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Growing Importance of Circumstantial Evidence Viz- A- Viz Oral Testimony: A Case for Recognizing Predominance of Circumstantial Evidence

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Abstract

Over the years, the opinion of our courts underwent a shift with respect to importance of circumstantial evidence in a criminal trial. Where this evidence was once regarded as explanatory to oral testimony, is now being seen as a touchtone to check the truthfulness of oral testimony. One of the reasons for this change can be the application of stricter standards to ensure accuracy, reliability and authenticity of circumstantial evidence. This article will discuss different factors which are taken into consideration by courts when believing or disbelieving a piece of circumstantial evidence. Secondly, it will analyze various types of circumstantial evidence routinely presented in our courts and their impact on a criminal trial. In third place, the article will examine the extent to which direct testimony has now been rendered subordinate to circumstantial evidence because of scientific accuracy of procedures such as computer forensics and DNA profiling. Fourthly, the article will shed light on cases involving crimes against women and children to build the argument that slow development of the rules governing direct oral testimony is propelling us to rely more on circumstantial evidence because of its contemporaneousness.

Keywords: *Circumstantial Evidence, Direct Oral Testimony, Forensics, DNA, Relevancy of Facts, Res-Gestae.*

Introduction

In past few decades, circumstantial evidence can be said to have gained ascendancy over the direct oral testimony with the evolution of court jurisprudence in tandem with scientific breakthroughs. According to the original scheme of Qanoon-e-Shahadat Order 1984, oral testimony of direct kind must be regarded superior to indirect or second-hand evidence. However, in recent times, our jurisprudence in regard to circumstantial evidence has witnessed unprecedented growth as new rules have been set forth to ensure its accuracy, reliability and authenticity. For example, in Atif Zarif (2001), the Supreme Court has laid down elaborate guidelines with respect to admissibility of DNA evidence. Similarly, the legislature has enacted laws to make admissible electronic transactions and reports of forensic science experts (ETO, 2002). Whereas the former has been accorded the status of primary evidence Art.46-A QS0 (1984), the latter is made admissible per se under Sc.9 of Punjab Forensic Science Agency Act (PFSA) 2007. In like manner, the Supreme Court set out methods concerning admissibility of audio-visual evidence in Ishtiaq Ahmad (2019). Because of these new rules, it is now straight forward to verify correctness of direct oral testimony on the yardstick of circumstantial evidence, which is least likely to be inaccurate or falsified.

As one would expect, the widespread practice of giving false testimony prompted the honorable Supreme Court in Khyzer Hayat (2019) to revive the ancient doctrine of *falsus in uno falsus in omnibus*. Against such a background, one feels compelled to bring into question primacy of oral testimony *vis-à-vis* circumstantial evidence. Although article 71 of QSO states that oral evidence must in all cases be direct, and the Supreme Court has proclaimed that testimony of a solitary witness is sufficient to sustain conviction if the same rings true and inspires confidence, according to Sadiq (2022), there are not enough safeguards to ensure accuracy, reliability and integrity of oral testimony. Consequently, so many prosecution cases are destroyed for lack of circumstantial corroboration. Therefore, the moot point is, should the oral testimony be accorded same weight as circumstantial evidence, particularly when the latter is less likely to be incorrect?

Secondarily, the primacy of oral testimony can be challenged on one more ground, namely neurological premise. Human memory is prone to falter, and by now it is firmly established that we humans can remember only the things we have been focusing on, in the recent past (Medina J, 2009). As our brains lack the capacity for multitasking, we cannot remember every tiny detail of an occurrence. Considering this, benefit of doubt will go to the accused if a witness makes improvements on his statement or contradicts the FIR story or evidence of other PWS. Therefore, limitations of human memory require us to confirm veracity of oral testimony with circumstantial evidence.

