All About Circumstantial Evidence

Introduction

Circumstantial evidence is a particularly important concept in the law of evidence but there are terms that come now and then again. It is good to go through basic concepts of proof to have some basic understanding of what it means to have Direct Evidence and Circumstantial Evidence. As it will show you that historically there were some pretty significant differences in the way this type of evidence would be treated by the law. Today, those differences have mostly evaporated but still because these terms are used so frequently, it's a good idea to have a basic understanding of what they mean and what the implications for their use are.

Analysis of the Term Evidence

There are two fundamental rules on which the law of evidence is based on:

- no facts other than those having rational probative value should be admitted in evidence.
- all facts having rational probative value are admissible in evidence unless excluded by a positive rule of paramount importance. These two ideas are expressed in Section 5 of the Act.

Definition of Evidence in Section 3 is not the real definition of the term "evidence", but is rather a statement of what the term "evidence" includes. The word 'evidence' has been derived from a Latin word 'ēvidēnt', which means "obvious" i.e. Everyday law which means to discover, to prove something which is in question.

According to the Indian Evidence Act (1872), the term evidence means and includes all statements that grants or requires to be made before the court by the witnesses in relation to any matter of fact which is under inquiry, all such statements are called Oral Evidence. The second part of the definition which talks about is all documents including the electronic records, which are produced before the examination of court. These are distinguished from the oral testimonies and all such documents are known as Documentary Evidence. The term 'evidence' means anything by which the alleged matter of fact is either established or

disproved. Anything (exclusive of mere argument) that makes the thing in question evident to the court is evidence.

For instance, where the question is whether an explosion took place before a fire occurred. The noise of the explosion and its flash are evidence of it. Persons who saw the flash or heard the noise can give evidence of the fact of the explosion. If the happening of the fact is recorded on anything apart from human memory, that record is also evidence of the happening.

The definition of 'evidence' provided in the Evidence Act is incomplete and defective. It excludes the statements and admissions of the parties, their conduct and demeanour(outward behaviour) before the court, circumstances coming under the direct cognizance of the court, facts of which the court can take 'judicial notice' of the fact which the court must or may presume. The confession of an accused person is not evidence in the ordinary sense of the term, as defined in this section(as not taken on oath and not subject to cross-examination) though it has to be given due consideration in deciding the case.

Similarly, statements of parties when examined otherwise than as witnesses, material objects other than documents, etc. do not amount to evidence according to the definition given in section 3, but these are matters which the court may legitimately consider. The definition given in section 3 is, however, exhaustive in the sense that every kind of evidence can ultimately be reduced either to the category of oral or documentary evidence.

Difference between 'evidence' and 'proof'- the word 'evidence'. 'Proof' is the establishment of fact in an issue by proper legal means to the satisfaction of the court. It is the result of evidence, while evidence is only the medium of proof.

Section 3 of the Indian Evidence Act, 1872

The word evidence is used in three different senses or forms:

i) as equivalent to relevant

ii) as equivalent to proof

iii) as equivalent to the material on the basis of which courts come to a conclusion about the existence or nonexistence of disputed facts.

For instance, we may say, the presence of a person who is guilty near the scene of the crime just before the crime was committed, is evidence that he may be

guilty of committing that crime; whereas his presence after the crime was committed, at the same place, is not evidence of the guilt of the person who committed the following crime. In the above example or the statement, the word evidence is used as equivalent to relevant (i).

Again we may say that the possession of a stolen article immediately after the theft is evidence of the fact that the person in whose possession the article is found is either the thief or a receiver of stolen property. In this example, the word evidence is used as equivalent to proof (ii), which is really the effect of evidence. But neither of these senses that the word is used in the Act. In Section 3, the word Evidence is also used in different phrases**.** But, In the definition of the word, we find only oral and documentary evidence But neither of these senses that the word is used in the Act. It is used in the third sense mentioned above, namely, as equivalent to the material on the basis of which courts reach the conclusion about the existence and the non-existence of the disputed facts.

Oral Evidence and Documentary Evidence

Oral Evidence as provided under Section 59 and Section 60 of the Indian Evidence Act. On the other hand, the Documentary Evidence is provided in Section 61 and Section 62. Basically, Documentary Evidence covers two types of evidence that can be considered as the Primary Evidence as well as the Secondary Evidence.

Oral Evidence- Section 59 says that it considers all facts as oral evidence except those that contain document or electronic evidence but that oral evidence must be the direct one. Now, the question arises what is actually the direct evidence. So, let us try to understand with an example – so if there is any kind of crime that has been committed and there is the person available at the moment on the spot of crime. then whatever he heard or whatever he sees as well as whatever he perceived by his senses, even though his own opinion will also be considered as oral evidence.

