

APPRECIATION OF EVIDENCE UNDER SECTION 3 AND 8
OF EVIDENCE ACT

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

Under section 3 of Evidence Act first the terms *Fact*, *Relevant Fact* and *Fact in issue* are defined in respect of *evidence* and later when it can be said to be *proved*, *disproved* and *not proved* is discussed. Thus, while appreciating evidence in respect of any fact, relevant fact and fact in issue the Court has to give its anxious consideration towards the peculiar facts of the case. There may be several facts in a case before Court and among it some may be relevant or some may be fact in issue. The Court has to first ascertain the facts, then it has to find out whether they are relevant and then whether they are actually in issue. After ascertaining this, the Court shall examine the fact and later by applying rules of evidence Court has to see that whether those facts are proved, disprove or not proved.

In appreciation of evidence under section 3 of Indian Evidence Act, the Hon'ble Supreme Court has illustrated some instances in *Ganesh K. Gulve ...Vs... State of Maharashtra AIR 2002 SC 3068* in following words;

“In order to appreciate the evidence, the Court is required to bear in mind the set-up and environment in which the crime is committed. The level of understanding of the

witnesses. The over jealousy of some of near relations to ensure that, everyone even remotely connected with the crime be also convicted. Everyone's different way of narration of same facts. Etc."

It is one of the established principles of law that a witness may lie but not the circumstances. The guilt of person can be proved by circumstantial evidence also. However, the Court must adopt a cautious approach while basing its conviction purely on circumstantial evidence. The circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so for complete has not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and further it must be such as to show that within all human probability the act must have been done by the accused.

Abscondance of the accused is not a circumstance which can be taken as a conclusive proof of guilt. False pleas raised by the accused can be taken as a circumstance against the accused. False and inconsistent defences taken by the accused charged of murder were held to be additional circumstances against him strengthening the chain of circumstances already firmly established.

A statement of an accused recorded under section 313 Cr. P.C. can not be treated as evidence. Further the entire prosecution evidence need not be put to the accused. Unregistered lease-deed though not allowed to be produced in evidence, it could be used by the carrier to explain the character of the possession.

A witness narrated to the doctor his version of the history of assault. The doctor recorded in his papers. This was held to be not a substantive piece of evidence. The statement would be used at based to contradict the testimony of the person who gave the narrative. **(Sujit Gulab Sohatre ... Vs... State 1997 Cr.L.J. 454 (Bombay)).**

When independent evidence is not available for any reason, the Court will have to examine the evidence of the police witnesses carefully on scrutinize the same and, if found reliable, conviction can be based on such evidence. Mere fact that the police personnel belong to the police department can not be a ground to reject their testimony if otherwise inspires confidence and no hostility of the police with the accused is shown. Where weapons of assault were recovered pursuant to the statement of the accused and there was no animosity between the accused and the police nor any suggestion was made that the police foisted the recoveries, it was held that it would be safe to believe uncorroborated statement of the Police Inspector, the solitary witness, in respect of recoveries. **(Bhimsha Subanna Pawar ... Vs ... State of Maharashtra, 1996 AIHC 1 (Bombay)).**

In order to appreciate evidence, the Court is required to bear in mind the set up and environment in which the crime is committed and the level of understanding of the witnesses. There is often over jealousy on the part of some of near relations to ensure that everyone even remotely connected with the crime be also convicted. Everyone has the different way of narration of same facts. These are only illustrative instances. Bearing in mind these broad principles, the evidence

is required to be appreciated to find out what part out of the evidence represents the true and correct state of affairs. It is for the courts to separate the grain from the chaff. (**Ganesh K Gulve Vs... State of Maharashtra AIR 2002 Supreme Court 3068**).

The evidence of any injured eye witness can not be discarded in toto on the ground of inimical disposition towards the accused particularly where his evidence, when tested in the light of broad probabilities, it can be concluded that he was a natural eye witness, and had no reasons to concoct a case against the accused. (**Suresh Sitaram Surve ...Vs... State of Maharashtra AIR 2003 S.C. 344**).

Presence of injury on a person of a witness does not guarantee his truthfulness. The Court is not bound to accept his evidence if it is found to be hopelessly contradictory and utterly unreliable.

Testimony of child witness is not be rejected outright but it is to be scrutinized with greatest caution.

The evidence of stock witnesses can not be relied upon because of appearing as police witnesses in number of cases and they being pliable and untrustworthy.

Tape recorded conversation is admissible provided the conversation is relevant to the matters in issue. There is identification of the voice and the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape

record. (R.M.Malkani ...Vs... State of Maharashtra AIR 1973 S.C. 157). Tape recordings can be legal evidence by way of corroborating the statement of a person who deposes that the other speaker and carried on the conversation on even of the statement of a person who may deposed that he over heard the conversation between the two persons and what they actually stated had been tape-recorded.

The time, place and accuracy of the recording must be proved by a competent witness and voices must be properly identified.

Dog Tracking : Evidence of dog tracking even if admissible is not ordinarily of much weight. In a case of alleged murder of the wife by the accused husband, the dogs of the police dog squad pointed towards the husband. It was held that it was not a circumstance compatible only with the hypothesis of the guilt of the accused husband. (**Surendra Pal JainVs.... Delhi Administration AIR 1993 S.C. 1723 : 1993 Cr.L.J. 1871**).

