake by convicting the accused as there was no evidence against them.
- The motive to commit the crime if of utmost importance in a case of circumstantial evidence, which was clearly missing and could not be established.
- The requirements or essential ingredients for application of circumstantial evidence were not applied by the court.
- All the recoveries upon which the court relied, which were allegedly made by the appellant, were planted and the appellant was being falsely charged in the matter.

- Appellant was being framed in the matter just because the appellant had an intimate relationship with the co accused, Shivani Chopra (employee of the deceased) and she had developed intimate relationship with Ashok Jain.
- No independent witnesses were examined regarding the recoveries. The only witnesses of the recoveries were police personnel.
- The judgment of conviction was liable to be set aside.

Contentions By The Respondent

On the contrary, the learned counsel (Shri Kamal Mohan Gupta) who was appearing for the State opposed the appeal made by the appellant. His contentions were as follows

- There was no justification for the court to interfere with the findings of facts which were recorded by the courts earlier.
- There was no doubt relating to the fact that the case was solely based on circumstantial evidence, but at the same time the chain of events was complete, every link thereof, which is pointing towards he guilt of the appellant.
- No explanation was given by the appellant in context to incriminating circumstances put to him, while his statement was recorded under Section 313, Cr.P.C.
- The present appeal, thus, lacked merit and was liable to be dismissed.

Examination Of Witnesses

Chander Shekhar Jain, testified that he had failed to identify the dead body because the face had been disfigured. The very next day, he re-visited the mortuary with Mahender Jain, brother of the deceased. Then they meticulously examined the dead body and finally identified the body to be that of Ashok Jain.

Anil Garg uttered that Ashok Jain was a resident of the United States of America and would visit India occasionally. Shivani Chopra who was the co accused in the case was an employee of Ashok Jain. He further stated that the deceased had informed him in December, 2002, that he would be reaching Delhi on 26.12.2002 and that he would direct him, at a later date if or not

he would be required to come to pick him up from the Airport. He further gave the phone numbers (landline and mobile) of Shivani Chopra both, in Delhi and in Mumbai

Bijender Kumar, who was in-Charge of the car parking at the Delhi Airport testified that on 26.12.2002, Car No.UP-32-AG 9991 was parked at the Airport parking between 5.26 p.m. and 8.34 p.m.

Shambhu Chaudhary who worked as the Receptionist of Hotel Suji International, Paharganj, Delhi testified that the appellant Munish Mabar and the co accused Shivani Chopra had stayed at their Hotel between 18- 19.11.2002 later on, between 7-8.12.2002 and yet again, on 26.12.2002, last time along with one Shri Sudhir Srivastava. This witness also lended proof of the stay, by showing the guest-log registers and also further identified both the said accused in Court.

Naresh Kapoor the owner of Ashoka Continental Hotel, Paharganj, asserted that the appellant and co-accused, Shivani Chopra had stayed at his hotel on 24.12.2002 by providing fake identities, representing themselves as Munish Mathur and Shivani Mathur respectively. Their stay was proved by providing the guest-log Register.

Narain Singh, Assistant sub inspector recovered numerous articles, including toiletries, blood stained garments of the appellant, one gold chain and one gold kara on 11.1.2003 and 14.1.2003 based on the disclosure statement made by the appellant. The appellant and the co-accused Shivani Chopra, also identified the exact place where the dead body of Ashok Jain was lying.

Surender Mohan Jain, who identified himself as the brother-in-law of the deceased deposed that the deceased was a Non Resident Indian and would visit India around 2-3 times in a year. He was informed that the co-accused, Shivani Chopra, an empoloyee of Ashok Jain would receive him at the Airport on the 26.12.2002 on his arrival on to India. Ms. Urvashi, niece of Ashok Jain, deceased, deposed that her father had talked to Shivani on her mobile phone ,before his death. He further added that Shivani Chopra informed him that she went to the Delhi Airport to receive the deceased but he didn't turn up. He also deposed that, Shivani Chopra had developed illicit relations with the deceased.

Capt. Rakesh Bakshi, provided the records of mobile phone numbers of the accused persons. Other witnesses further deposed in support of the case of the prosecution and proved all material particulars.

