

Government offices. Trade Union Leaders of Public Sector banks confirmed the move, but refused to make a statement before the CTUs make a formal announcement. The February 28th stir is also likely to have an affect on the port traffic, as senior trade union leaders confirm that talks were on to bring on Board Port and Dock leaders across all the major Port of the Country. The leaders said the coming together of the Unions was part of a grant strategy to put pressure on the Government. It is another matter that differences exist within the trade unions on various issues. This includes the recent cabinet decision to permit foreign direct investment in retail, which all left-backed trade unions have opposed even as the ruling congress-backed INTUC has put its wait behind the Government”.

About the Author: Rajasbekar Rao. N

Working as Ophthalmic Officer in the Health, Medical & Family Welfare Department, Government of Andhra Pradesh since last 25 years. Graduated in Science (B.Sc.) and completed Post Graduation in Law (LL.M., specialization-Labour Laws) from Osmania University, Hyderabad in the year 2002. Also qualified the Post Graduate Degree of ‘Master in Community Eye Health’ from University of New South Wales, Australia in the year 2009. Conducted a Research Project (Reasons for Loss to Follow-up & Visual Outcomes after Cataract surgery at secondary Eye centre in Adilabad District of Andhra Pradesh) in the year 2009 with the approval of Ethics Committee of (Hyderabad Eye Research Foundation) L.V. Prasad Eye Institute, Hyderabad. Participated in Indian Eye Research Group 19th Annual Meet and presented a poster and also Presented a free paper in International Assembly of Community Ophthalmologists & Second Annual Meet of the Association of Community Ophthalmologists of India (ACOIN) during 2011.

CIRCUMSTANTIAL EVIDENCE AND JUDICIAL ADVENTURISM

By

—**P.M. MURALI KRISHNA**, Advocate,
Seethapalmandi, Near Rly. Gate,
Secunderabad, A.P.

In a recent judgment it was observed by the Supreme Court (Justices *G.S. Singvi* and *A.K. Ganguli*) that ‘when a murder charge is to be proved solely on the Circumstantial Evidence, presumption of innocence of the accused must have a dominant role’. The Dictum of Criminal Law is that “Every accused person must be presumed to be innocent until he is proved to be guilty.”

In appreciating the weight of Evidence, there is a fundamental difference between the Civil and the Criminal Proceedings. Whereas in Civil Cases “a mere preponderance of Evidence” is sufficient to establish a fact, in criminal matters, however, the evidence adduced by the prosecution should not only make the guilt of the

accused “highly probable”, but any alternative hypothesis in favour of the accused must be extremely improbable. As pointed out in *Guab Chand v. Kudilal*¹ “the prosecution must prove its case beyond all reasonable doubt” in Criminal proceedings.

In recent times, however, the Supreme Court diluted the application of Proof beyond reasonable doubt doctrine to show its sensitivity towards societies needs to ensure the punishment of guilty. In *Bhagwan Din v. State of Madhya Pradesh*² the Supreme Court confirming death sentence on several members of MCC for murdering 35 people

1. (1966) 3 SCR 623

2. (2002) 4 SCC 85

from another caste in Bihar seriously questioned that the doctrine was leading to too many acquittals and laid down that it was not required to meet every hypothesis put forward by the accused. But the Court definitely deviated from application of the 'rarest of the rare cases' principle enunciated earlier. In another case the Court held that 'exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and there by destroy social defence. (*Gangbadbar Bebera v. State of Orissa*)³. The Court expressed its pro-prosecution stance in *Shamsber Singh v. State of Haryana*⁴ by observing that "initial presumption of innocence of an accused disappears on conviction after trial subject to the orders to be passed in further appeals". It suggested stringent punishments without any exception in election related violence and political crimes (*Ruli Ram v. State of Haryana*)⁵.

The Supreme Court further in number of cases reiterated that conviction can be awarded despite minor discrepancy in the evidence⁶. However it cautioned not to resort to harsh like TADA unless the nature of activities of the accused cannot be checked and controlled under the ordinary law⁷. The Court also has permitted recording of the confessions on mechanical devices including computers as admissible⁸.

Oral Evidence, under Section 60 of Evidence Act must in all cases is required to be direct to be admissible. The word Direct Evidence, we have seen excludes hearsay evidence. It, however, does not exclude circumstantial evidence.

The following observations of Supreme Court in *H.G. Nagundkar v. State of M.P.*⁹, are noteworthy in this connection :

Circumstantial evidence is the testimony by witnesses as to the circumstances from which an inference is to be drawn as to the fact in issue. In cases where Direct Evidence is not available then circumstantial evidence can be resorted to. But where the evidence is of 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. The circumstances should be of conclusive nature and there should not be even a single weak link in the chain of circumstantial evidence.

