Vol- X
Part-9

Prosecution Replenish

An Endeavour for Learning and Excellence

September, 2021

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"

APPRECIATION AND EVALUATION OF CIRCUMSTANTIAL EVIDENCE IN CRIMINAL CASES

DVR Tejo Karthik
JMFC, Spl.Mobile Court,
Mahabubnagar

➢ *INTRODUCTION*

The primal principle of Anglo – Saxon criminal jurisprudence is that the prosecution has to establish the guilt of the accused beyond shadow of doubt. For establishing the guilt of the accused, the prosecution is required to prove a fact or facts. Fact means and includes anything, state of things or relations of things, capable of being perceived by the senses or any mental condition of which any person is conscious. A proof of fact can be either by direct evidence or by circumstantial evidence. Direct evidence means that from which the existence of a given thing or fact is proved either by its actual production or by the testimony or admissible declaration by some one who has perceived it. In case of circumstantial evidence certain fact is proved from which the existence of a given fact is inferred. The fact from which the existence of fact in issue is to be inferred must be proved by direct evidence.

Circumstantial evidence, in law, evidence not drawn from direct observation of a fact in issue. If a witness testifies that he saw a defendant fire a bullet into the body of a person who then died, this is direct testimony of material facts in murder, and the only question is whether the witness is telling the truth. If, however, the witness is able to testify only that he heard the shot and that he arrived on the scene seconds later to see the accused standing over the corpse with a smoking pistol in his hand, the evidence is circumstantial; the accused may have been shooting at the escaping killer or merely have been a bystander who picked up the weapon after the killer had dropped it. The notion that one cannot be convicted on circumstantial evidence is, of course, false. Most criminal convictions are based on circumstantial evidence, although it must be adequate to meet established standards of proof. ***(see., Encyclopaedia Britannica).***

Circumstantial evidence is defined by Peter W. Murphy, Professor at South Texas College of Law, Houston, Texas and Barrister of Middle Temple and of the Carlifornia and Texas Bars in his book ***"Murphy on Evidence, 10th Edition, Oxford University Press"*** as "evidence from which the desired conclusion may be drawn but which requires the tribunal of fact not only to accept the evidence presented but also draw an inference from it."

➢ *WHAT ARE THE GUIDING PRINCIPLES FOR THE COURTS IN APPRECIATING THE EVIDENCE OF CIRCUMSTANTIAL EVIDENCE*

In ***R. v. Hodge, 168 ER 1136 (1838, England)*** the court held that before a person is convicted entirely on circumstantial evidence, the court must be satisfied not only that those circumstances were consistent with

his having committed the act, but also that the facts were such, so as to be inconsistent with any other rational conclusion other than the one that the accused is the guilty person. The observed in the following words:

"...the case was made up of circumstances entirely; and that, before they could find the prisoner guilty, they must be satisfied not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person."

The rule in Hodge's Case developed to deal with the differences between direct and circumstantial evidence. A Court faced with direct evidence must only address whether that evidence is to be believed. In contrast, circumstantial evidence requires a multi-layered approach since the Court must ask both whether the evidence is to be believed and what inferences may be drawn from the evidence. The rule in Hodge's Case addresses a potentially latent danger in circumstantial evidence by requiring that in convictions based on circumstantial evidence alone that guilt must be the only rational inference from the evidence.

In ***Mezzo v. The Queen, 1986 CanLII 16 (SCC) = (1986) 1 SCR 802,*** the Supreme Court of Canada observed that *"(W)here all the evidence is circumstantial the accused can be found guilty only if the evidence is both consistent with guilt and inconsistent with any other rational conclusion."*

In another Canadian case between ***R.* v. *McIver***, 1964 CanLII 248 (ON SC) = (1965) 1 O.R. 306 the Ontario High Court of Justice had aptly explained the rule in Hodge's Case as follows: *"Before you can find the prisoner guilty you must be satisfied beyond a reasonable doubt that the circumstances are consistent with the prisoner having committed the act and you must also be satisfied beyond a reasonable doubt that the facts are such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person".* (also see., **R. v. Alberta Hot Oil Services Ltd., *2007 ABQB 155*** in the **Court of Queen's Bench of Alberta**)

In McIver Case the Court emphasized that inferences must be rational conclusions based upon proven facts, not speculative suggestions.

Likewise in ***Regina v. Torrie, 1967 CanLII 285 (ON CA)*** again the Ontario Court of Appeal observed that the Court cannot make a finding of reasonable doubt on non-existent evidence.