When we talk about Primary Evidence, it can be considered as that evidence which can be given in several parts like duplicate copies which can be given as counterparts like those which are signed by parties and also the uniform process of the documents that have been made by a uniform process like printing, lithography and also the photograph. The process of formation is all considered as Primary evidence.

Secondary Evidence contains the certified copies, those copies which have been contained by the same mechanical process and those documents as well as which is made or compared with the original one. Also contains the counterpart of the

document against the party even though the important thing is that oral account of a content of a document will also be considered as secondary evidence but it must be the oral account of that person who has himself seen it, means he himself has seen the content of the document and is giving the oral account of that.

There are different kinds of evidence but Direct evidence and circumstantial evidence are one of the more talked about pieces of them.

Direct Evidence

It is the testimony of the witness as to the principal fact to be proved e.g. the evidence of a person who says that he saw the commission of the act which constitutes the alleged crime. It also includes the production of the original document.

It is much easier to understand and much easier to apply. You always know Direct Evidence when you see it because essentially what you have is a witness who is providing directly what you need to prove. So in this case, direct evidence is essentially categorised by the idea that witness gives you the very inference that you need to prove in this case.

For instance, this is direct evidence of the fact that it rained yesterday you have witnessed they have told you they saw it raining yesterday. Therefore, it is direct evidence of the fact that it rained yesterday and reason you know that this is what I call direct evidence is the links in the evidentiary chain of reasoning are direct, what I mean by that is i) the witness says that its raining and you are using it to prove a proposition that is asserted that it was raining.

Therefore, indirect evidence links in the chain are incredibly short. ii) If you believe this witness you can accept the fact that it was the exact proposition that the witness asserts that it was raining. Therefore step one it was raining and step two it was raining that is direct evidence. That is the only type of direct evidence there is when the proposition you mean is tendered exactly to what it is you are trying to prove. We can call it direct evidence because we are not trying to draw any other conclusion from that fact.

What do you mean by Circumstantial Evidence?

‘Circumstantial Evidence’ includes all the relevant facts. It is not secondary evidence; it is merely direct evidence; it is merely direct evidence applied indirectly.

Essentials of Circumstantial Evidence

A fact which is put before the court and that fact itself does not tell us anything about the offence of the course of action. It is not one of the elements of the course of action but it allows the court to make some assumptions or some inferences that bring it very close to being able to define other facts which are directly related to the chain of the course of action.

You can see circumstances not related directly to the crime but they indirectly point at the crime. They make it more likely that what has been proposed to the court is true. For instance:

1. A was observed in the laneway where the B was robbed and murdered. A was then observed burying what turned out to be a quantity of money, approximately the same as had been stolen. Now, we can see that these two inferences are pretty coincidental. It is much more likely that A has been seen as the victim who has a large amount of money. These are the irresistible inferences that he probably killed and robbed the person. Circumstantial evidence leads in the direction of thinking but they do not give us anything conclusive.
2. C aged 9 attended the slumber party and alleges to have been indecently assaulted by an adult male. Only two males were in the house overnight and the other male's guilt was excluded by evidence.

In both the above examples there are inferences which lead to the elements of crime being done.

Scope

In the absence of any direct evidence, a person can be convicted on the basis of circumstantial evidence alone if the conditions mentioned above are satisfied (Umedbhai v State of Gujarat AIR 1978 SC 424). In appreciating a case based on circumstantial evidence, one circumstance by itself may not unerringly point to the guilt of the accused. It is the cumulative result of all the circumstances which could matter (Gade Lakshmi Mangraju v State of A.P. AIR 2001 SC 2677). Thus, there must be a chain of evidence where no reasonable ground is left for a conclusion which is relevant with the innocence of the accused and it must be such as to show that, it is within all human possibility, the act must have been done by the accused (Hanumant Govind Nargundkar v State of M.P. AIR 1952 SC 343).

Sometimes the facts happen suddenly and do not leave behind much direct evidence. In such cases, the main event will have to be reconstructed before the court with the help of surrounding circumstances such as the cause or the effects

of the event. Circumstances sometimes speak as forcefully as does direct evidence. For instance, there is a quiet little village touched by a road which ends there. Occasionally the driver who belongs to the village comes there with his lorry for night rests. The night on which the truck came, a man from the village was found lying dead by the road-side. The position of his body and nature of his injuries creates a doubt that he was dragged by a vehicle for a little distance and then one wheel ran over him. There was no dust storm, rain or mist to obstruct visibility. From these circumstances, certain facts may reasonably be inferred and many others can be safely presumed as a matter of probability. The facts tell a story beyond a shadow of a doubt that it is the work of the village lorry and it must have been negligently handled.

