

EVIDENCE:ITS ROLE AND KINDS

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Abstract

For my own part, I think that if one were looking for a single phrase to capture the stage to which philosophy has progressed, 'the study of evidence' would be a better choice than 'the study of language'. —A.J. Ayer, Philosophy in the Twentieth Century

Evidence plays a crucial role in the investigation. A case is as strong as its evidence. It is of foremost importance. Without proof there can be no case in a court of law and without evidence there can be no proof. Evidence relies on research and proven facts, and not on conjecture or common belief. The following article analyses the different kinds of evidence in detail and the role they play during investigation

Keywords- evidence, oral, documentary, investigation

Introduction

“In our reasonings concerning matter of fact, there are all imaginable degrees of assurance, from the highest certainty to the lowest species of moral evidence. A wise man, therefore, proportions his belief to the evidence.”²

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²David Hume, *An Enquiry Concerning Human Understanding*, Harvard Classics Volume 37

The evidence in lieu of any offence or dispute is the eye and ear of a court. Evidence can be understood to be of utmost importance with regard to practice of law. Moreover, a proper decision in any case before a court is not possible without knowledge of true facts involved in a dispute. Through the evidence the facts alleged by one party, and denied by the other require the Court to ascertain whose contentions are true and for that purpose, the judge has to weigh the 'evidence' available in support of or contradiction to those contentions.

Thus, without proof there can be no case in a court of law and without evidence there can be no proof. Hence, evidence can be said to be the *Sine qua non* of the practice of law.

There are certain principles of law which are inextricably linked to the procedure that must be followed in every court proceeding by every authority established by law. One of these principles can be considered to be that every party must be heard before a decision is passed governing his rights and liabilities, this implies that no man should go unheard. This is a fundamental constituent of principles of natural justice. In a court of law, any presentation of one's arguments or claims is recalcitrant without evidence being led or appreciated. In fact the testimony given by the party himself or certain witnesses relevant to the case also constitutes evidence. Due to the fundamental importance of evidence, it is difficult to delineate. In keeping with the same the concept of appreciability of evidence is an important concept and must be understood clearly. Evidence is required to be appreciated to find out what part out of it represents the true and correct state of things. It is the function of separating the grain from the chaff.³ Lastly, evidence is to be tested by its inherent consistency and inherent probability of the prosecution story.⁴

Meaning of Evidence

And when we try to define 'evidence' ... we find it very difficult.

—R.G. Collingwood, *The Idea of History*

The meaning ascribed to 'evidence' by certain renowned authors is mentioned herein as follows:

Evidence, as used in judicial proceedings, has several meanings. The two main senses of the word are: first, the means, apart from argument and inference, whereby the court is informed as to the issues of fact as ascertained by the pleadings; secondly, the subject matter of such means. The word is also used to denote the fact that some fact may be admitted as proof and also in some cases that some fact has relevance to the issues of fact. In a real sense evidence is that which may be placed before the court in order that it may decide the issues of fact...Evidence, in the first sense means the

³ Ganesh K Gulve v. State of Maharashtra AIR 2002 SC 3068, Bhanwar Singh v. State of MP AIR 2009 SC 768

⁴ Ramkant Rai v. Madan Rai AIR 2004 SC 77

testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some fact in dispute. In the second sense it means the content of that testimony.⁵

It may also be defined as any knowable fact or group of facts, not a legal or logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, on the part of the tribunal, as to the truth of a proposition, not of law or of logic, on which the determination of the tribunal is to be asked.⁶ Judicial evidence may be defined as evidence received by Courts of Justice in proof or, disproof of facts, the existence of which comes in question before them.⁷

As per the Indian Evidence Act, 1872 (hereinafter referred to as the Act) 'evidence' means and includes:⁸

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;

(2) all documents including electronic record produced for the inspection of the Court, such documents are called documentary evidence.

Thus, the word evidence, by its very definition means statements/documents which have been produced for the inspection of the Court and on basis whereof a Court decides a lis.⁹ Since the Act applies to both civil and criminal cases, the specific context in which evidence and its meaning is considered will depend on the facts, circumstances and kind of case being referred to.

The Hon'ble *Supreme Court* of India in *Sivrajbhan v. Harchandgir*¹⁰ held:

“The word evidence in connection with Law, all valid meanings, includes all except agreement which prove disprove any fact or matter whose truthfulness is presented for Judicial Investigation. At this stage it will be proper to keep in mind that where a party and the other party don't get the opportunity to cross-examine his statements to ascertain the truth then in such a condition this party's statement is not Evidence.”

Role of Evidence

The object of rules of evidence is to help the Courts to ascertain the truth and to avoid the confusion in the minds of judges, which may result from the admission of evidence in excess.¹¹ Thus, the Indian Evidence Act, 1872 was passed with the main object of preventing indiscipline in

⁵ Hodge M. Malek, Jonathan Auburn, Roderick Bagshaw, *Phipson on Evidence*, 17th ed., December 2009, Sweet & Maxwell Ltd

⁶ Arthur Best, *Wigmore on Evidence*, 4th ed. 2014

⁷ In Re: Sr. Abhaya's case, 2006CriLJ3843

⁸ Section 3 of the Act

⁹ Ex. Const. Ajayvir Gulav. UOI & Ors. AND Govt. of NCT of Delhi v. Ravinder Singh 2013VIIAD(Delhi)414