Judgment

Both the courts appreciated the provided evidence and material on record and ultimately convicted the appellant and co-accused relying on the following circumstances-

1. The intimate relations between Shivani Chopra and the appellant, Munish Mubar as well as between her and the deceased, Ashok Jain.
2. Shivani Chopra was well acquainted with the fact that the deceased was coming to Delhi on the evening of 26.12.2002 and she had to pick him up, upon his arrival, from the Delhi Airport.
3. Shivani Chopra misinformed Surender Mohan Jain, that Ashok Jain never reached Delhi at all, and thus, she failed to receive him at the Airport on the said date. On his previous visits to India, Anil Garg would receive him at the Airport.
4. Car No. UP-32-AG-9991 which was owned by the appellant was found parked, on the evening of 26.12.2002, at exactly 17:26:21 hours in the parking lot of the Domestic Airport, Delhi and was driven away on the very same day, at 20:34:50 hours and within the time span of 3 hours of such taking away of the said car, the murder, is known to have taken place. The said car was later on recovered from the possession of the appellant himself.
5. The calls which were made from mobile No.9818082195 at 21:26:41 hours on 26.12.2002, were traced back to be routed through cell No.6572 which pertained to the Badshahpur, Gurgaon Tower, which was located in the proximity of the village Bhondsi, the place from where the dead body of Ashok Jain was recovered.
6. The guest log records of hotel Suji International located in Paharganj, Delhi were proof enough that both the accused, and one Sudhir Srivastava (since the date of incident, who was a proclaimed absconder), stayed in the same hotel on numerous occasions, including the evening when the crime took place, as of 26.12.2002 between the time span of 3.40 p.m. and 11.55 p.m. The appellant Munish Mubar, and Sudhir Srivastava also stayed in hotel Ashoka Continental, Paharganj, Delhi on 24.12.2002. The appellant had stayed in the same hotel along with the co-accused Sudhir Srivastava on

25.12.2002, while identifying themselves as Munish Mathur, Shivani Mathur and Sunil Srivastava, respectively.

7. There was adequate motive to rob Ashok Jain of all his valuables and to get rid of him, as he was proving to be a hurdle in the love affair between the appellant Monish Mabar and Shivani Chopra.
8. There was evidence that a telephonic communication took place between the accused Shivani Chopra and the deceased on the day of occurrence of the crime and also apart from other prior communications.
9. Police had recovered jewellery, cosmetic articles, a gold chain, a gold kara etc. from the appellant, on the basis of his disclosure statement.
10. Police also recovered a torn vest, a blood stained hammer, one blood stained knife and a blood stained pair of trousers, on the basis of the disclosure statement made by the appellant on 13.1.2003.
11. The act of absconding by the accused and the co-accused and eventually the arrest of the accused on 10.1.2003.

Critical Analysis Of The Case

After the detailed study of the case, it can be safely concluded that the appellant was guilty of the offence. In order to draw an inference of the guilt of the accused it is quite essential to form a link of events which rule out any possible hypothesis of innocence of the accused. Hence, to begin with, the alleged illicit relationship of the co-accused with the deceased, it was proven beyond doubt with the help of evidences and the eye witnesses.

Second area of focus was the Santro car belonging to the accused. The car was found parked in the parking lot of the Delhi Airport for duration of around 3 hours and the time when the car left coincided with the arrival of the flight by Ashok Jain who was travelling.

Thirdly, the presence of the accused at Bhonsdi village, the place from where the body of the deceased was recovered, was traced with the help of telephone call records.

Fourthly, the appellant and the co-accused, while being examined under Sec. 313 of Cr.P.C. failed to provide any sound reasoning or explanation in context of the crime. Both the appellant and co-accused made a bald statement that they were being falsely framed in the crime and that all the documents and call records were fabricated. However, none of their explanations fit into

the situation because they failed to explain the car parking for 3 hours or the call records that were traced. It is mandatory on the part of the accused while being probed under Section 313 Cr.P.C., to provide some explanation in context to the implicating circumstances associated with him, and the Court must take into notice such explanation even in a case of circumstantial evidence in to conclude whether or not the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that incriminate him in relation to committing of the crime, and he fails to offer a decent explanation, or gives an incorrect answer with respect to the same, the said act may be incorporated as providing a missing link for completing the chain of circumstances.

In case of a criminal trial, the motive of examining the accused person under [Section 313](#) Cr.P.C., is to fulfill the requirement of the concept of natural justice i.e. audi alterum partem. In other words that the accused may be asked to provide some explanation in context of the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is required to connect the dots and reach a conclusion. Irrelevant of the fact that how weak the evidence of the prosecution may be, it is the supreme responsibility of the court to examine the accused, and to seek his explanation in regards to the incriminating material that has come up against him. The circumstances which do not link to the accused in his examination under [Section 313](#) Cr.P.C., cannot be used against him in court and have to be ruled out from consideration.

When a case relies heavily on Circumstantial evidence, motive assumes great importance because in absence of any motive the court will be unable to punish the offender.

In light of this case, the motive was crystal clear i.e. the co accused Shivani Chopra had an illicit relationship with Ashok Jain and it was proving to be a hurdle between the appellant and co accused. Nonetheless, they had robbed Ashok Jain of all his jewellery and valuables which were later recovered from the appellant.

