

## “Last Seen Together Rules”

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### **Historical Background**

Historically speaking, Law of Evidence may be described as child of the judiciary system. Evidence, as the word suggest may be defined as a set of rules determining the disputed question of facts in judicial inquiries. Law of Evidence holds a global importance. The literal term of Evidence means “proof” be it oral evidence, documentary evidence, circumstantial evidence, direct evidence, medical evidence or any relevant evidences acceptable in the court of law.

We will specifically be dealing with evidences arising from various circumstances, though not direct but equally given as much importance as direct evidences.

- **CIRCUMSTANTIAL EVIDENCE -**

In most of the criminal cases direct evidences are hard to be found, then the entire case depends upon the circumstantial evidence. Circumstantial evidences implies when all the evidences are clubbed together to form a complete chain of events in such a way that the accused may be convicted. The chain of events so formed must be without any reasonable doubt. Each circumstance and the evidences from which the chain is formed should be individually proved and should be forceful as direct evidences. The circumstantial evidence is always direct and primary which means the fact from which the existence of the fact in issue to be inferred must be proved by direct evidence. In case of circumstantial evidence all the circumstances should be vested by absolute evidence and should form a complete chain, bring home the guilt to the accused without giving chance to any other hypothesis.

- **RES GESTAE-**

The term “chain of events” now brings us to another important aspect of law of evidence which is “Res Gestae”. When the prosecution forms a chain of events, the evidences so produced of such events should form a part of same transaction. This concept in Indian Evidence Act 1872 has best been described as “res gestae” under section 6. The principle of doctrine of res gestae is that whenever a contract, crime or any transaction is a fact in issue, then the evidence can be given of every fact which forms a part of same transaction. These facts which surrounds the

happening of an event are called “res gestae”. “Res gestae” literally means things said and done in the course of a transaction. When the case is taken to the court, the court lays emphasis at “De recenti” i.e. where the time span between the point of time when the deceased and the accused were last seen alive and when the former is found dead, is so short then the chance of any person except the accused being the initiator of the crime, becomes impossible.

Now if the accused proves in the court that at the time of the commencement of the offence, he was not present with the deceased, he needs to produce his plea of alibi in the court of law. The evidences of the fact of alibi should be in relation to the case and no other than that. After producing the plea of alibi in the court of law, the onus of proof shifts to the accused as he possesses special knowledge according to section 106 of Indian Evidence Act 1872.

### **LAST SEEN TOGETHER THEORY**

Last seen together means the time when two persons were seen together and later it is found that one of them is dead and the other is alive. The time gap of the person seen together and the person found dead is important. If the time gap is short, the presumption as to the person who caused the death goes to the person who is alive and who was seen together. The ideology of “Last seen together” is one where two persons are seen ‘together alive’ and after an interval of time, one of them is found alive and the other dead. If the span between two is short, presumption as to the person alive being the creator of the death of the other can be drawn. Time span should be such that it rules out the risk of somebody else committing the crime. This theory is one of the new principles, which is taken into account for proving the guilt of the accused. It is a piece of circumstantial evidence. In the absence of any eyewitnesses or tangible evidence, this theory is the last resort to the prosecution. The base of this theory is principles of probability cause and connection. The circumstance of the theory does not by itself leads to the inference that it is the accused who has committed the crime. There must be something more establishing connectivity between the accused and the crime.

Last seen together evidences may be taken depending upon the facts and circumstances of each case. The court may look for other circumstantial and corroborative evidences in order to convict a person. Last seen theory can only be taken as a conclusive evidence if the time gap between the accused and the deceased seen together is very small.

Last seen theory basically helps in finding the persons liable for committing crimes like Murder as per S-302 Of Indian Penal Code (IPC),1860, Kidnapping as per S-359-361 of Indian Penal Code and rape as per S-375 of IPC. These crimes are very crucial in nature and in absence of any direct evidence in commencement of the crime, Last seen together concept plays a vital role. The case of the prosecution is based on the way they put the circumstantial evidence in proper manner. All the evidences should form a chain of evidence. If all the evidences put together does not complete the puzzle, the accused wins the case.

The basic and accepted rule of criminal jurisprudence in India is that, the burden of proof is always on prosecution. This conclusion is borrowed from the fundamental principle that the accused should be presumed to be innocent till he is proved guilty beyond reasonable doubt and accused has got right to take benefit of some reasonable doubt. The Doctrine of "Last seen together" helps the courts to shift the burden of proof to the accused.