While some headway has been made in modernizing rules relating to oral testimony, it may not be wrong to suggest that these rules are slow to catch up with corresponding developments in circumstantial evidence. For example, it has now been made mandatory for the Investigating Officer (IO) to make a site plan during recovery proceedings and get it signed by Mashirs (Haq Nawaz, 2007). Not fulfilling this requirement can be fatal to the prosecution case as much as calling a witness/ Mashir at police station to attest recovery memo. Similarly, improvements made in court testimonies in respect of statements under section 161 CrPC can be fatal to the prosecution case. Even with these guidelines, one cannot fail to notice that pace of development of rules concerning oral testimony is despairingly slower than that of circumstantial evidence.

For example, in a recent case relating to circumstantial evidence, the Supreme Court held that analysis of blood-stained earth has no evidentiary value unless it is compared with the blood of the deceased (Jameel Hussain, 2021). In the same way, semen stain on the clothes of victim has no probative force unless the same is compared and contrasted with vaginal swabs taken from the victim (Farooq Ahmed, 2020). Likewise, as regards audio visual evidence, the Supreme Court ruled that these will only be admissible if the system with which the fact in issue is recorded is produced along with the person who made the recording to testify as to the authenticity of the tape (Ishtiaq Ahmed, 2019). Pertaining to ballistics, it has been observed that recovery of a pistol will be of no consequence to prosecution unless the same along with

crime empties are together sent for report of ballistic expert to indicate whether in his opinion, the fatal bullet was fired by the same weapon (Sher Ahmed, 1976). Undoubtedly, all these pronouncements are backed up by scientific reasoning.

On the other hand, direct oral testimony as per law is required to pass the test given in Article 71 that if it relates to a fact which can be seen, heard or perceived, it must come from the person who says he saw, heard or perceived it. Nevertheless, this requirement is confined to actual physical facts which can be perceived by senses. In parallel, QSO 1984 makes room for testimony to be made by the person to whom such facts were narrated in a manner as to form part of the same transaction or as explanatory or preparatory to the fact in issue. This category of facts is called relevant facts and they are listed in articles 19-69. The purpose of relevant facts is to prove if the occurrence of fact in issue is probable or improbable. Without doubt, little progress has been made as to refining these rules and bringing them in line with modern day requirements.

Credibility of a witness can be challenged in multiple ways and most common among these are cross examination and confronting the witness with his previous contradictory statement. Then of course, if an oral statement is not corroborated by circumstantial evidence it tends to lose its probative force. Oral evidence can also be discarded by the relationship of the witness with the complainant, previous enmity between the parties and the witness being a chance witness.

All said, there is no question that rules pertaining to establishing the authenticity of direct oral testimony are long standing and medieval. At best, some of these rules are extracted by improving the existing rules while others are derived from previously discarded rules, there is hardly anything new or novel about them. Unquestionably, there have been evolutions such as relaxation of hearsay rule in cases involving sexual offences against children, but these are insignificant by comparison to clear cut principles set forth in regard to circumstantial evidence (Raja Khurram Ali Khan, 2019).

Considering the foregoing, it can be argued that in present day trials and investigations, the primacy of direct oral testimony has been diminished for all practical purposes. It is extremely difficult, if not altogether impossible to secure a conviction on the basis of uncorroborated oral testimony as was the case in the past (Sadiq, 2022). Oral testimony will be given weight if corroborated by the circumstantial evidence which has extensive rules for determining its authenticity, integrity and reliability.

Object & Types of Circumstantial Evidence

The foremost purpose of circumstantial evidence is to corroborate the ocular testimony (Asadullah, 1971). There are different kinds of circumstantial evidence including DNA and forensic evidence, expert testimony, recovery evidence, last seen evidence, extra-judicial confessions, crime empties, Waj Takkar and so on and so forth. Each of these will be discussed below to prove that all these types of circumstantial evidence are backed up by some express provisions of law, and each provision has been expounded in case law.

