

“Evidence Act ”

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What is Evidence ?

- It is establishment of facts in issue by proper legal means to the satisfaction of the court.
- It is the medium of the proof .
- Proof is the result of the evidence.

Types of Evidence

- Two Types
- Direct Evidence – Statement of what a man has actually seen or heard
i.e. Evidence of eye-witness which is also called ocular evidence.
- Circumstantial Evidence – Something from which fact in issue is to be inferred.
i.e. the circumstance of recovery of the weapon of offence

Types of Evidence

- The evidence can also be documentary in contrast to the oral evidence
- Oral evidence is the one given on oath by a witness before the court
- Documentary evidence is something produced before the court in written format e.g. the notice, sale deed etc.

Law of Evidence

- It is a system of a rules for ascertaining controversial questions of facts in judicial inquiries.
- It determines how the parties are to convince the courts of the existence of that state of facts which would established the existence of rights and liabilities.
- It deals with relevancy, admissibility & burden of proof

Evidence

Evidence has to be given only,
of the facts in issue
&
of relevant facts
&
of no other facts.

Fact

- Means & includes,
- Anything, state of things, relation of things capable of being perceived by the senses.

and

- Any mental condition of which any person is conscious.

e.g.

- A man has heard or saw something is a fact.
- A man has certain reputation is also a fact.

Facts

Two Types of Facts

Facts in issue :- Means and includes those facts from which the existence, non-existence, nature or extent of any right liability or disability necessarily follows.

e.g. In a trial for the offence u/s 498 A of I.P.C., the facts in issue would be,
whether complainant is the wife of accused?
whether she was subjected to cruelty?
whether cruelty was of a such nature as is likely to drive her to commit suicide or to cause grave injury to herself ?

Facts

Relevant Fact:- It is so connected to the fact in issue in any of the ways referred to in the provisions of the Evidence Act.

e.g. In the abovesaid trial for the offence u/s 498 A of I.P.C. The facts,

whether she was driven out of the house?
whether her family members tried to convince the accused to accept her?

Whether previously she has lodged any complaint in Police about harrasment ?

All these facts are relevant facts.

Relevant Facts

Section 6 to 55 deals with relevant facts.

They are,

Facts forming part of the same transaction whether they occurred at the same time, same place or a different times and places.

e.g. In a trial for the offence u/s 324 of I.P.C. the fact that on the previous day accused has quarrel with the complainant is a relevant fact though it has not occurred at the same place or at same time of the offence.

Res-gestae

- Explain in one sentence what is Res-gestae?
- Which Section of Evidence Act deals with it?
- Give one example of Res-gestae.

Section-6

- Section-6 Deals with Res-jestae. It means the facts forming part of same transactions.
- e.g. Spontaneous reactions, statements of bystanders, witnessing the incident. In question whether certain goods ordered from B were delivered to A, the said good were delivered to several intermediate persons is relevant fact under this section
- A statement which is contemporaneous with the incident so shortly before or after the incident is Res-jestae.
- It is not merely the narration of prior

Case laws

- *Sukhar V State of UP 2000 Cri.L.J. 29
AIR 1999 SC3883*
- *Rattansingh V State of H.P. AIR 1997 SC
768*
- *Sawaldas V Satte of Bihar AIR 1974 SC
778*
- *Vasa Chandrashekhar Rao V Pauna
Satyanarayan AIR 2000 SC 2138*

Relevant Facts

- Facts which are the occasion, the cause or the effect of the facts in issue.
- e.g. In a trial for a murder, the presence of blood stains on the spot of incident or on the cloths of the accused is a relevant fact as it is the effect of the fact in issue i.e. whether accused committed the murder.
- In the same trial the fact that there was enmity between the family of the deceased and the accused is a relevant fact as it gives the cause for the murder.

Section 7

- This section admits a very large class of facts connected with facts in issue or relevant facts.
- A fact in Issue cannot be proved by showing that the facts similar to it but not part of a same transaction have occurred at other times.
- A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under this section but such evidence must be received with caution.

vide Mahabir Pd. Verma v. Surinder Kaur, AIR 1982 SC 1043: (1982) 2 SCC 258

Motive

- Motive constitutes an important part for proof of any offence as it gives the cause for incident.
- e.g. In trial for offence u/s 326 of IPC the evidence relating to fact that two days before the incident, the complainant has teased the sister of accused and hence accused had got annoyed and threatened the complainant is a relevant fact.