Where the circumstantial evidence only showed that the accused and deceased were seen together the previous night, it was held to be not sufficient (Prem Thakur v State of Punjab AIR 1983 SC 446). The Kerala high court has observed that, in a murder case, just because the doctor conducting the autopsies not in a position to give his expert opinion related to the cause of the death of the person, the court does not become helpless in this situation. It can still convict the accused on the basis of other circumstantial evidence they already have on the basis of the investigation. (State v Mani, 1992 Cr LJ 1682). In Laxman Naik v State of Orissa AIR 1995 SC 1387, the conviction and sentence of death supported on the basis of circumstantial evidence which presented a continuous and complete chain of events which lead to the rape and murder of a seven-year-old daughter of the brother of the accused.

Circumstantial Evidence – A Sole Base for Conviction

The confession of an accused person is the best evidence if it is voluntary, to make this happen accused are tortured till they confess, and their confession is used as evidence of guilt against them. Today, no court would act upon a confession if there is the slightest suspicion of torture having being employed, but that does not prevent the person entrusted with investigation from resorting to such methods for gathering evidence. The remedy lies elsewhere, and not in courts. Mechanical aids like lie detectors and truth drugs are being used, but no court would think of acting upon such mechanical aids only. (Haricharan Kurmi v State of Bihar, AIR 1964 SC 1184).

A court after considering the evidence presented before it and hearing the arguments comes first to a conclusion that if the facts exist or not in reality which have been declared or denied by the parties and after finding all the facts, the court applies the rule of law. If all the facts given in the rule of law are found to

exist, the right or liability which would follow according to the rule of law is ordered by the court. When a court finds that facts provided exists, the following facts are said to have been proved, if the court finds they do not exist, they are said to be rejected by the court according to Section 3 of Indian Evidence Act.

Section 106 of the Indian Evidence Act, 1872

Section 106 deals with the burden of proving a fact within the special knowledge of a particular person. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. For example, A does an act. The circumstances are such that the reasonable inference is that he did the act with a particular intention. If A wants to show that he did the act with a different intention then the burden is upon him, for A's intention being a psychological fact and within A's special knowledge, under the section, the burden is upon him.

Similarly, if A is charged with the offence of travelling without a ticket and if A's defence is that he bought a ticket, but lost it, then the burden of proving that he had a ticket lies upon him, but lost it, for it is is a matter within his special knowledge as to where he bought the ticket and entertain, and so, under the section 106, the burden is upon him. To throw the burden upon the prosecution would reduce the trial to an absurdity, as the prosecution will have to examine every ticket-issuing clerk of every station in the country, to show that A did not buy a ticket. In such a situation, it is not a matter of mere inconvenience but one reducing the trial to a farce.

In Shambu Nath Mehra v. the State of Ajmer, the appellant was charged with offences under Section 420 of I.P.C., and Section 5(2) of the Prevention of Corruption Act,1947, in that he drew from government money, second-class T.A., without travelling in second class and without paying the fare. The prosecution proved that no second-class tickets were issued on that day for the journey, and relied on illustration (b) to Section 106 and contended that burden was on the applicant to show that he travelled or paid this fare or the difference on the train.

If facts within the special knowledge of the accused are not satisfactorily explained by the accused it would be a factor against him, though by itself it would not be conclusive about his guilt. It would be relevant while considering the totality of the circumstantial evidence. It is submitted that under the Indian law, section 106 should be more liberally used against the accused [State of Punjab v Karnail Singh (2003) 11 SCC 271].

Difference between Direct and Circumstantial Evidence

As you can see, circumstantial evidence can be very convincing and sometimes it can be incredibly powerful but it does mean that circumstantial evidence is different from direct evidence. In this, one has to draw more links in his evidentiary chain of reasoning plus it is not simply a matter of belief. Evidence can be direct evidence and circumstantial evidence at the same time, it depends upon what you are trying to prove. So, this evidence right here is direct evidence of the fact it was raining yesterday but it's circumstantial proof if you need to prove that people near John were carrying umbrellas.

So guess what whether something is direct evidence or circumstantial evidence depends upon the assertion you are trying to prove. So if you need to prove in your case that it was raining yesterday, it is the direct evidence we are talking about here. If you need to prove rather that people around where John was standing were carrying umbrellas, it is circumstantial evidence and that is essentially different. It just depends on what it is you are trying to prove.