Again in **R. v. Paul*, (1975) 1 SCR 181,*** the Supreme Court of Canada held that *"The rule (in* Hodge's Case*) makes it clear that the case is to be decided on the facts, that is, the facts proved in evidence and the conclusions alternative to the guilt of the accused must be rational conclusions based on inferences drawn from proven facts. No conclusion can be rational conclusion that is not founded on evidence. Such a conclusion would be a speculative, imaginative conclusion, not a rational one."*

The Supreme Court of Canada in **R. v. Villaroman, *2016 SCC 33 (CanLII),*** at para 37 stated as: "When assessing circumstantial evidence the trier of fact should consider "*other plausible theories*" and "*other reasonable possibilities*" which are inconsistent with guilt."

The Court of Appeal for Alberta in the case of **R. v. McEwan, *1932 CanLII 308*** held that proof by circumstantial evidence being a matter of logical reasoning from facts admitted or established in evidence there is always the danger of the tribunal of fact, whether it be Judge or jury, jumping to conclusions from certain facts without due regard to other facts which are inconsistent with the hypothesis which the first set of facts seems to point to. There being no direct evidence, the case must rest, on the circumstantial evidence alone, and the general rule is that to amount to proof such evidence must be not merely consistent with guilt but inconsistent with innocence.

The High Court of Australia on appeal from the Supreme Court of Victoria in ***Martin v. Osborne (1936) HCA 23 = (1936) 55 CLR 367*** speaking through Justice Dixon held that If an issue is to be proved by circumstantial evidence facts subsidiary to or connected with the main fact must be established from which the conclusion follows as a rational inference. In the inculpation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed. The circumstances which may be taken into account in this process of reasoning include all facts and matters which form constituent parts or ingredients of the transaction itself or explain or make intelligible the course of conduct pursued. The moral tendencies of persons, their proneness to acts or omissions of a particular description, their reputations and their associations are in general not matters which it is lawful to take into account, and evidence disclosing them, if

not otherwise relevant, is rigidly excluded. But the class of acts and occurrences that may be considered includes circumstances whose relation to the fact in issue consists in the probability or increased probability, judged rationally upon common experience, that they would not be found unless the fact to be proved also existed. The application of this, as of any other general statement about relevancy is subject to the well-known specific rules of exclusion.

Sir Alfred Wills in his admirable book ***"William Wills" "An Essay on The Principles of Circumstantial Evidence, Illustrated by Numerous Cases"., 6th Edition, Butterworth & Company, London, 1912*** in Chapter VI ***"Rules of Induction Specially Applicable to Circumstantial Evidence"*** lays down the following rules specially to be observed in the case of circumstantial evidence:

Rule (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;

Rule (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

Rule (3) in all cases, whether of direct of circumstantial evidence the best evidence must be adduced which the nature of the case admits;

Rule (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and

Rule (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

The law regarding the nature and character of proof of circumstantial evidence is no longer *res integra* insofar as India is concerned and it has been settled by several authorities of Ho'ble Supreme Court of India as also of the Hon'ble High Courts. The *locus classicus* of the decision of the Hon'ble Supreme Court is the one rendered in the case of ***Hanumant v. The State of Madhya Pradesh, AIR 1952 SC 343 = 1953 CriLJ 129,*** where Hon'ble Justice Mahajan, had clearly expounded the various concomitants of the proof of a case based purely on circumstantial evidence, and pointed out thus: *"It is well to remember that in cases where the evidence in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused....."*

The Supreme Court in the case of ***Sharad Birdhi Chand Sarda v State of Maharashtra*** reported in ***(1984) 4 SCC 116*** elucidated five golden principles popularly known panchsheel of the proof of a case based on circumstantial evidence and the Court has held as under:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in ***Shivaji Sahebrao Bobade & Anr v State of Maharashtra, (1973) 2 SCC 793*** where the observations were made:

> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In ***C. Chenga Reddy and Ors v. State of Andhra Pradesh (1996) 10 SCC 193,*** wherein it has been observed by the Hon'ble Supreme Court of India that in a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

In ***Padala Veera Reddy v. State of Andhra Pradesh and Others., AIR 1990 SC 79*** it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilty of the accused but should be inconsistent with his innocence.

In ***Vinay D. Nagar v. State of Rajasthan, (2008) 5 SCC 597***, the Supreme Court held that the principle of law is well established that where the evidence is of a circumstantial nature, circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and the facts, so established, should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and they should be such as to exclude hypothesis than the one proposed to be proved. In other words, there must be chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

The observation made by the Supreme Court in ***Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808,*** is worth mentioning. The Court observed that the golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.

In ***State of Uttar Pradesh v. Ashok Kumar Srivastava., AIR 1992 SC 840 = (1992) Crl LJ 1104*** it was pointed out by the Hon'ble Supreme Court 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.