Motive

- Mere existence of motive is by itself not an incriminating circumstance.
- Motive howsoever strong cannot take the place of proof. (*State of Punjab V Sucha Singh AIR 2003 SC147*)
- Absence of Motive does not not ipso-facto affect the prosecution case when there is direct evidence of eye-witnesses corroborated with medical evidence. (*Dhananjay Shetty V State of Maharashtra AIR2002 SC 2787*)
- Motive however if proved, provides additional link in the chain.
- Motive assumes significance in a case based on circumstantial evidence.

Preparation

- Any acts done towards preparation of the incident are relevant facts.
- e.g. the facts that accused has purchased a gun just 8 days before the incident becomes the relevant in a trial for the offence of the murder.

Similarly in a suit for possession based on title the facts that there were meetings of negotiations between the parties and accordingly the stamp was purchased are the relevant facts.

Previous or Subsequent Conduct

- It should be in close proximity with the fact in issue and not a remote or distant one. It must have a nexus with the fact in issue.
- e.g. The fact that after the incident accused absconded is a relevant fact as it shows his subsequent conduct.

Similarly the fact that after execution of sale deed party was full in possession of the party also to prove that sale deed was actually executed.

Conduct of Accused

- The conduct of accused being last seen with the deceased is relevant but not decisive.

(vide Kansa Behara V State of Orissa AIR 1987 SC1507)

- Absconding of Accused immediately after the incident may be indicative to some extent of guilty mind but considering the instinct of self-preservation it is also not a conclusive fact about his guilt .

(vide Kartarey V State of U.P. AIR 1976 SC76)

- Conduct of Accused after being arrested, begging forgiveness is relevant though again not conclusive.

Facts necessary to explain or introduce facts in issue & relevant facts (Section 9)

- Not only the relevant facts but the facts which are otherwise relevant to explain or introduce relevant facts are also relevant.

e.g. The explanation offered by the accused about his not being available after the incident is relevant.

- This section make admissible facts regarding the place, name, date, identity of parties/things, circumstances and relationship of the parties, being relevant to explain facts in issue .

Test Identification Parade

- Evidence relating to TIP is admissible u/s. 9 as it pertains to identity of the accused or muddemal.

e.g. Earabhadrappa V State of Karnataka AIR 1983 SC 446 – Identification of stolen ornaments, saris & cloths by ladies.

Marshalling of Evidence

Marshalling and Appreciation of Evidence is the backbone of a Judgment and Order.

Marshalling of Evidence is the skill of picking up of various pieces of evidence on a particular disputed point

and

putting them together so as to analyse them for arriving at a conclusion.

- There is no rule of universal application

And

- No empirical formula for appreciation of evidence.

Four Basic Criterias for Evaluation of Evidence are-

- Whether the statement is inherently improbable or contrary to the course of nature.
- Whether the deposition is mutually contradictory or inconsistent on substantial points.
- Whether the witness is having any motive, grudge or bias.
- Whether the demeanour of the witness was abnormal or unsatisfactory.

- The approach of the Court must be integrated and inferences should not be drawn by picking up statements from here or there.
- The findings should be based on the objective assessment of the evidence and not on conjectures and surmises.

Relevant Legal Provisions

- Section 3 of the Evidence Act, which defines proved, disproved and not proved.
- In Civil Cases, facts are to be proved on the basis of preponderance of probabilities.
- In Criminal Cases, the guilt has to be proved beyond reasonable doubt.

Relevant Legal Provisions

Section 114 of Evidence Act

According to this Section,
the Court may presume the existence of
the fact having regard to
the common cause of natural events,
human conduct,
public and private business.

Relevant Legal Provisions

Section 118 of Evidence Act Competence of Witness

- Two conditions
 - (i) The person understands the questions put to him;
 - (ii) Such person possesses the faculty to give rational answers to such question.
- It is the discretion of the Judge to decide on the basis of the understanding of the witness about his competence.

Relevant Legal Provisions

Section 134 of Evidence Act

Basic Rule of Evidence

- No particular number of witnesses necessary for proof of a fact.
- The evidence not to be enumerated but weighed.
- It is the quality of evidence and not the number of witnesses which is a deciding factor.