### **BURDEN OF PROOF IN THE MATTER OF LAST SEEN TOGETHER**

In any criminal case whatsoever, the prosecution should proof the involvement of the accused beyond all reasonable doubt. In a case where husband and wife both were last seen together in a room and their children who were watching television were asked to leave by the deceased and after a while the wife locked the room from inside. As soon as the children saw smoke coming out of the room, they broke open the door. From the above case conclusion can be drawn that no applicability of section 106 can be considered here.<sup>1</sup> In *Madho Singh v State of Rajasthan*<sup>2</sup> absence of any proof of homicidal death, accused could be convicted on the basis of last seen together.

### **EVIDENCIARY VALUE OF LAST SEEN TOGETHER**

The evidence of last seen together may solely be relied upon for conviction of the accused although it depends upon the facts and circumstances of each case. Some court of laws looks for other corroborative evidences while some of the courts may rely only on the evidences of being last seen. In *Jaswant Gir v Punjab*, in this case the deceased was travelling in a vehicle with the accused. The body of the deceased was recovered from a culvert. The apex court did not convict the accused and he was acquitted as the time gap between the deceased boarding the vehicle and his body being found was not as considerable and even the other chain of evidences did not fall together to convict the accused. Thus, in this case it was not possible to convict the accused solely on the basis of last seen together.

It is generally presumed to be secondary evidence. In absence of primary or direct evidence and eye witness, the person who was last seen with the person, who is dead, is presumed to be the murderer. The onus of proving shifts to that the person who is accused, to prove his innocence by giving the plea of alibi. But it doesn't always hold true that the person accused of committing the crime has actually committed the crime. In the absence of corroborative evidence, the accused is charged with the crime. For example- if a man A was last seen together with B in a lonely road and later on B is found dead and his body is recovered from a well in that road and it is even proved that A had enough reasons and had motive to kill B, the burden of proof shifts and now the onus is on A to proof that he had not caused B's death.

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<sup>1</sup> P. Mani v/s State of Tamil Nadu (2006) 3 SCC 161.

<sup>2</sup> 2003(2) Crimes 111 SC.

The Indian Evidence Act,1872, also state about this concept and theory. The apex court from time to time have led down various rules relating to this depending upon the facts and situation of the case. Last seen together concept can form a weak kind of evidence in itself and this concept does not hold true all the time. But when other circumstances are coupled as to the time when last seen and the recovery of the deceased body, the accused have to explain under S-106 of Indian Evidence Act. If the accused gives no proper explanation or his plea of alibi as per S-11 of the same Act is proved wrong and there is no other evidence left with the accused to proof his innocence and the chain of circumstances are such to proof his guilt, the accused is convicted for the crime. Had it been any doubt or there is a break in the chain of evidence, the accused gets the benefit.

In State of Maharashtra v. Suresh<sup>3</sup>, the respondent in this case was already convicted for rape of a 8 year old girl. While he was in the prison, he met Sneha's (the deceased in this case) brother. They became friends. When both were released from the jail, the respondent made frequent visit to Sneha's house. Sneha was also called as Gangu by her family members and near ones. He made himself familiar with the little girl. She was only 4-year-old. One day he went to her house. He took Gangu to a near shop and thereafter to a farm where cotton and pulses were grown. There he raped and murdered the little girl and left her body there itself. He was convicted for the rape and murder of the child as he was last seen together with her and even other circumstantial evidences were against him.

Rajendra Pralhadrao Wasnik v State of Maharashtra,<sup>4</sup> This is another case of a brutal and heinous case of rape and murder of a 3-year-old girl. The deceased girls name was Vandana. The accused took the deceased from her home with the view of purchasing her some biscuits. Both the accused and the deceased were missing and they never returned. The accused was seen with the girl near a bus stop. After a day, the nude body of the girl was recovered from a field. Here on the pretext of last seen together and other chain of evidences, the accused was convicted. Though he pleaded that it was false implication but all the evidences indicated his guilt.

### **Conclusion**

Thus, it may be concluded that the last seen together rule are applied by the court in such a prudent manner that unless the court gets some circumstantial evidence or corroborative evidence, accused are not convicted. In this case the burden of proof shifts to the person who is accused for the commencement of the crime and the accused provides with such chain of evidence that the benefit of doubt arises. But if the accused is not able to provide with such evidences, the accused is convicted. It is necessary to establish a link.

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<sup>3</sup> Appeal (crl.) 1092-1093 of 1998.

<sup>4</sup> (2012) 4 SCC 37

The circumstance of the theory of last seen together does not necessarily lead to the inference about the fact that it was the accused who committed the crime. The connectivity between the accused and the crime must be something more establishing. A situation where based on close proximity of place and time between event of accused and the factum of death, a rational mind may be persuaded to reach a conclusion that either the accused should explain "how and in what circumstances the victim suffered the death or own the liability for the homicide."