In ***Dhananjoy Chatterjee v. State of West Bengal.,(1994) 2 SCC 220,*** the Court held that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

It has been consistently laid down by the Supreme 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, AIR 1954 SC 621*** 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.

It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See., ***Anil Kumar Singh v. State of Bihar., (2003) 9 SCC 67*** and ***Reddy Sampatha Kumar v. State of Andhra Pradesh., (2005) 7 SCC 603***).

In ***Bhim Singh & Anr v. State of Uttarakhand, (2015) 4 SCC 281.,*** held that when the conviction is based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt.

In ***Gurpreet Singh v. State of Haryana, (2002) 8 SCC 18.,*** the Court has held that if some of the circumstances in the chain can be explained by any other reasonable hypothesis, then the accused is entitled to benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The Court considers ordinary human probabilities.

- ***MOTIVE IN CASES OF CIRCUMSTANTIAL EVIDENCE***

While considering the motive in cases of circumstantial evidence, the Supreme Court in ***State of Uttar Pradesh v. Kishanpal & Ors., (2008) 16 SCC 73,*** examined the importance of motive in cases of circumstantial evidence and observed that the motive is a thing which is primarily known to the accused himself/themselves and it is not possible for the prosecution to explain what actually promoted or excited him/them to commit the particular crime. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitness/eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitness/eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitness/eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.

The evidence regarding the existence of a motive which operates in the mind of the accused is very often very limited, and may not be within the reach of others. The motive driving the accused to commit an offence may be known only to him and to no other. In a case of circumstantial evidence, motive may be a very relevant factor. However, it is the perpetrator of the crime alone who is aware of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggests adequately, the existence of the necessary motive required to commit a crime, it may be conceived that the accused has in fact, committed the same. (Vide: ***Subedar Tewari v. State of Utter Pradesh & Ors, AIR 1989 SC 733; Suresh Chandra Bhari v. State of Bihar, AIR 1994 SC 2420; and Dr. Sunil Clifford Daniel v. State of Punjab, (2012) 11 SCC 205***).

In ***G. Parshwanath v. State of Karnataka, AIR 2010 SC 2914*** it was held that in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted. Effect of absence of motive would depend on the facts of each case.

In ***Sanjeev v. State of Haryana, (2015) 4 SCC 387***, 3 Judge Bench of the Court while dealing with a case of murder held that it is settled principle of law that, to establish commission of murder by an accused, motive is not required to be proved. Motive is something which prompts a man to form an intention. The intention can be formed even at the place of incident at the time of commission of crime. It is only either intention or knowledge on the part of the accused which is required to be seen in respect of the offence of culpable homicide. In order to read either intention or knowledge, the courts have to examine the circumstances, as there cannot be any direct evidence as to the state of mind of the accused.

When facts are clear, it is immaterial whether motive was proved. Absence of motive does not break the link in the chain of circumstances connecting the accused with the crime. Further, proof of motive or ill-will is unnecessary to sustain conviction where there is clear evidence. (vide:***Bhimsingh v. State of Uttarakhand, (2015) 4 SCC 281***).

In ***Mulakh Raj Etc v. Satish Kumar and Others., (1992) 3 SCC 43 = AIR 1992 SC 1175*** it was held that undoubtedly, in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never indispensable for conviction. When facts are clear it is immaterial that motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case.

In ***Amitava Banerjee @ Amit @ Bappa Banerjee v. State of West Bengal, AIR 2011 SC 2913*** it was observed by the Court as: "Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty. Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the Courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence. Human nature being what it is, it is often difficult to fathom the real motivation behind the commission of a crime. And yet experience about human nature, human conduct and the frailties of human mind has shown that inducements to crime have veered around to what Wills has in his book "Circumstantial Evidence" said:

> *"The common inducements to crime are the desires of revenging some real or fancied wrong; of getting rid of rival or an obnoxious connection; of escaping from the pressure of pecuniary or other obligation or burden of obtaining plunder or other coveted object; or preserving reputation, either that of general character or the conventional reputation or profession or sex; or gratifying some other selfish or malignant passion."*

- ***ASPECT OF LAST SEEN THEORY AND CIRCUMSTANTIAL EVIDENCE***

While considering the aspect of last seen, the Supreme Court in ***State of Uttar Pradesh v. Satish., (2005) 3 SCC 114*** held that the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.(See., ***Bodh Raj @ Bodha & Ors. v. State of Jammu & Kashmir., AIR 2002 SC 3164***).

Similarly in ***Ramreddy Rajesh Khanna Reddy & Anr v. State of Andhra Pradesh., (2006) 10 SCC 172*** it was observed that the last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.