Circumstantial evidence is incredibly important in criminal cases and the reason why it is important is that in criminal cases there is a probable need to prove the Actus Reus which is an act and the Mens Rea which is the intention. So in most of the assault cases, for example, direct evidence for the Men's Rea is difficult to obtain but easy to obtain for Actus Reus. In such cases where it is difficult to obtain direct evidence for the men's rea, their circumstantial evidence is used instead to prove the men's rea of the person who committed the crime.

For example, the fact that Suman saw Ram punch Ravi in the head is the direct evidence of the Actus Reus but she can also provide circumstantial evidence of the men's rea because he looked like he was intending to punch him. From this, it can be inferred that Ram had the Men's Rea. It is very important to use circumstantial evidence for a variety of propositions in a criminal case.

Direct evidence turns mainly on whether you believe the witness, if you believe this witness and saw that it was raining then you have proof of the fact that you are trying to establish but circumstantial evidence requires a different form of reasoning.

First of all, it has to be believed for whatever reason the underlying statement just like with direct evidence, it should be believed that this witness saw that the road was wet but then need to go through a different pattern of reasoning because now it is entirely possible that the fact the road was wet shows that it

rained yesterday but it is also possible that the fact that the road was wet means street was cleaned.

Basics of what we do when we use Circumstantial Evidence?

Use the two-fold breeze process which makes this different from direct evidence.

1. decide whether or not to believe the witness i.e., believe that what the piece of evidence is asserting.
2. it requires to evaluate all the conclusions in light of all the evidence.

So the fact that the road was wet probably means that it was raining but it may mean that the street was being cleaned. So whether or not we should accept proposition A or proposition B depends upon all the other evidence in the case. What it means is if there is enough circumstantial evidence, there were clouds in the area, for example, more likely it was raining and we saw many people around with umbrellas that day, then more likely it was raining or on the contrary, you know at the same time as he saw the road was wet somebody reported seeing a street cleaner. This gives us the idea that what is being tried to prove in circumstantial evidence requires to evaluate conclusions in light of all the evidence of a case.

Circumstantial evidence requires easy use of an interim proposition sometimes, it also requires the obviousness of other pieces of evidence. So the propositions can be strengthened by adding additional facts. If circumstantial evidence is being used to prove the following case then it should be remembered that it should be the only reasonable inference from the facts.

Risks involved when using Circumstantial Evidence:

1. There is a risk of too easily jumping to conclusions.
2. Instructions to the jury are useful in warning of the risk of this type of evidence.
3. Instruction should remind the jury the inference of guilty should be the only reasonable inference from the facts.

When providing the circumstantial evidence one should not jump too easily to the conclusion, remember that other possibilities are involved and think them

through. The inference one wishes to draw probably by tendering other forms of circumstantial evidence because the truth of the matter is the more one can build various circumstantial points, the more strong propositions can be proven. Like by showing road is wet, well the road is wet is one thing that one piece of circumstantial evidence, it was cloudy that is another piece of circumstantial evidence, people were carrying an umbrella that is another piece of circumstantial evidence, it usually rains at that time of the year that is all circumstantial evidence to prove that on that day it was raining even though nobody saw that it was raining. Circumstantial evidence can add up and become a powerful tool in the evidentiary reasoning process

Which is Superior Direct or Circumstantial Evidence?

This question arises because it is sometimes said that witnesses may lie but circumstances never do, thereby implying that circumstantial evidence is superior to direct evidence. A little thought, however, will show that the statement is meaningless because we are comparing incommensurable things.

Circumstances are the relevant facts and are placed before a court through the witness. If we are saying that circumstances do not lie, we are assuming that the witnesses who speak of the circumstances are not lying, and, if that assumption is made, there is no reason why the same assumption should not be made about the direct witness also, in that case, certainly the evidence of the direct witness is superior.

If you assume that the direct witness is telling a lie then the possibility cannot be overruled by witnesses speaking about the various circumstances, are all speaking the truth, or, that all of them are speaking falsehood. If all are speaking the truth, there is no reason why circumstantial evidence should prefer to direct evidence and if all are speaking falsehood, there is nothing to choose at all. One aspect, however, must be noted.

The human mind is so constituted that when a person gives evidence of having seen a particular fact, it may not accept it because of the possibility of a mistake; whereas, if there is a chain of circumstances, all logically pointing towards the existence of the matter in controversy, the human mind would prefer to follow the chain of circumstances. It is almost impossible for such a chain to be forged falsely and deliberately.