Lastly, the court also took into consideration the fact that they were absconding.

Thus, they were rightly convicted under the following sections of IPC-

Sec. 302 - Punishment for the murder of Mr. Ashok Jain.

Sec. 34 – “Acts done by several persons in furtherance of common intention. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

In this case Shivani Chopra and Munish Mubar had a malicious intention to murder the deceased and all the acts were premeditated.

Sec. 334 – “Voluntary causing hurt or provocation on grave and sudden provocation.”

Presence of numerous anti mortem injury marks on the body of the deceased which were inflicted by a sharp weapon were proof enough of the heinous act.

Sec. 201 – “Causing disappearance of evidence of offence, or giving false information to screen offender.” Here, both the accused gave false information in relation to the deceased and tried to mislead the investigating team.

Sec. 120B – Punishment for criminal conspiracy. Both Munish Mabar and Shivani Chopra preplanned the crime. Both of them were held equally liable for the conspiracy.

Sec. 404 - Dishonest misappropriation of property possessed by deceased person at the time of his death. In this case, the appellant and accused robbed the deceased of all his valuables such as jewellery, cash and cosmetic items.

Another issue which cropped up in the midst of the proceedings was that there was no independent witness in the case and only the police personnel were the ones who were relied upon for the various evidences. The Court clearly stated that in spite of the fact that in this case there was no independent witness of recoveries and panch witnesses are only police personnel, it shall not affect the merits of the case.

If we analyse the whole case, then we can deduce that there were hardly any direct evidences which could link the accused to the crime. The whole case revolved around circumstantial evidences. Investigating officials had to connect the dots in order to prove that Munish Mubar and Shivani Chopra were guilty beyond reasonable doubt. If there would have been one missing link in the chain of events, then the prosecution would have failed to punish the accused. Right from the stay in the Paharganj hotel with fake identities to the parking of the car in the airport parking lot at the time of landing of flight, call records, blood stains on various articles, each

and every circumstance pointed out the role of accused in the crime. There was not an iota of doubt or loophole by which innocence of the appellant and co accused would have been proved. Thereby circumstantial evidence played a pivotal role in this case to put the accused behind bars.

OTHER CASES BASED HEAVILY ON CIRCUMSTANTIAL EVIDENCE

In the very famous case of *Priyadarshani Madoo (Santosh Kumar Singh v State through CBI^{xxxii})* circumstantial evidence had a very important role to play in the conviction of the accused for rape and murder of the lady. Initially when the case was being tried in the Additional Session Judge court, the accused was acquitted on the basis of lack of direct evidence presented by the investigation authorities. However, the judgment was overruled by Delhi High Court based on the critical analysis of the circumstances proved beyond reasonable doubt and the evidence was unquestionable that Singh was responsible for rape and murder of the victim.

In the *Nitish Katara case^{xxxiii}, (Vikas Yadav v. State of U.P)* the deceased Nitish Katara and Bharti yadav (sister of the accused Vikas and Vishal Yadav) studied together in IMT, Ghaziabad and were having alleged relationship. However, this relationship was not up to the liking of the brothers. On February 16, 2002, at a common friend's wedding in Shastri Nagar the accused brothers came and took Nitish outside for a conversation. After 3 days, burnt body of Nitish Katara was found on Khurja road. Initially the Additional Session Judges acquitted the accused based on the lack of eye witnesses to the alleged murder of Nitish Katara. However, Delhi High Court convicted both Vishal and Vikas Yadav primarily based on circumstantial evidence. They were sentenced to rigorous life imprisonment and fine upto rupees 1,60,000 each.

In *Aarushi murder case^{xxxiv} (Dr. Mrs Nupur Talwar v. CBI, Delhi and Anr)*. There was no direct evidence against the dentist couple in the [Aarushi-Hemraj double murder case](#), but [CBI](#) said in September, 2009 that all circumstantial evidences were against them which clearly indicate that only Talwar couple could have killed the duo.

As per CBI' theory, the circumstantial evidence were --no outside entry, last scene theory, dressing of crime scene, destruction of evidence, tampering with Aarushi' body and covering of Hemraj' body with cooler panel on the terrace --are against the dentist couple. CBI officials said though there were all circumstantial evidences against Talwars, their suspicious behaviour, which has been from the beginning of this case; forced CBI' to frame the couple.

In *State of U.P. v. Ashok Kumar Srivastava*^{xxxv}, it was pointed out that "great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt".^{xxxvi}

This Court in the case of *State of U.P. v. Ram Balak & Anr.*^{xxxvii}, had dealt with the whole law relating to circumstantial evidence in the following terms: - "1. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances."