Last Seen Evidence

It means that the victim was last seen alive in the company of the accused leaving the impression that accused was the wrong doer. Where the occurrence is unseen, last seen evidence provides circumstantial support to the ocular account of the prosecution witnesses. According to the Supreme Court, the probative force of last seen evidence is amplified if the witness is natural and not a chance witness (Muhammad Abid, 2019). A chance witness is not expected to be at the place where he professes to be at the time of occurrence due to remoteness of his work place or residence; still he claims to have witnessed the occurrence (Soomar, 1990). In case, a chance witness is also interested or related to the complainant, it further diminishes the credibility or weight of his testimony. In contrast, probative value of last seen

evidence is enhanced if it comes from a natural witness who because of his relation with the victim or proximity of his place of business or abode is supposed to be at the place of the occurrence at the time of the offence. As an example, in Ayub Masih (2002), a chance witness was disbelieved who claimed to have heard the sacrilegious utterances of the accused when he was in the vicinity by chance. Furthermore, the prosecution story was also discredited because accused and complainant were illiterate, and as per crime report, the accused offered the complainant to accompany him to Karachi to read 'Satanic Verses' by Salman Rushdie. Above all else, the complainant had a property dispute with the accused which was proved by the revenue record.

In Ahmad Omar Sheikh (2021), the Supreme Court rejected last seen evidence because the taxi driver, who testified to have last seen the victim with the accused immediately before his capture and subsequent beheading, turned out to be a constable who was planted by the police to lend credence to the story of the prosecution. In cross examination, it transpired that the said witness had no knowledge of the surrounding places in spite of being a taxi driver and he also made improvements on his statement under section 161 CrPC to align himself with the prosecution version.

Last seen evidence is held to be relevant under article 22 of the Qanoon-e-Shahdat where certain facts are declared relevant as explanatory of the fact in issue including the facts establishing identity of a person or time and place of the occurrence in question. This evidence suggests that the accused and the victim were last seen alive together before the latter was found dead, giving the impression that the death was caused by the person with whom the victim was last seen (Muhammad Abid, 2018).

Waj Takkar

This is the evidence of a person who confronts the accused in a street corner when he is retreating from the place of occurrence after the commission of crime. Thus, in one of the cases, where the accused after allegedly committing rape and murder was trying to make good his escape, a waj takkar witness came across him and testified to have seen him racing towards the bus stop with pale face and blood-stained clothes. As the witness was a carpenter in the neighborhood and unrelated to the complainant, the fact of he being a natural witness added to the probative force of his testimony (Jameel Hussain, 2021).

By comparison, where the Wajj Takker witness was a paternal uncle of the deceased and real brother of the complainant, and testified to have seen the victim in the company of the accused immediately before his disappearance and ensuing murder. The fact that he made no attempt to rescue him led the court to disbelieve his testimony. Again, the test is that WajTakkar should be a natural witness and preferably a disinterested one (Muhammad Shafi, 1973).

Wajj Takkar evidence is relevant as part of the same transaction under article 19 of the Qanoon-e-Shahdat Order 1984. The article incorporates the doctrine of "Res-geste" where-under all those acts or statements are relevant which take place at the time of, immediately before or soon after the occurrence of fact in issue.

Recovery Evidence

This is probably the most important circumstantial evidence of all. While corroborative in nature, it has a strong bearing on probative force or weight of the ocular testimony. It is such an important piece of evidence that it makes admissible even a confession in custody of police if the accused leads to recovery in consequence of such a confession (Article 40 QSO 1984).

However, if the recovery does not support the ocular testimony, it may be inconsequential. For example, where the Medico Legal Report (MLR) suggests that the injuries are caused by blunt weapon or sharp-edged weapon, and the recovery consists of 7MM rifle, such recovery will be of no use to the prosecution

(Criminal Appeal No. 46 L of 2007 FSC). Similarly, where a hatchet was recovered from the possession/ shop of the accused, three months after the occurrence, such recovery was disbelieved because according to the Supreme Court, in natural course of events, an accused would like to get rid of the murder weapon rather than keeping it as a trophy (Arshad, 1995). Likewise, where a 22-bore gun was recovered by police along with crime empties, and the gun only was sent for the opinion of ballistic expert, such opinion was held to be devoid of any probative force. Naturally as both gun and empties had been in possession of police, it was possible that in order to trap the accused at the behest of the complainant, the police might have fired new cartridges to plant the recovery of crime empties (Sher Ahmed, 1976).