How circumstantial evidence becomes relevant in the absence of any direct evidence becomes clear when we consider the following leading case on the subject :

*Ananth Chintaman Lagu v. State of Maharashtra*¹⁰. The facts of the case are as follows :

1. *Ananth C. Lagu* the accused was the family doctor of the deceased *Lakshmi Bai Karve*.
2. On 12th December, 1956 she was taken from Poona to Bombay by the Doctor for some medical treatment.
3. The next day morning by the time the train reached the station she was in an unconscious state and was admitted to G.T. Hospital for treatment but within a few hours time she died. There was no direct evidence of any kind to show that the accused was responsible for the death of the deceased. The accused was arrested and prosecuted on the charge of murder of the deceased by

3. (2002) 8 SCC 381

4. (2002) 7 SCC 536

5. (2002) 7 SCC 691

6. *Dhamendrasinh v. State of Gujarat*, (2002) 4 SCC 679

7. *R.S. Savant v. State of Maharashtra*, (2002) 5 SCC 604

8. *B.D. Shetty v. CEAT Ltd.*, (2002) 1 SCC 193

9. 1952 SCR 343

10. AIR 1960 SC 500

administering poison and his conviction in this connection was totally based on circumstantial evidence. The Supreme Court referred to the following circumstances which conclusively establish the guilt of the accused :

1. After admitting the deceased in the hospital the accused disappeared with her cash and costly jewellery.
2. He gave a false name while admitting the deceased in the hospital.
3. A Post-Mortem was not conducted immediately after her death due to the interference of the accused.
4. The accused forged the signature of the deceased on several documents and collected money from several sources of the tune of about Rs.26,000/-.

On the basis of the above mentioned circumstantial evidence, the Supreme Court upheld the conviction of the accused for murderer under Section 302 of the Indian Penal Code.

The Supreme Court laid down the following rules to be taken into account while convicting a person on the basis of circumstantial evidence :

1. The facts alleged as the basis of any legal inference must be clearly proved and undoubtedly connected with the Factum Probandum (Fact-in-issue).
2. The burden of proof is on the party alleging the existence of any particular circumstance connected with the fact in issue.
3. The inculpatory (= incriminating) facts alleged must be conclusively established and should be consistent only with the hypothesis of the guilt of the accused and should be incapable of explanation upon any other reasonable hypothesis than that of his guilt.

4. If the guilt of the accused is not conclusively established and there is any reasonable doubt in this regard which was not cleared, then the accused is entitled as of right to be acquitted."

*Ram Avatar v. The State of Delhi Administration*¹¹ is another case in point.

The appellant in this case was convicted under Section 302 IPC for murder and sentenced to imprisonment for life by the High Court. The Supreme Court upheld the conviction. The case purely depends on circumstantial evidence.

The trial Court in the instant case, after considering the evidence came to the conclusion that the prosecution has established the case beyond reasonable doubt and accordingly acquitted the accused of the charges framed against him. The State filed an appeal before the High Court which, reversed the decision of the trial Court and held that the accused murdered his, wife by strangulation. The decision is based on the circumstantial evidence :

1. The Marriage of the accused and the deceased took place on 6th December, 1975 and within one year of the marriage, the deceased died during the night of 16th and 17th November, 1976.
2. A number of witnesses deposed that the accused, *Ram Avatar*, had been ill-treating the deceased and that their relations were extremely strained. This is buttressed (= supported), by the further circumstance that about 6' months after the marriage a Panchayat was held at Bakhtamal Dharmashala, Delhi for bringing about conciliation between the spouses.
3. Another circumstances which proves the case of the prosecution is the

11. AIR 1985 SC 1692

evidence of one (Prosecution witness 1) Mr. *Kishen Avatar*, according to which, the accused was seen by him on the fateful night between 9 or 9.30 p.m., in his house. The evidence given by him is to the following effect : “When I returned at about 9 or 9-30 p.m. I saw the accused in his house. He was alone in the house at that time. The room of the accused is situated on the ground floor while mine is situated on the First Floor, when saw him, he was coming downstairs from the first floor and entered his room on the Ground Floor.... then I entered the room of the accused where he and his wife used to sleep together and saw the dead body of *Madhu*, his wife.”

4. Another circumstance is, that there is further evidence to show that on the night of the occurrence, *i.e.*, between night of 16th and 17th Nov. 1976, the accused left his house in the morning went to Muzaffar Nagar and stayed at his sister's house there and came back to Delhi in the evening of 17th Nov. 1976 but instead of staying in his own house he stayed at Venus Hotel in Pahar Gunj in Delhi under a false and assumed name of *Vinod Kumar* which according to the evidence, was written by him while making the entries in the hotel register.
5. The banian of the accused, recovered by the sun inspector while conducting a personal search contained blood stains on the front side.
6. The recovery of broken bangles and a pair of cufflinks also show that during the course of strangulation the deceased must have put in stiff resistance.