In Babu Maqbul ShaikhVsState of Maharashtra 1993 Cr. L.J. 2808(Bombay) it was held that tracker dog's evidence must pass the test of scrutiny and reliability as in the case of any other evidence. The following guidelines must be borne in mind :

(a) There must be a reliable and complete record of the exact manner in which the tracking was done and a panchnama in respect of the dog tracking evidence will have to be clear and complete. It will have to be properly proved and will have to be supported by the evidence of the

handler.

(b) There must be no discrepancies between the version as recorded in the panchnama and the evidence of the handler as deposed before the Court.

(c) The evidence of the handler will have to pass the test of cross examination independently.

(d) Some material will have to be placed before the court by the handler, such as the type of training imparted to the dog, its past performance, achievements, reliability, etc. supported, if possible, by documents. In a case of murder, the chappal and knife were found near the place of the incident. Both the articles were wrapped in a paper to preserve original scent. Identification parade was held within twenty four hours and after smelling the chappal and knife the police dog immediately picked up the two accused from amongst the persons in the parade. It was held that the evidence provided by the dog was sufficient to link those two items with the accused.

Where there is no contradiction in the statement of the prosecution witnesses given in the court and their earlier statements, the non examination of the investigating officer like other witnesses can not be said to be fatal.

In case of variance between medical evidence and ocular evidence, unimpeachable evidence of eye witnesses should be accepted in preference to the hypothetical answers given by the medical officer (**State of Maharashtra ... Vs.... Vithal 1993 Cri.L.J.**

2285).

Under section 8 of the Evidence Act the motive which induces a party to do an act, or the preparation which he makes in its commission, will be taken into account. Evidence of motive or preparation becomes important when a case depends upon circumstantial evidence only.

The Evidence Act intends to make only those statements admissible which are the essential complement of acts done or refused to be done, so that the act itself or the omission to act acquires a special significance as a ground for interference with respect to the issues in the case under trial.

This section embodies the rule that the testimony of *res gestae* is allowable when it goes to the root of the matter concerning the commission of a crime. Consequently, a verbal statement to a police-officer during the time of recovery of articles upon the information of an accused in custody is admissible in evidence.

Motive is that which moves a man to do a particular act. There can be no action without a motive, which must exist for every voluntary act.

Motive, if proved would only supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. (**Paramjeet Singh v. State of Uttarakhand, AIR 2011 SC 200 : 2011 Cr.LJ 663 : (2010) 10 SCC 439**).

Where the direct evidence of eye-witness is that

the accused caused the death of the deceased, failure to prove motive by prosecution is of no significance. (**Nageshwar Shah v. State, 1995 Cr.LJ 2184 (Del)**).

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

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

Attempt is the direct movement towards commission of a crime. In Criminal Law, in any crime that is committed there are four stages. (1) Intention; (2) Preparation; (3) Attempt ; and (4) Actual commission.

Mere act of absconding on the part of the accused, alone does not necessarily lead to final conclusion regarding the guilt of the accused, as even an innocent person may become panic stricken and tried to evade arrest, when suspected wrongly or committing a grave crime; such is the instinct of self-preservation. (**Dr. Sunil Clifford Daniel v. State of Punjab, 2012 Cr.LJ 4657(SC) : (2012) 11 SCC 205**).

Where the accused was shown to have absconded from the date of the recovery of the dead body of her husband up to the date of her arrest, her abscondance being her guilty conduct and also probalising the guilty intent of her mind is relevant under Section 8 of the Evidence Act. (**Shanti Lakara v. State, 2009 Cr.LJ. 4589 (Del)**)

(DB).

Where the accused tried for the murder of his wife pointed to the place of hiding of the dead body of his wife, it would be admissible under Section 8 although it cannot be treated as statement under Section 27 of the Act. (**Ravindran v. State of Kerala, 1999 Cr.LJ 2364 (Ker).**)

Where the accused identified the dead bodies of five terrorists in the mortuary, the evidence as to the conduct of the accused, which is deposed to by a Police officer, is admissible notwithstanding the exclusion of the statement under Section 162 of Cr. PC to show the association of the accused with the terrorists relevant and not their names.

Where the accused person pointed out to the police officer to place where the dead body of the kidnapped boy was buried and the same was exhumed, this fact is admissible as conduct under Section 8 of the Evidence Act. (**A.N.Venkatesh v. State of Karnataka, (2005) 7 SCC 714 :2003 (3) Crimes 231 (3) Crimes 231 (SC) : 2005 (5) Supreme 746).**)

Where the statement of the accused leading to the recovery of murderous weapon was not recorded by the Investigation Officer, although the statement is not admissible under Section 27 but it is relevant as his conduct pointing out to the said weapon from the place of occurrence under Section 8. (**Sudhir Chandra Barman v. State of West Bengal, 2006 Cr.LJ 4656 (Cal).**)

The accused strangled his wife to death and raised the plea of insanity. The circumstances proved indicated that he was sane and normal prior to the commission of the offence. Dragging the dead body and lying in the verandah of the neighbour revealed his perplexed mind and the threatening of the children by the accused that, if they cried or created noise, they would also be killed indicated his sanity immediately after the commission of the offence. It was held that the conduct was relevant to show his sane state of mind.

Where the accused alleged to have strangled the deceased to death, produced the watch belonging to the deceased before the police from the box in his house, it was held that his conduct was admissible against him under Section 8 though the disclosure statement did not reveal the authorship of the concealment of watch.

(S. R. SHARMA)
District Judge-1 &
Addl. Sessions Judge,
Bhadnara