Safe Principle

- Safe Principle is to consider how consistent the story is with itself.
- How it stands the test of cross-examination.
- How far it fits with rest of evidence in the circumstances of the case.

Hari Obula Reddi and others Vs. The State of Andhra Pradesh, AIR 1981 SC 82

- To find out whether the presence of the witness at the relevant time and place was probable ,
- whether the substratum of the story narrated by him is consistent with
- the other evidence on record,
- natural course of human events,
- the surrounding circumstances and
- inherent probabilities of the case and

What is Proof beyond the Reasonable Doubt?

It is a guideline and not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human process [vide Inder Singh Vs. State (Delhi Admn) (1978) 4 SCC 161]

Shardul Singh Vs. State of Haryana (2002) 8 SCC 372

There cannot be a prosecution case with a cast-iron perfection in all respects and it is obligatory for the courts to analyse, sift and assess the evidence on record, with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same without being obsessed by an air of total suspicion of the case of the prosecution.

What is to be insisted upon is not implicit proof.

State of West Bengal Vs. Orilal Jaiswal (1994) SCC 73

Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence.

**Viscount Simon J. long back observed
that ,**

**'a miscarriage of justice may arise from
the acquittal of the guilty no less than
from the conviction of an innocent.'**

Falsus In Uno Falsus In Omnibus

- It means false in one thing, false in every thing.
- This maxim, which is neither a sound rule of law nor a rule of practice, is not applicable as far as criminal jurisprudence of our country is concerned.
- The skill of appreciation of evidence itself demands disengaging truth from the falsehood, therefore, wholesome rejection of the testimony of a witness because some or the other part of his statement has not been found to be true, may lead to injustice.

Ugar Ahir Vs. State of Bihar, AIR 1965 SC 2777

The Apex Court observed that,

“hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroidery or embellishments.

It is, therefore, the duty of the Court to scrutinize the evidence carefully.”

Bhagwan Tana Patil v. State of Maharashtra AIR 1974 SC 1974

The Apex Court ordained that,

“ the function of the Court is to disengage the truth from the falsehood and to accept what it finds to be true and reject the rest.

It is only where the truth and falsehood are inextricably mixed up, polluted beyond refinement and down to the core so as to damage the entire fabric of the narration given by a witness, that the Court might be justified in rejecting the same.”

State of U.P. Vs. Shankar, AIR 1981 SC 897

The Apex Court observed that,

“ mere fact that the witness has not told the truth in regard to a peripheral matter would not justify whole sale rejection of his evidence. In this country, it is rare to come across the testimony of a witness which does not have a fringe of an embroidery of untruth although his evidence may be true in the main.

It is only where the testimony is tainted to the core, the falsehood and the truth being inextricably intertwined, that the Court should discard the evidence.”

State of U.P. Vs. Anil Singh, AIR 1988 SC 1998

It has been stressed that,

“a Judge does not preside over a criminal trial merely to see that no innocent man is punished.

A Judge also presides to see that a guilty man does not escape.

One is as important as the other.

Both are public duties which the judge has to perform.”

Krishna Mochi & Ors. Vs. State of Bihar (2002) 6 SCC 81

The Apex Court observed that,

“ now the maxim, ‘Let hundred guilty persons be acquitted but not a single innocent be convicted’ is in practice changing the world over and Courts have been compelled to accept that ‘society suffers by wrong convictions and it equally suffers from wrong acquittals’.

Precisely put the approach of the Court should be that neither an innocent person is convicted nor a guilty person is allowed to escape from the clutches of law.”

Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753

The Apex Court pointed out that discrepancies which do not go to the root of the matter and shake the basic version of the witness cannot be annexed with undue importance and over much importance cannot be attached to minor discrepancies.

> Appreciation of evidence should not be divorced from the realities.

Evidence of eye witnesses, who are said to be close relatives, cannot be discarded on the ground that they are close relatives of the victim or deceased.

Dalip Singh and Ors. Vs. State of Punjab,
AIR 1953 SC 364

The Apex Court observed that “Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person...”.

Seeman alias Veeranam Vs. State by Inspector of Police, (2005) 11 SCC 142

The Apex Court has summed up the law on this point as under:

“It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible...”