Establishing Credibility

With a view to make recovery proceedings credible, it is of utmost importance that independent recovery witnesses be associated from amongst the inhabitants of locality (Sc. 103 CrPC, 1898). Where the witnesses were not engaged from the place of crime, rather the recovery memo was attested at the police station; the court disbelieved the recovery proceedings (Shankar, 1997). Likewise, where the recovery of weapon of offence (Churri) was made pursuant to the disclosure of the accused but the same was kept in a polythene bag; the court rejected the recovery as polythene bag was neither mentioned in the FIR nor in the statement of witnesses under section 161 CrPC (Naveed Asghar, 2021). Where the prosecution explained the motive of triple murder to be robbery, but failed to take into custody the recovered empty boxes of jewelry as mentioned in the FIR and in statements u/s 161 CrPC, the same also damaged the prosecution case. Obviously, if something is disclosed in the crime report as well as in statements u/s 161 CrPC, the recovery will corroborate the statements. However, if the recovery proceedings suffer from illegality or irregularity, this will discredit the prosecution story, giving benefit of doubt to the accused.

In the like manner, under article 129 (g) of QSO 1984, giving up a key recovery witness by the prosecution raises a presumption that had such witness been produced, he would not have supported the prosecution version. Thus, in Ahmad Umar Sheikh (2021), when a key witness Mrs. Pearl was given up in whose possession the laptop was on which the messages for ransom were received, the court regarded it as major hole in the prosecution case. Her testimony could have been corroborated by computer forensics.

Connection of recovery to Commission of Crime

In the past, recovery of weapon of offence or stolen property from the possession of the accused was thought to be sufficient to bring home the guilt of the accused. However, now our courts further require that recovery should be connected to the commission of crime. In particular, recovered weapon should be the same which was used in the crime. That being the case, a chemical examiner's report is required to indicate if the blood stains found on the recovered weapon match with the blood or DNA of the victim.

Mashirnama and Site Plan

Correspondingly, in some cases, the recovery was disbelieved because 'Mashirnama' was not signed by the witnesses. For example, in Ahmad Omar Sheikh (2021), the wife of slain journalist Daniel Pearl deposited the hard disk/ laptop on which threatening emails were received but she did not sign the 'Mashirnama.' Similarly, in Naveed Asghar (2021), the site plan was not prepared of the place from which the motorbike was recovered which was used in the alleged commission of the crime. In the absence of a site plan attested by Mashirs, it could not be proved that the alleged motorbike was recovered from the house of the accused. Motorcycle used in the commission of offence was disbelieved because the witness identifying the bike could not disclose the source of light making him see the bike in the middle of the night.

Forensics

Computer Forensics

The word forensic means application of scientific principles to resolve legal problems. There can be computer forensics, finger impressions, email, call data record (CDR) and DNA analysis. The Supreme Court has laid down elaborate guidelines in Ishtiaq Mirza (2019) regarding the admissibility of audio-visual evidence, and the same have been recapitulated in its recent judgment, Ahmad Omar Sheikh (2021). According to dictum laid down by the Supreme Court, the original video and not its copies can be produced in evidence. The reason is that the copies can be altered, edited, doctored, fabricated or modified. Furthermore, the person who makes video must also be brought forth to testify as to authenticity of its content. Finally, the original device such as mobile phone or camera with which the video is made has to be produced for the inspection of court. Otherwise, the act recorded in video can be taken as a camera trick or a video clip made in film studio.

Furthermore, to establish the identity of the sender of an email, the laptop on which the email is received must be produced. By doing this, the IP address of the sender can be found and therefrom, the service provider can be traced. Contrarily, if the laptop or the device on which the email is received continues to be used by different parties, the authenticity and reliability of the content stored in it comes under question.

Serologist and ballistic expert's report

Mere taking samples of blood-stained earth and blood-soaked shirt of the deceased and sending the same for serologist's report does not absolve the IO of his responsibility. In regard to these, the serologist can only state that the blood is of human origin. The chemical examiner/ serologist should also match the samples with blood/DNA of the deceased, and this can be done if the IO conveys blood-stained knife, shoes or dress of the accused dipped in victim's blood, alongside DNA of the victim to the chemical examiner.