In *Bhagat Ram v. State of Punjab*^{xxxviii} it was laid down that "where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt"^{xxxix}

The principles^{xl} which govern the appreciation of circumstantial evidence in cases based on circumstantial evidence, the Supreme Court in the case of *Pohalya v. State of Maharashtra*^{xli} held as follows-

"it is a common ground that there is no direct evidence intimating the appellant. Prosecution case rests on circumstantial evidence. As the case depends on

circumstantial evidence, at the outset the well established principals governing the appreciation of evidence in a case dependent upon circumstantial evidence may be born in mind. Briefly the principals are that each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence, that the circumstance relied upon must be such as cannot be explained or any hypothesis except the guilt of the accused, in other words the circumstances must be of an incriminating character. All the proof circumstance must provide a complete chain, no link in which must be missing and they must unequivocally point to guilt of the accused and exclude any hypothesis consistent with his innocence.”

This position has been further explained by Supreme Court in *Kishor Chand v. State of Himachal Pradesh*, wherein it was observed:^{xlii}

“In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. When there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established. If any of the circumstances proved in a case are consistent with the innocence of the accused or the chain of continuity is broken, the accused is entitled to benefit of doubt.”

CONCLUSION

The most essential part of our judicial system is that it is based on the presumption that the accused is innocent unless proven guilty beyond doubt. Also it is better that ten guilty are held free than one innocent being falsely implicated in a case. Thus the burden of proof in a criminal case is very high.

Circumstantial evidence is basically the evidence which is furnished not by direct testimony of an eye witness to the fact to be proved, but by relying on the fact or other auxiliary facts which can be relied upon as incompatible with any result other than truth of principal fact. Circumstantial evidence can be fully apprehended if it is compared in context of direct evidence. It is a type of evidence which is simply direct evidence applied indirectly.

The whole discussion brings us back to the most fundamental question i.e. whether the circumstantial evidence can be used as sole basis of conviction or not. The fact cannot be denied that circumstantial evidence plays a pivotal role in a criminal case. It has helped the courts in administration of justice in so many landmark cases which heavily relied on circumstantial evidence.

Generally speaking, when a crime is planned and committed, the offenders try not leaving behind any direct evidences behind. They plan their acts in such a manner that no evidence can be construed against them. Thus, it becomes quite essential to be able to link up all the events in such a manner so as to complete the chain of events.

Despite the fact that circumstantial evidence is indirect it holds great importance because it brings under notice inconsistencies between the behavior of suspect and his claims. It provides the missing piece of a jigsaw puzzle. Circumstantial evidence can be presumptive, but on the other hand its pattern and quantity can be considered sufficient to convict the guilty.

It will be wrong to say that circumstantial evidence is of lesser utility as compared to the direct evidence. There is no doubt that direct evidence is more powerful, but at the same time, successful criminal prosecutions rely largely on circumstantial evidences only.

It is considered as a better piece of evidence because of the fact that it is difficult to suppress it or manipulate it or fabricate it in any manner which can easily be done in case of direct evidence. One other advantage of this kind of evidence is that it comes from multiple sources which tend to check and reinforce each other which is not possible in case of direct evidence.

The principles for basing a conviction solely on the basis of circumstantial evidence have been indicated in man decisions of the Supreme Court. The law is well settled that each and every incriminating circumstance is required to be clearly established with supporting evidences and also the chain of events should be complete in such a manner that the only conclusion which could be drawn is guilt of the accused and no other hypothesis against the guilt is possible. The Supreme court also didn't hesitate in giving death sentence to the murderer only because the case relied on circumstantial evidence. The general rule is that it is admissible in a court of law but they are required to be cautious when a case solely relies on circumstantial evidence. All the facts should be closely examined and it must be looked at cumulatively.

After analyzing the entire case of Munish Mabar and Shivani Chopra, it can be deduced that there have been hardly any direct evidences which could hyperlink the accused to the crime. The entire case revolved round circumstantial evidences. Investigating officials needed to join the dots with the intention to show that Munish Mubar and Shivani Chopra had been guilty beyond reasonable doubt. If there would had been one lacking link in the chain of movements, then the prosecution would have been able to punish the accused. Right from the stay in the Paharganj resort with false identities to the parking of the auto within the airport parking space on the time of touchdown of flight, name records, blood stains on various articles, each circumstance brought up the role of accused in the crime. There was once no longer an iota of doubt or loophole wherein innocence of the appellant and co accused would had been proved. The court also took in consideration the fact that they failed to provide any explanation under section 313 of Cr.p.c. which excluded the possibility of the innocence of accused. Thereby circumstantial proof played a pivotal role in this case to place the accused behind bars.

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