Who is an interested witness?

One who either has some enmity against the accused

OR

Is interested in result of a case in a particular manner

Merely because he is a relative he does not become interested witness.

Merely because he is an Investigating Officer, he does not become interested / partisan witness.

Mechanical rejection of his evidence would result in failure of justice.

Seeman alias Veeranam Vs. State by Inspector of Police, (2005) 11 SCC 142

The Apex Court has summed up the law on this point as under:

“It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case it is paramount duty of the Court to be more careful in scrutiny of his evidence...”

CHILD WITNESS

Evidence Act does not prescribe any particular age as a determinative factor to treat a witness to be a competent one but some different considerations are required to be applied in case of child witnesses due to factors like child witness being easily influenced, likely to be tutored and susceptible to be swayed by what others tell him.

Hence, it has been held in Panchhi Vs. State of U.P., AIR 1998 SC 2726,

“evidence of child witness requires to be scrutinized very carefully. Once it is found to be reliable, it alone can form the basis of conviction.”

SOLITARY WITNESS

No difficulty in relying on the sole testimony of a single witness to base conviction if it is found to be above reproach or suspicion of interestedness or incompetence .

Vadivelu Thevar Vs. The State of Madras, AIR 1957 SC 614

As a general rule, the Court can and may act on testimony of a single witness though uncorroborated.

One credible witness outweighs a testimony of a number of other witnesses of indifferent characters.

HOSTILE WITNESS

Testimony of hostile witness not to be rejected outright. The same can be accepted to the extent his version is found to be corroborating the prosecution case.

Part of his testimony which is found to be creditworthy can be acted upon. The court has, however, to be careful, aware and should be slow to act upon the testimony of such witness unless being corroborated.

Vide i) Rabindra Kumar Dey Vs. State of Orissa, AIR 1977 SC 170

ii) Gurpreet Singh Vs. State of Haryana, AIR 2002 SC 3217

CHANCE WITNESS

A person who happens to be at the place of occurrence, at the time of incident by sheer coincidence is known as 'Chance Witness'.

The testimony of such witness is although not necessarily false, is proverbially unsafe. (Guli Chand Vs. State of Rajasthan. AIR 1974 SC 276)

The concept of chance witness is foreign to India as here people are less formal and more casual. If murder is committed in street as only passersby will be the witnesses, their evidence cannot be brushed aside on the ground that they are mere chance witnesses. [Thangaiya Vs. State of Tamil Nadu (2005) 9 SCC 650]

POLICE / PANCH WITNESS

Karamjit Singh Vs. State (Delhi Admn.) (2003) 5 SCC 291

The Apex Court observed that,

“ the testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down.”

POLICE / PANCH WITNESS

Babulal Vs. State of M.P. 2004 (2) JLJ 425

“Mechanical rejection of the testimony of the police witness cannot be said to be a judicial approach, rather such evidence should be scanned and examined by applying the same parameters, which are applicable to an ordinary witness.”

CIRCUMSTANTIAL EVIDENCE

The essentials of circumstantial evidence to prove any offence thus are:-

- i) Irrefutable circumstances i.e. the circumstances of conclusive nature and tendency must be established from which conclusions are to be drawn.
- ii) All facts must be consistent with the hypothesis of the guilt of the accused.
- iii) The circumstances should lead to moral certainty,
- iv) exclude every hypothesis but the one proposed to be proved.

Sharadchandra Sarda Vs. State of Maharashtra

Case Laws

Ranbir v State of Punjab, 14 AIR 1973 SC 1409

In this case, the Supreme Court held that in cases of party factions, there is generally a tendency on the part of the prosecution witnesses to implicate some innocent persons along with the guilty persons. In such cases, the evidence has to be scrutinised with care and caution, and if the substratum of the prosecution case remains unaffected, and the remaining evidence is trustworthy, the prosecution case should be accepted to the extent it is considered safe and trustworthy.

Bhagirath v State of Madhya Pradesh, AIR 1976 SC 975

Their Lordships of the Supreme Court observed, It is well-settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs, it cannot take advantage of the weakness of the defence. Nor can the court, on its own motion, make out a new case for the prosecution to convict the accused on that basis. ,

The court cannot disbelieve the substratum of the prosecution case or the material particulars of evidence to re-construct a story of its own out of the rest.