Call Data Record (CDR)

Mobile data track record may be sent to the expert to determine the location of the accused at the time of the commission of crime. For example, in Khalid Pervez (2021), the call data record showed that the accused was 40 kilometers away from the scene of crime minutes before the murder. Since it was virtually impossible to reach the place of occurrence in such a short span of time, the court held that the accused was falsely implicated.

Qualification of Expert

According to article 59, opinion of expert is admissible in evidence; however, the expert must be properly qualified. While he may not be a direct witness but based on his specialized knowledge and expertise, he can give opinion which makes out an exception to hearsay rule. For example, in Ahmad Omar Sheikh (2021), the expert was found to be merely a graduate of Sindhi literature and his evidence as a handwriting expert was disbelieved. Lacking necessary skill, he could not have recognized the handwriting of the accused by comparing his signature on wakalatnama with that of the disputed document. Furthermore, no reasons were given for consistency of two signatures such as formation of letters, flow of writing, syntax and structure of writing.

Co Accused's Confession

According to article 43 QSO, the confession of co-accused is direct evidence against himself and circumstantial evidence against the co-accused. In Ahmad Omar Sheikh (2021), the confession of co-accused was not properly recorded by the Magistrate. For instance, his handcuffs were not removed; no

assurance was given to him that his physical custody will not be delivered back to the police, whether or not he makes the confession, and no statutory warning was made to him. Thus, the Supreme Court held if the confession of co-accused was recorded without removing the elements of threat, promise or inducement as listed in article 37 QSO, it will not be deemed circumstantial evidence against the fellow suspect.

Similarly, in regard to extra-judicial confession, it must be taken into consideration to who such confession is being made. If the confession is made to someone related to the complainant and the same is later retracted, it will lose its evidentiary value (Faqira, 1966). Additionally, it must be seen if the confession corroborates the facts and circumstances of the case (Manzur, 1973).

Evidently, all circumstantial evidence is aimed at corroborating direct oral testimony. Nonetheless, rules governing circumstantial evidence are so well developed that such evidence can be used as a benchmark to test the veracity of direct oral evidence. Hence, it merits to be placed at higher pedestal as compared to oral testimony.

Rules Governing Oral and Circumstantial Evidence

Admissibility and Relevance

To begin with, one needs to understand the distinction between admissibility and relevance to appreciate the weight or probative force of different kinds of evidence. A piece of evidence may be relevant but it may not necessarily be admissible. Relevancy means quality of evidence to prove or disprove a fact in issue. On the other hand, admissibility implies that the evidence can be disallowed irrespective of being relevant on the grounds of public policy, expeditious trial or fairness. Thus, for example, hearsay evidence even if relevant shall not be admissible on the grounds that repeated statements run the risk of a witness missing out on crucial information or bringing in exaggerations, moreover, the maker of such statement cannot effectively be cross examined (Ramzan, 2022).

With that said, here one thing must be borne in mind that only the fact perceivable by senses is required to be deposed by the person who sees, hears or feels it. In contrast, other facts such as explanatory, collateral or incidental may be deposed by a third person who has been informed by the person directly perceiving the fact. For instance, facts forming part of the same transaction are held to be relevant under article 19 of the QSO. Accordingly, if a victim, accused or witness narrates the facts of occurrence immediately before, soon after or at the time of occurrence to his father, friend or spouse, the person to whom such fact is narrated can appear in the court and testify as to the information given to him. As an example, disclosure of a fact in issue by an eye witness to his father soon after the occurrence is relevant and admissible as part of the same transaction. Likewise, if a victim of rape shares the details of the incident with her relative soon after the occurrence, testimony of the relative though indirect or hearsay will be admissible as part of the same transaction (Ramzan, 2022).