In ***Mohibur Rahman and Anr. v. State of Assam., AIR 2002 SC 3064,*** it was held by the Court that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.

In ***Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681,*** the Court held as : "Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

In **Rohtash Kumar v. State of Haryana*, (2013) 14 SCC 290,*** it was observed by the Court that the doctrine of "last seen together" shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him.

In ***Ashok v. State of Maharashtra, (2015) 4 SCC 393*** it was observed that the initial burden of proof is on prosecution to adduce sufficient evidence pointing towards guilt of accused. However, in case it is established that accused was last seen together with the deceased, prosecution is exempted to prove exact happening of incident as accused himself would have special knowledge of incident and thus would have burden of proof as per Section 106, Evidence Act. But last seen together itself is not conclusive proof but along with other circumstances surrounding the incident like relations between accused and deceased, enmity between them, previous history of hostility, recovery of weapon from accused, etc. non-explanation of death of deceased, etc.etc. may lead to a presumption of guilt of accused.

In ***State of West Bengal v. Mir Mohammad Omar & Ors etc. etc., AIR 2000 SC 2988,*** the Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for prosecution to prove certain facts particularly within the knowledge of accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section 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 knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

- ***CONDUCT OF THE ACCUSED AND THE CIRCUMSTANTIAL EVIDENCE***

In ***Joydeep Neogi @ Bubai v. State of West Bengal, (2009) 15 SCC 83*** it was observed that a criminal trial is not an enquiry into the conduct of an accused or any purpose other than to determine his guilt. It is not disputed piece of conduct which is not connected with the guilt of the accused is not relevant. But at the same time, however, unnatural, abnormal or unusual behaviour of the accused after the offence may be relevant circumstance against him. Such conduct is inconsistent with his innocence. So the conduct which destroys the presumption of innocence can be considered as relevant and material.

Where the accused had absconded after committing the murder, it has been held that the conduct of the accused in such cases is very relevant u/s 8 of the Evidence Act *(See.,* **Sidhartha Vashisht @ Manu Sharma v. State *(*NCT of Delhi*). (*2010*) 6 SCC 1)***

In ***Kundula Bala Subrahmanyam and Anr v. State of Andhra Pradesh, (1993) 2 SCC 684*** it was held that indeed, absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent persons may run away for fear of being falsely involved in a criminal case and arrested by the police, but coupled with the other circumstances , the absconding of the accused assumes importance and significance.

- ***CONCLUSION***

In summation it would be apt to note the observation of the Supreme Court that a criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The

law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide : Kashmira Singh v. State of Madhya Pradesh, AIR 1952 SC 159; State of Punjab v. Jagir Singh Baljit Singh & Anr., AIR 1973 SC 2407; Shankarlal Gyarasilal Dixit v. State of Maharashtra, AIR 1981 SC 765; Mousam Singha Roy & Ors. v. State of West Bengal, (2003) 12 SCC 377; and Aloke Nath Dutta &Ors. v. State of West Bengal, (2007) 12 SCC 230).

Further the Supreme Court in Paramjeet Singh @ Pamma v. State Of Uttarakhand, (2010) 10 SCC 439 that in a criminal trial involving a serious offence of a brutal nature, the court should be wary of the fact that it is human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the court that its case has been proved beyond reasonable doubt.

Though a conviction may be based solely on circumstantial evidence, this is something that the court must bear in mind while deciding a case that the prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. The Court must assure itself that various links in the chain of circumstantial evidence are in themselves complete and the circumstances from which the conclusion of guilt is to be drawn should be amply established and conclusive in nature that in all human probability the act was committed done by the accused there by excluding every possible hypothesis except the one to be proved.

*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. TejoKarthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

CITATIONS

2021 0 Supreme(SC) 425; Surajdeo Mahto and Another Vs. The State of Bihar: Criminal Appeal No. 1677 of 2011:Decided On : 04-08-2021(THREE JUDGE BENCH)

The case of the prosecution in the present case heavily banks upon the principle of "Last seen theory." Briefly put, the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible. Elaborating on the principle of "last seen alive" a three judge bench of this Court in the case of Satpal vs. State of Haryana, (2018) 6 SCC 610 has, however, cautioned that unless the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence. The Court further held:

> ".....Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established and there is corroborative evidence available inter-alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

The contention that most of the prosecution witnesses were either related or close to the complainant party and their testimony could not be relied upon in the absence of corroboration by any independent witnesses, in our opinion, is without much substance. It is trite in law that the job of the prosecution is to put forth the best evidence that is collected during the investigation. Although it is ideal that the prosecution case is further substantiated through independent witnesses, but it would

be unreasonable to expect the presence of third- parties in every case. This Court has consistently held that the prosecution's case cannot be discarded merely on a bald plea of all witnesses being related to the complainant party. Hence, in order to draw an adverse inference against the non-examination of independent witnesses, it must also be shown that though the best evidence was available, but it was withheld by the prosecution.