Therefore, the fact to which they all lead must be true. To create such a chain would involve a conspiracy between the several witnesses, a plan of mendacity

which would be highly improbable. Therefore, we might with greater truth say that witnesses may be mistaken but circumstances are not. Even so, fact and fiction have several instances of circumstances pointing one way, the truth is the other way.

The trials of Robert Wood, Adolf Beck, and Oscal Slater show the dangers of placing too much reliance either on witnesses identifying the accused (witnesses giving direct evidence) or on witnesses giving evidence of incriminating circumstances (witnesses giving circumstantial evidence). The stories of Sir Arthur Conan Doyle especially; (i) The Beryl Coronet, (ii) The Silver Blaze, (iii) The Boscombe Valley Mystery, (iv) The Norwood Builder, and (v) The Thor Bridge, wherein the same set of circumstances are differently interpreted by the police and by Sherlock Holmes, are worthy of a close study.

Case Laws

State of U.P. v Ravindra Prakash Mittal (AIR 1992 SC 2045)

In this case, The respondent took his trial on the allegations that Saharanpur committed the murder of his wife Smt. Kamlesh, burnt the dead body by sprinkling the kerosene oil and thereby caused the evidence of the offence of murder to disappear with an intention of screening himself from legal punishment. On the above allegations, he stood charge under two heads, that is under Sections 302 and 201 IPC. The court laid down:

1. The circumstances from which the conclusion is drawn should be established by the court regarding the following case.
2. The circumstances should be conclusive in nature i.e unquestionable by the court on the bases of the set of circumstantial evidence provided as evidence.
3. All the facts that are established should be accordant only with the hypothesis of guilt and not according to the innocence of the accused.
4. The circumstances should depend on moral certainty, that should exclude the possibility of the guilt of any person other than the accused person.

Bodh Raj @ Bodha And Ors vs State Of Jammu And Kashmir on 3 September 2002

Facts and Issue: In the case, the question was whether the discovery of a weapon of assault on the basis of information given by the accused while in custody, was sufficient to fasten the guilt of the accused.

Observations and Decision: The court said that the exact information was given by the accused which leads to the recovery of the denouncing article must be proved and only then could such information become the basis of convicting the accused of the following accusations. The court observed:

1. Section 27 of the Evidence Act was enacted as the proviso to Section 25 and Section 26, which imposed a complete ban on the admissibility of any confession made by accused either to the police or to anyone during the period the accused was in police custody. The object of making provision in Section 27 was to allow a certain portion of statements made by an accused to the police officer admissible as evidence whether or not such statement is confessional or non-confessional. The ban imposed by section 25 and 26 would be lifted if the statement is clearly related to the discovery of facts (Pandurang Kalu Patil v State of Maharashtra AIR 2002 SC 733).
2. Under Section 27, in order to provide the evidence leading to the discovery of any fact admissible in the court, the information must come from any accused in the custody of the police. The statement which is admissible under Section 27 is the one which is the information leading to the discovery of the admissible facts. So, what is admissible is the information discovered and provided by the information and not the opinion formed on it by the police officer.
3. For the benefit of both the accused and prosecution the information given should be recorded and proved. But if not recorded and proved, the exact information must be mentioned through the evidence. The basic idea implanted in section 27 is the Doctrine of Confirmation by successive events.
4. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information provided by the prisoner is true. The information might be confessional or self-harming in nature but if it results in the discovery of fact, it becomes reliable information.

5. It is now well established that the recovery of an object is not a discovery of fact anticipated in section 27. The fact discovered anticipated in the section also embraces the place from which the object was produced, and the knowledge of the accused as to it. Information regarding the concealment of the article of the crime does not lead to the discovery of the fact that the article was concealed at the indicated place to the knowledge of the accused.

6. The extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The information related to being admitted in evidence is confined to that portion of the information which noticeably relates to the fact thereby discovered and must be curtailed as to make it senseless or unclear. The extent of information admitted should be accordant with understandability.

The court, therefore, held that the mere statement which the accused provided to the police and the witnesses to the place where he had concealed the article is not indicative of the information as considered under section 27.

Conclusion

In practice, if there is direct evidence and also circumstantial evidence, such as evidence of motive, conduct and opportunity, the court feels itself on safe ground in finding an accused person guilty. If however, the entire evidence is purely circumstantial even if the court believes it, the court scrutinises the evidence with such great care as to eliminate the possibility of any hypothesis in favour of the accused, and then only finds him guilty. It is also necessary, before drawing the inference of guilt from circumstantial evidence, to be sure that there are no other coexisting circumstances in which the word weakens or destroys the inference. 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 proof of the guilt of the accused.