On a similar note, facts explaining or introducing a fact in issue can be deposed by a third person as they are held to be relevant under article 21 of QSO. More than that, facts supporting or rebutting inference drawn by facts in issue or showing its preparation can be deposed by a third person in terms of article 22. For these reasons, it is clear that, the admissibility of principal facts is strictly regulated by hearsay rule as they are required to be deposed by the persons perceiving them with their senses. At the same time, collateral, incidental, explanatory and preparatory facts can be deposed by third persons as part of the same transaction or explanatory or preparatory to the fact in issue (Hayatullah, 2018). Thus, in Raja Khurram (2019), the Supreme Court allowed a PW to depose an out of court statement made to him by the child victim/ witness as an exception to hearsay rule being part of the same transaction. Similarly, in Nasreen Bibi case, Justice Amjad Rafique of Lahore High Court made a clear distinction between principal and explanatory/ preparatory facts and held the latter category admissible as an exception to hearsay rule (Ramzan, 2022). As per facts, a lady named Nasreen lodged crime report against her husband for

committing Zina with their maid. The incident was reported to Nasreen by her daughter Alishiba who was found to be fainted and shocked at the time of occurrence. Since Nasreen was the direct observer of Alishiba's condition, she can only give evidence under article 71 QSO. On the other hand, Alishiba saw her father naked with their maid Iqra, this fact being explanatory to the fact in issue can be deposed either by Alishiba or by Nasreen as an exception to hearsay rule. Furthermore, both these facts can be clubbed together under the doctrine of Res-geste or facts forming part of the same transaction.

In the same way, documents are admissible either subject to proof or per se. Subject to proof means the document itself be produced in the court along with its author to testify as to truthfulness of its contents (Art 79, QSO 1984). That said, some documents are declared to be admissible without proof such as serologist or chemical examiner's report under section 510 CrPC. In simple words, the chemical examiner himself needs not to appear and testify as to contents of his report unless required by the court. Likewise, DNA analysis by personnel working in Punjab Forensic Science Agency has been made admissible per se by virtue of section 9 of Punjab Forensic Science Agency Act 2007). In the same vein, documents generated through a computer management system have been declared to be relevant and admissible as primary evidence under articles 46-A and 78 A QSO and articles 3 and 5 of Electronic Transactions Ordinance 2002 (Atif Zareef, 2021).

Thus, relevance and admissibility are two different things and a fact having been declared relevant may be excluded from admissibility on the grounds of public policy, convenience or to save court time. It is a settled law that in order to prove or disprove a fact in issue what matters is quality and not quantity of evidence.

Corroboration of Oral Testimony with Circumstances Surrounding a Fact

According to Supreme Court, truthfulness of oral testimony will be established if it is corroborated or supported by surrounding circumstances (Naveed Asghar, 2021). In this view of the matter, it can be argued that the opposite of direct or firsthand evidence is not circumstantial evidence rather the same is hearsay evidence. As enunciated by the Lahore High Court, "By direct evidence is meant when the principal fact is attested directly by witnesses, things or documents. To all other forms, the term circumstantial evidence is applied (Zahid Hussain, 1954)." There are two reasons because of which hearsay was declared in- admissible, impossibility of cross- examination of the maker of the statement, and possibility of exaggeration or understatement of the truth by the deponent (Ramzan, 2022).

Unfortunately, the second factor is present even in direct oral evidence. The witnesses giving testimony in the court frequently make improvements upon their statements under section 161 CrPC. Additionally, there can be memory lapses because of which QSO 1984 enables a witness to refresh his memory (Art.155-157). Then there can be mistakes in recording testimony, all these factors point to fact that direct testimony is not foolproof either.

One example of circumstantial evidence taking precedence over oral testimony is given in case reported as Raja Kurram v. Tayyaba Bibi (2020 PLD 146 SC). In this case, the unexplained marks of violence or burns on the body of the child victim, who was in the care of the accused, provided primary justification for the conviction. Interestingly, the child witness Tayyaba faltered in her testimony in the court, still, it was decided to take into account her out of the court statement as an exception to hearsay rule. Clearly, circumstantial evidence of burns along with medical report was given priority by the court rather than second hand statement to establish the crime of child abandonment and neglect.