As to what materials would prima-facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima-facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. **The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima-facie accepted or rejected....."**

(Emphasis Supplied)

2021 0 Supreme(SC) 426; M/S. CHEMINOVA INDIA LTD. & ANR. Vs. STATE OF PUNJAB & ANR.; CRIMINAL APPEAL NO.749 OF 2021 [ARISING OUT OF S.L.P.(CRL.) NO.4102 OF 2020]; DECIDED ON : 04-08-2021

Merely because a further request is made for sending the sample to the Central Insecticide Testing Laboratory, as contemplated under Section 24(4) of the Act, which report was received on 09.12.2011, receipt of such analysis report on 09.12.2011 cannot be the basis for commencement of limitation. The report of analysis received from the Insecticide Testing Laboratory, Ludhiana on 14.03.2011 itself indicates misbranding, as stated in the complaint, thus, the period of limitation within the meaning of Section 469, Cr.PC commences from 14.03.2011 only.

2021 0 Supreme(SC) 427; M/S. CHEMINOVA INDIA LTD. & ANR.Vs. STATE OF PUNJAB & ANR. CRIMINAL APPEAL NO. 750 OF 2021 (Arising out of SLP (Crl.) No.4144 OF 2020): On : 04-08-2021

Similarly, with regard to the procedure contemplated under Section 202 of the Code of Criminal Procedure, the same is to be viewed, keeping in mind that the complainant is a public servant who has filed the complaint in discharge of his official duty. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry/investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, per se, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant. In the present case, 2nd Respondent/Public Servant, in exercise of powers under provisions of the Insecticides Act, 1968, has filed complaint, enclosing several documents including reports of the Government Laboratories, it is always open for the Magistrate to issue process on such complaint which is supported by documents. In any event, we do not find any merit in the submissions of the learned Counsel that proceedings are to be quashed only on the ground that, the Magistrate has taken cognizance without conducting inquiry and ordering investigation. In absence of showing any prejudice caused to the appellant at this stage, the same is no ground to quash the proceedings in exercise of power under Section 482 of the Code of Criminal Procedure.

2021 0 Supreme(SC) 414; BANKA SNEHA SHEELA Vs. THE STATE OF TELANGANA & ORS.: Criminal Appeal No. 733 of 2021 [Arising out of SLP (Criminal) No. 4729 of 2021] Decided on : 02-08-2021

it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the Detenu, if set free, will continue to cheat gullible persons. This

may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute.

2021 0 Supreme(SC) 417; NEERAJ GARG Vs. SARITA RANI AND ORS ; CIVIL APPEAL NOs. 4555 4559 OF 2021 (Arising out of SLP (C) Nos.86438647 of 2021)Decided On : 02-08-2021
While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court.

2021 0 Supreme(SC) 445; Siddharth Vs. State of Uttar Pradesh and Another: Criminal Appeal No. 838 of 2021, SLP (Crl.) No. 5442 of 2021: Decided On : 16-08-2021
It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word “custody” appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the charge-sheet.
12. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. [Joginder Kumar vs. State of U.P. and Others, (1994) 4 SCC 260]. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.
13. We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar’s case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the charge-sheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C.

2021 0 Supreme(SC) 450; MADHAV Vs. STATE OF MADHYA PRADESH : Criminal Appeal No. 852 of 2021 (@ Special Leave Petition (Crl.) No.2345 of 2019): WITH Criminal Appeal No. 853 of 2021 (@ Special Leave Petition (Crl.) No.9326 of 2018): Decided On : 18-08-2021
we are clearly of the view that the investigation in this case was carried out by PW14, not with the intention of unearthing the truth, but for burying the same fathom deep, for extraneous considerations and that it was designed to turn the informant and her family members as the accused and allow the real culprits named in the FIR to escape.