On the basis of above circumstantial evidence, the Supreme Court upheld the conviction. In this connection, the Court observed as follows :

“Circumstantial evidence must be complete and conclusive before the accused can be convicted thereon. This however, does not mean that there is any particular or special method of proof of circumstantial evidence.... where there is a chain of circumstances linked up with one another, it is not possible for the Court to truncate and break the chain of circumstances. In other words, where a series of circumstances are dependent on one another, they should be read as one integrated whole and not considered separately, otherwise the very concept of proof of circumstantial evidence would be defeated where circumstantial evidence consists of a chain of continuous circumstances linked up with one another, the Court has to take the cumulative effect of the entire evidence led by the prosecution before acquitting or convicting an accused.”

It may be pointed out that as regards the punishment to be awarded, however, it makes absolutely no difference whether the evidence is direct or circumstantial once it is accepted as reliable proof of the guilt of the accused.

In a recent case¹² the Supreme Court has cautioned Courts against “judicial adventurism” and convicting the accused, and even sending some of them to the gallows, in murder cases merely on the basis of “circumstantial” evidence.

“When a murder charge, is to be proved solely on circumstantial evidence, presumption of innocence of the accused must have a dominant role,” a bench of Justices *G.S. Singhvi* and *A.K. Ganguli* held.

The bench acquitted two persons – *Musbeer Khan* and *Basant Shivia Bhai* who were allegedly part of a three-member gang that shot a man to death in Bhopal in October 2003. They had been given the death sentence.

12. The Deccan Chronicle Newspaper dated 8.2.2010

According to the prosecution, there was no direct evidence against the duo. A man had seen three persons riding a scooter near the car after he peeped out of the window of his house on hearing gun shots. Another scooterist had seen three men going on a scooter towards the murder site after dark.

The Court said “circumstances which lead to the conclusion of guilt should be in the first instance fully established, and all the facts so established should be consistent with the guilt of the accused.”

“There must be a chain of evidence so complete as not to leave any reasonable doubt for a conclusion consistent with the innocence of the accused,” the Court ruled. “It must be shown that within all human probability (that) the act must have been committed by the accused (and) none else,” the top Court held.

Even if the accused had confessed to the crime and the weapon was recovered on the basis of it, this did not give liberty to the Trial Judges to draw a definite conclusion about his guilt if there was no evidence connecting the arm to him, the bench ruled out that “under Section 106 of the Evidence Act, the circumstantial evidence is treated a very weak evidence in murder cases.”

Circumstantial evidence may be accepted though direct evidence fails – There is no rule of evidence that if direct evidence on a fact is rejected, then the circumstantial evidence bearing on that fact must be ignored. A fact has to be determined on the basis of such direct and circumstantial evidence as may be on record. *Gulab Chand v. Kudi Lal*¹³.

The weight of circumstantial evidence is higher than that of the direct evidence : *Sheoraj v. A.P. Batara*¹⁴. “Besides, the rule that facts are provable by circumstances as well as by direct testimony, has a considerable effect in preventing guilty or dishonest parties from tampering or making

away with witnesses and other instruments of evidence, which they would be more likely to do if they knew that the only evidence which the law would receive against them was contained in a few easily ascertained depositories” (Best’s Principle of the Law of Evidence, 1911 Edition P.309). Evidence on oath can be obtained by money and influence. But circumstantial evidence is free from such vice. Where sure circumstances are available is prudent to rely more on them than on deposition of witnesses. “Men may lie, circumstances do not.” – *Ganga Bai v. Malabar*¹⁵; *Rahim Khan v. Khursheed Ahmad*¹⁶.

Besides the quality of being untainted there are some facts which can be proved only by circumstantial evidence. No direct evidence is possible to prove them. The mental state such as intention is to be gathered from the circumstances; *Hayati Usta v. State*¹⁷. Whether a person had knowledge of previous contract by his vendor can be proved by circumstances. *Md. Aslam Khan v. Feroze Khan*¹⁸.

In cases where the direct evidence on both sides is of a partisan character, Court is always on a safer ground in deciding a case upon the circumstances and probabilities: *Sibt Ahmad v. Hamida Khatoon*¹⁹. In cross cases where the accused in one case figures as a witness in the other circumstances which are reliably established aliunde can serve as proper guide in adjudicating upon the guilt or innocence of the persons involved, otherwise grave miscarriage of justice is bound to result²⁰.

It should be borne in mind that there is a difference between circumstances and circumstantial evidence. *Maqbul Ahmed v. Rahman*²¹.

13. AIR 1959 MP 151 (FB)

14. AIR 1955 All. 638

15. AIR 1950 Kutch 64

16. AIR 1975 SC 290 Para 40

17. AIR 1961 Goa 11 (FB)

18. AIR 1932 PC 228

19. AIR 1929 All. 18

20. *Saudagar Singh v. Emperor*, AIR 1944 Lah. 377

21. AIR 1952 Cal 494.