By contrast, in some cases, complainant's relationship with the witnesses is taken into consideration to determine the truthfulness of their statements. For example, in Sadiq (2022), although the forensic evidence was missing, the court still held that as the complainant was wife of the accused and mother of the victim, she had no motive to falsely implicate her husband in the murder of their son.

Based on the above, it can be argued that superior courts of Pakistan have laid down extensive guidelines to establish authenticity, reliability and integrity of the circumstantial evidence. In particular, landmark judgments such as Ahmad Omar Sheikh, Atif Zareef, Raja Khurram and Ishtiaq Ahmad Mirza will go a long way towards highlighting the significance of circumstantial evidence as an instrument to test the truthfulness of the oral testimony. Use of phrases like DNA evidence is gold standard to bring home the guilt of the accused further magnifies the value of circumstantial evidence. Moreover, technological advancements of the twenty first century may provide supplementary means to ensure authenticity, reliability and accuracy of circumstantial evidence. It can, therefore, be argued that it is now contemporary requirement to acknowledge the ascendency of circumstantial evidence viz-a-viz oral testimony. As a starting point, circumstantial evidence based on well-developed sciences should be placed on higher footing in comparison with oral testimony. In a sense, the process has already begun as electronic documents generated through electronic information system have been declared primary evidence. Likewise, DNA evidence is seldom contradicted by oral testimony if the former is properly analyzed. It is therefore about time to simplify the law of evidence by proclaiming that oral statements must be proved by circumstances surrounding them, irrespective of their direct or indirect character.

Conclusions

As time passed, the opinion of our courts underwent a significant shift with respect to importance of circumstantial evidence in a criminal trial. Where it was once regarded as explanatory to oral testimony, is now being seen as a touchtone to check the truthfulness of oral evidence. One of the reasons for this shift is stricter standards are now being applied to ensure accuracy, reliability and authenticity of circumstantial evidence.

Notwithstanding this, the guiding principle of criminal jurisprudence remains presumption of innocence of the accused, and requirement of proof beyond reasonable doubt. The latter rule necessitates that there shall be no missing link in the chain of circumstances surrounding a fact in issue which should tie on the one end to the neck of the accused and on the other to the dead body of victim. The benefit of any gap must go to the accused as a matter of right and not as grace.

Having said this, in crimes against vulnerable segments such as women and children, courts are now showing willingness to be flexible qua observance of stringent requirements of procedure. For example, mechanisms at odds with human dignity like two fingers test are being abolished (Atif Zareef, 2021). This was made possible by omission of article 151(4) of the QSO 1984 which entitled a man charged with rape to impeach the character of prosecutrix by showing that she was leading an immoral life and may have consented to the rape. The criminal law amendment Act 1988 abolished this clause, and consequently the courts done away with the archaic test aimed at proving if the vagina was so flexible as to admit of two fingers at a time, it shall be presumed that the victim would have consented to rape (Sadaf, 2021). By the same token, in Raja Khurram (2020), the Supreme Court took an exception to hearsay rule in cases involving crimes against children and held admissible in evidence an out of the court statement made by a child to a third person in regard to a fact in issue.

Conversely, in murder reference or appeal, sections 374 and 375 of CrPC impose stringent duties on High courts to be careful in re-appraisal of evidence and not to let their judgments get clouded by seriousness of the crime (Ali Haidder @ Pappu, 2020). By comparison to the latitude shown by the courts with respect to crimes against women and children in terms of making evidentiary requirements less rigid, respecting these standards in murder cases is absolutely essential as criminal jurisprudence is based on the principle, ‘It is better that ten guilty persons go free than that one innocent person be convicted.’

In a nutshell, oral testimony becomes inconsequential if the same does not find support from circumstantial evidence. Therefore, it is about time that we recognize predominance of circumstantial evidence through legislation. This will put witnesses on alert that their statements will have to pass the test of corroboration in order to have any weight and thus perjury will be discouraged as a byproduct.

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