SARANYA Vs. BHARATHI AND ANOTHER: CRIMINAL APPEAL NO.873 OF 2021: DECIDED ON : 24-08-2021
It also appears that during the course of the investigation, the investigating officer has collected very important evidence in the form of call details between A1 & A2 which are in the proximity of the time of commission of offence and even thereafter. Therefore, in the facts and circumstances of the case, when respondent no.1 herein has been chargesheeted for the offences under Sections 420, 302 r/w 109 IPC and as observed hereinabove when there is ample material to show at least a prima facie case against respondent no.1 herein – A2, the High Court has committed a grave error in quashing the chargesheet/entire criminal proceedings qua her in exercise of powers under Section 482 Cr.P.C. Quashing the chargesheet against the accused is not justified. The High Court has evidently ignored

what has emerged during the course of investigation. The High Court has entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not, which as such is not permissible at all at this stage while considering the application under Section 482 Cr.P.C. The High Court was not as such conducting the trial and/or was not exercising the jurisdiction as an appellate court against the order of conviction or acquittal. Therefore, in the facts and circumstances of the case, the High Court ought not to have quashed the chargesheet qua respondent no.1 herein – original accused no.2.

Harjit Singh Vs. Inderpreet Singh @ Inder and Another: Criminal Appeal No. 883 of 2021 (Arising from S.L.P.(Criminal) No. 3739 of 2021) Decided On : 24-08-2021

At this stage, a recent decision of this Court in the case of Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (koli) 2021 (6) SCALE 41 is also required to be referred to. In the said decision, this Court considered in great detail the considerations which govern the grant of bail, after referring to the decisions of this Court in the case of Ram Govind Upadhyay (Supra); Prasanta Kumar Sarkar (Supra); Chaman Lal vs. State of U.P. (2004) 7 SCC 525; and the decision of this Court in Sonu vs. Sonu Yadav 2021 SCC Online SC 286. After considering the law laid down by this Court on grant of bail, in the aforesaid decisions, in paragraphs 20, 21, 36 & 37 it is observed and held as under:

> "20. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-judge Bench decision of this Court in Ram Govind Upadhyay v. Sudharshan Singh, the nature of the crime was recorded as "one of the basic considerations" which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract: "4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:
>
> (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
>
> (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.
>
> (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
>
> (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."
>
> 21. This Court further laid down the standard for overturning an order granting bail in the following terms:
>
> "3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained."
>
> xxx xxx xxx
>
> 36. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in Chaman Lal v. State of U.P (2004) 7 SCC 525 in a similar vein

has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for non-application of mind. This Court observed:

"8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence…"

MANJEET SINGH Vs. STATE OF HARYANA & ORS.: CRIMINAL APPEAL NO.875 OF 2021: DECIDED ON : 24-08-2021

The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under Section 319 CrPC can be summarized as under:

(i) That while exercising the powers under Section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;

(vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it;

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under Section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;

(x) the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319 CrPC can be exercised;

(xv) that power under Section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);
(xvii) while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

Lala @ Anurag Prakash Aasre Vs. The State Of Maharashtra: Criminal Appeal No. 540 of 2018: Decided On : 24-08-2021
While it is true that the FIR is silent on the name of the appellant, we cannot entirely throw out the prosecutorial case on such a basis as other reliable evidence are available in the case. The FIR is certainly the starting point of the investigation, but it is well within the rights of the prosecution to produce witness statements as they progress further into the investigation and unearth the specific roles of accused persons. The FIR as is known, only sets the investigative machinery, into motion.

Syed Taruj Ahmed Vs. State of Telangana; 11.08.2021; CRLP No. 3598 OF 2021;
where even no limitation has been prescribed, the petition must be filed within a reasonable time

2021 2 ALD Crl 179(SC); 2021 0 Supreme(SC) 182; SONU @ Subhash Kumar Vs. State of Uttar Pradesh & Anr: Criminal Appeal No 233 of 2021 (Arising out of SLP (Crl) No 11218 of 2019):Decided On : 01-03-2021
There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR.

2021 0 AIR(SC) 1381; 2021 0 CrLJ 2193; 2021 0 Supreme(SC) 133; 2021 2 ALD Crl 184(SC); Krishna Lal Chawla Vs State of U.P. & Anr.: Criminal Appeal No. 283 of 2021, (arising out of S.L.P. (Crl.) No. 6432 of 2020): Decided On : 08-03-2021
It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in 'fact-finding' owing to the adversarial nature of our justice system. However, Section 165 of the Indian Evidence Act, 1872 by providing the Judge with the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.
Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the Courts, as and when required in each case. As this Court has held in Amitbhai Anilchandra Shah (supra), such an absurd and mischievous interpretation of the provisions of the CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.
2021 2 ALD Crl 217(SC); 2021 0 AIR(SC) 1241; 2021 1 Crimes(SC) 454; 2021 0 Supreme(SC) 114; Kapil Agarwal AND OTHERS Vs. SANJAY SHARMA AND OTHERS : CRIMINAL APPEAL NO.142 OF 2021: Decided on : 01-03-2021
merely because on the same set of facts with the same allegations and averments earlier the complaint is filed, there is no bar to lodge the FIR with the police station with the same allegations and averments.
in the FIR, neither there is any reference to the application under Section 156(3) Cr.P.C. which is pending before the learned Magistrate, nor there is a reference of the complaint under Section 138 of the NI Act. Under the circumstances, the impugned FIR is nothing but an abuse of process of law and can be said to be filed with a view to harass the appellants.