Swaran Singh v State of Punjab 1984 Ch Cr Cas 604 (P&H);

Jagit Singh v State of Punjab 1978 Cr LJ 1588 (P&H)(DB) (AIR 1976 SC 975 followed);

State of Uttar Pradesh v Hurt Prasad AIR 1974 SC 1740, 1974 CrLJ 1274, (1974) 3 SCC 673.

Pattu Lal v State of Punjab 1996 Cr LJ 2446 (SC).

Corroboration is a rule of prudence. Evidentiary value of a deposition, which is otherwise admissible, is not just wiped out in the absence of corroboration. Even in the absence of corroboration, a deposition, for its quality, may be safely accepted to be correct.

*Babu Singh v State of Punjab 1996 Cr LJ 2503 (SC),
(1996) 8 SCC 699*

If a witness is found to be independent and reliable, and is believed to be present during the occurrence, then his evidence cannot be rejected on the sole ground that his name had not been mentioned in the FIR.

Leela Ram (descd) through Dull Chand V State of Haryana & Anor AIR 1999 SC 3717

The discrepancies found in the ocular account of two witnesses, unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There is bound to be some discrepancies between the narrations of different witnesses, when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore, should not render the evidence of eye-witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

The court shall have to bear in mind that different witnesses react differently under different situations, whereas some become speechless, some start waiting, while some others run away from the scene and yet there are some, who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact, it varies from individual to individual.

cont...

Leela Ram (descd) through Dull Chandv State of Haryana and Anor AIR 1999 SC 3717

There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction, not falling within a set pattern is unproductive and a pedantic exercise.

Hardly one comes across a witness, whose evidence does not contain some exaggeration or embellishments. Sometimes, there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety, they may give slightly exaggerated account. The court can sift the chaff from the corn and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, they sought to inspire confidence in the mind of the court to accept the stated evidence, though not in the absence of the same.

State of Uttar Pradesh V Shanker AIR 1981 SC 897.

In this country, it is rare to come across the testimony of a witness, which does not have a fringe or an embroidery of untruth, although, his evidence may be true in the main. It is the function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest. It is only where the testimony of a witness is tainted to the core, the falsehood and the truth being inextricably intertwined, that the court should discard his evidence in toto.

Gurnam Kaur v Bakshish Singh AIR 1981 SC 631, p 635,

It is not axiomatic that whenever the witnesses take the signatures of witnesses to their statement despite the ban of s 162, Cr PC 1973, it must be presumed that the witnesses were not considered reliable by the police. It is a question of fact to be determined in the circumstances of each case.

Dalbir Singh v State of Punjab AIR 1987 SC 1328, p 1322.

Where an eye-witness is not examined because he has been won over by the other party, it cannot be said that the witness has not been examined without giving any reason.

Madkani Baja v State 1986 Cr.L.J. 433, p435

The evidence of a witness to the occurrence in a criminal case is not to be accepted merely because the defence has not been able to say as to why the accused has been involved or as to why a witness has come forward to depose against him or because the witness is a disinterested person, Disinterested evidence is not necessarily true and interested evidence is not necessarily false.

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Sonia Behera V State of Orissa AIR 1983 SC 491

Non-disclosure of the occurrence to any one until the police officer came to the scene without any reasonable explanation, would certainly affect testimony of the witness, and it would not be reasonable and proper to accept the testimony of such a witness

Sevi V State of Tamil Nadu AIR 1981 SC1230,

Babuli V State of Orissa AIR 1974 SC775.

Where the witnesses admit that they were all attacked simultaneously, it is not possible for each of the witnesses to have noticed the attack on every one else. In such a situation, the dramatic and photographic account of the incident with minute details of attack on each of the victims does not inspire confidence.

Appabhai v State of Gujarat AIR 1978SC 696, p 699.

The witnesses to heinous crime may not react in a normal manner, nor they do react normally. The court cannot reject their evidence merely because they have reacted in an unusual manner.

Rana Pratap v State of Haryana 1984 Mad LJ (Cr) 4, p 6 (SC), AIR 1983 SC 680.

Every person, who witnesses a murder, reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysterical and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner, is to appreciate evidence in a wholly unrealistic and unimaginative way.

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