2021 2 ALD Crl 312(AP); Taiboyina Peraiah Mahesh Vs State of A.P. :W.P.No.24672 of 2020:06.03.2021:

As regards the Standing Order 602(2) of the A.P. Police Standing Orders is concerned, even though the said Standing Order enables the police to continue the rowdy sheet even when the petitioner is not figuring as an accused in any pending case, a careful reading of the aforesaid Order makes it manifest that the concerned authority can continue the rowdy sheet only when the activities of the petitioner are found to be prejudicial to the maintenance of public order or affecting peace and tranquillity in the area or where the victims are not coming forward to give complaint against him on account of threat from him. So, three grounds are contemplated to continue the rowdy sheet under Standing Order 602(2) of the A.P. Police Standing Orders viz., (i) that the concerned authority must have material before him that the activities of the petitioner are prejudicial to the maintenance of public order; (ii) his conduct must be of such a nature which affecting the peace and tranquillity in the area; and (iii) that the victims are not coming forward to give any complaint against him on account of threat from him. Existence of any one of these three grounds is sine qua non for extending the period of rowdy sheet from time to time even though when the petitioner is not figured as an accused in any pending case. As can be seen from the material available on record, the respondent police officials did not produce any order passed extending the period of rowdy sheet based on the aforesaid three grounds contemplated under Standing Order 602(2) of the A.P. Police Standing Orders. Mere making a bald assertion in the counter-affidavit sans producing any material to substantiate the said version cannot be countenanced to justify extension of the rowdy sheet against the petitioner

NOSTALGIA

PERJURY- PROCEDURE

in the case of KTMS Mohammad and Another vs. Union of India, 1992 (3) SCC 178 wherein it is observed as hereunder:-

> "37. The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under Section 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the 'judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. Further, such a prosecution for perjury should be taken only if it is expedient in the interest of justice."
>
> Further, in the case of Amarsang Nathaji vs. Hardik Harshadbhai Patel and Others, 2017 (1) SCC 113 relied on by the learned counsel for the appellant, this Court on referring to the case of KTMS Mohammad vs. Union of India (supra) has held as hereunder:-

"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC") but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340 (1) Cr.P.C. having regard to the overall factual matrix as well as the probable consequences of such a prosecution. The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."

Circumstantial Evidence

in its much-celebrated judgment of Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116, The SC has elaborately considered the standard necessary for recording a conviction on the basis of circumstantial evidence and has further held:

> "153. xxx xxx xxx

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved.

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

These five cardinal principles have been reiterated on numerous occasions, including in the recent decisions in Mohd. Younus Ali Tarafdar vs. State of West Bengal, (2020) 3 SCC 747 and R. Damodaran vs. State Represented by the Inspector of Police, 2021 SCC Online SC 134.

Proof of Circumstantial Evidence

The position of law is well settled that the links in the chain of circumstances is necessary to be established for conviction on the basis of circumstantial evidence. This has been articulated in one of the early decisions of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116. The relevant paragraphs are as hereunder:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance points to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus: [SCC para 30, p. 43: SCC (Cri) p. 322]

"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstances, if other circumstances point unfailingly to the guilt of the accused."

NONMATCHING OF BLOOD GROUPS

In R. Shaji vs. State of Kerala, (2013) 14 SCC 266 this Court took note of almost all previous decisions starting from Prabhu Babaji Navle vs. State of Bombay, AIR 1956 SC 51 and including those in Raghav Prapanna Tripathi (supra); Teja Ram (supra), Gura Singh (supra); John Pandian vs. State, (2010) 14 SCC 129; and Sunil Clifford Daniel vs. State of Punjab, (2012) 11 SCC 205 and came to the conclusion that once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or nonmatching of blood groups loses significance.

Therefore, as pointed out by this Court in Balwan Singh vs. State of Chhattisgarh, (2019) 7 SCC 781 there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. But the judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood.

NEWS

- The Constitution (One Hundred and Fifth Amendment) Act, 2021, published 18.08.2021
- GOVERNMENT OF TELANGANA - Public Services – State and Subordinate Services – Prescription of minimum service for promotion/ appointment by transfer to next higher class, category of grade– Ad-hoc Rule – Issued. G.O.Ms.No. 259 GENERAL ADMINISTRATION (SER.A) DEPARTMENT Dated: 30-08-2021
- The Adoption (First Amendment) Regulations, 2021 published 11.08.2021
- The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 published 7.8.2021
- GOVERNMENT OF TELANGANA -Public Services Prosecuting Officers - Promotion and postings to certain Senior Assistant Public Prosecutors as Additional Public Prosecutors Grade-II on temporary basis Orders Issued. G.O.Rt.No.1517 -HOME (COURTS.A1) DEPARTMENT Dated:30-08-2021

Sl. No. (1)	Name and Designation (2)	Place of Posting on Promotion (3)
1.	S.Shoba Rani, Sr.APP, JMFC Court Nalgonda	*VIII* Addi. Assistant Sessions Court, LB Nagar, RR District
2.	E.Kirankumar Reddy, Sr.APP, JMFC Court, Bodhan	Assistant Sessions Court, Adilabad
3.	P.J. Ramakrishna, Sr.APP, JMFC Court, Medak	Assistant Sessions Court, Shadnagar, Mahabubnagar District
4.	Dharavath Sharath, Sr.APP, JMFC Court, Narsampet	Assistant Sessions Court, Huzurabad, Karimnagar
5.	L.H.Rajeshwara Rao, Sr.APP, working on OD as CLI in TSPA, Hyderabad	Faculty Member TSPA, TS
6.	K.Naresh Kumar, Sr.APP, XI ACMM Court, Secunderabad	Assistant Sessions Court, Ibrahimpatnam, RR District

7.	K.V.Beena, Sr.APP, I ACMM, Court Hyderabad	*VII* Addi. Assistant Sessions Court, LB Nagar RR District
8.	P.Krishna Murthy, Sr.APP, II AMM Court, LB Nagar, Ranga Reddy District	VI Addi. Assistant Sessions Court, Medchal, RR District
9.	P.Sathyanarayana, Sr.APP, XII ACMM Court, Hyderabad	Assistant Sessions Court, Bhonglr, Nalgonda
10.	M.Santoshl, Sr.APP, I AJMFC Court, Waranqal	Assistant Sessions Court, Jagitial, Karimnagar District
11.	PVD Lakshmi, Sr.APP, I AJMFC Court, Khammam	Addi. Assistant Sessions Court, Kothagudem, Khammam
12.	M.Rajini, Sr.APP, II ACMM Court, Hyderabad	IX Addi. Assistant Sessions Court, LB Nagar RR District
13.	G.Bhadradri, Sr.APP, JMFC Court, Adllabad	Principal Assistant Sessions Court, Warangal
14.	A.Phanl Kumar, Sr.APP, PJMFC Court, Kothaaudem	Principal Assistant Sessions Court, LB Nagar, RR District
15.	D.Upender, Sr.APP, JMFC Court, Luxettipet	Assistant Sessions Court, Asifabad, Adilabad
16.	T.Rajeshwar, Sr.APP, JMFC Court, Tandur	Assistant Sessions Court, Vikarabad, RR District
17.	G.V.Ramakrishna Rao, Sr.APP, PJMFC Court, Bhongir	I Addi. Assistant Sessions Court, LB Nagar, RR District
18.	S.Komalatha Subbaiah, Sr.APP, IX ACMM Court, Hyderabad	II Addi. Assistant Sessions Court, LB Nagar, RR District

THE COPIES OF THESE CIRCULARS, GAZETTES MENTIONED IN NEWS SECTION OF THIS LEAFLET ARE AVAILABLE IN OUR "PROSECUTION REPLENISH" CHANNEL IN TELEGRAM APP. *http://t.me/prosecutionreplenish*AND ALSO ON OUR WEBSITEhttp://prosecutionreplenish.com/

ON A LIGHTER VEIN

Former Prime Minister of the United Kingdom, Winston Churchill, once said: "I took a taxi one day to the BBC offices for an interview.

When I arrived, I asked the driver to wait for me for Forty Minutes until I 'll get back, but the driver apologized and said, "I can't, because I have to go home to listen to Winston Churchill's speech".

I was amazed and delighted with the man's desire to listen to my speech! So I took out 20 pounds and gave it to the taxi driver instead of 5 Pounds without telling him who I was. When the driver collected the money, he said: "I'll wait for hours until you come back sir! And let Churchill go to hell".

You can see how Principles have been modified in favour of money; Nations were sold for money; Honour sold for money; Families split for money; Friends separated for money; People killed for money; and people being made slaves for money.

✍The Prosecution Replenish, 4-235, Gita Nagar, Malkajgiri, Hyderabad, Telangana-500047
: 9848844936; e-mail:-prosecutionreplenish@gmail.com
telegram app :*http://t.me/prosecutionreplenish;*