¹⁰ *Sivrajbhan v. Harchandgir* (AIR 1954 SC 564), *Phoolchand Garg v. Gopaldas Agarwal*, AIR 1990 MP 135 at 137

¹¹ *Hales v. Kerr*, (1908) 2 KB 601; *Butterley Co. v. New Hucknall Colliery Co.*, (1909) 1 Ch 37.

the admission of evidence by enacting a correct and uniform rule of practice. The law of evidence is the *lex fori* which govern the Courts; whether a writer is competent or not; whether a certain fact requires to be proved by writing or not; whether a certain evidence proves a fact or not; that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced and where the Court sits to enforce it;¹²

Whenever a judge is called upon to pronounce upon the rights and liabilities of parties arising out of facts, certain information about the facts involved must be submitted to him which will create a belief in his mind so as to what the real facts are.¹³ Facts must be proved in the first instance and then only the matter is ripe for application of relevant laws.¹⁴ The means by which facts are proved are governed by the law of evidence. The function performed by the law of evidence is laying down rules according to which the facts of a case can be proved or disproved before a court of law. Thus, it can be said that the means which can be used to prove a fact are all controlled by the rules and principles laid down by the law of evidence. The law of evidence does not affect substantive rights of parties but only lays down the law for facilitating the course of justice.¹⁵

The basis on which rules of evidence are framed are:(i) No facts other than those having some connection with the matter in controversy should be looked into by the court however interesting it may be; and(ii) All facts having rational probative value i.e., which helps the Court to come to a conclusion upon the existence or non-existence of the matter in controversy, are admissible in evidence, unless excluded by some rule of paramount importance. Further, it is one of the basic principles of law that if evidence is to be admitted in a court of law it must be relevant, material, and competent. Once admitted as relevant evidence, the judge is to determine the appropriate weightage to be given to a particular piece of evidence. A given piece of evidence is considered material if it is offered to prove a fact that is in dispute in a case.

Since the quality and reliability and the substance of the evidence shapes the actual decision, it is important to consider the means used to obtain the evidence presented before the Court. It was made clear by the Supreme Court¹⁶, the court need not concern itself with the method by which the evidence in question was obtained. This proposition was also upheld in *Barindra Kumar Ghose v. Emperor*¹⁷. However, the Supreme Court noted an exception to this wherein after the alleged offence improper methods have been used to obtain evidence for it and the judge is of the view that the prejudicial effect of such evidence would be out of proportion to its evidentiary value, the judge may exclude it.¹⁸ The Act applies to both civil and criminal cases alike and hence the rules of evidence to be considered are (largely) the same as well. Thus, even in civil cases it is only relevant evidence that must be taken into account irrespective of the manner in which it was obtained.

¹²Brain v. White Raven and Furnem Junction Ry., (1850) 3 HLC 1 (19).

¹³ Singh Avatar, Principles of the law of evidence, 19th ed. 2011, Central Law Publications

¹⁴ Ibid.

¹⁵ Ram Jas v. Surendranath AIR 1980 All 385

¹⁶ Pushpa Devi M Jatia v. M.L. Wadhwa AIR 1987 SC1748

¹⁷Barindra Kumar Ghose v. Emperor ILR (1910) 37 Cal. 467

¹⁸ Pushpa Devi M Jatia v. M.L. Wadhwa AIR 1987 SC1748

The rules of law of evidence for civil and criminal Cases are the same, for example: the method of proving that a particular person is dead in respect of Civil Case (person executing the Will, died or not on a particular date) or of Criminal Case (a person charged with murder). But there are certain sections of the Act, which apply only to Civil Cases (sections 115-117 dealing with estoppel) and some only to the Criminal Case (sections 24-30 dealing with confessions). Furthermore, the burden of proof is on the *prosecution* in criminal cases and on the *plaintiff* in civil matters. In civil cases a matter is taken to be proved when the balance of probability suggests it, but in criminal cases the court requires a burden of proof beyond reasonable doubt.¹⁹ There is a marked difference as to the effect of evidence in civil & criminal matters. In criminal proceedings, law presumes the accused as innocent unless and until he is proved guilty. In civil cases, principle of *res ipsa loquitur* is followed.²⁰

Kinds of Evidence

There are various ways and methods in which evidence can be grouped together to classify as types of evidence. Even though the meaning of evidence as per the Act only includes two kinds of evidence, oral and documentary, the Act provides for certain other kinds of evidence as well which are discussed as follows:

Before the conventional types of evidence are discussed, an important concept of ***corpus delicti evidence*** must be mentioned herein. It refers to evidence that establishes that a crime actually occurred. In other words, it is a strong piece of evidence which is clinching and can help to successfully prove the case. For example, a dead body with an electrical cord tied around the neck is best considered *corpus delicti evidence* that a homicide occurred. Further, another kind of evidence which is used almost always is **corroborative evidence**. Corroborative Evidence is evidence that is supplementary to the evidence that is already available, and strengthens it and confirms it. For example, a suspect is apprehended near a burglary scene and his finger prints are collected from the scene. The finger prints would corroborate the statements of a witness who saw the suspect running from the house. Furthermore, evidence could be **associative** as well as **dissociative**, thereby used to either make links between crimes, crime scenes, victims, and suspects, or showing a lack of association between the same of any of the same.

I. Direct Evidence

Direct evidence is the evidence directly about the real point in issue. It is the testimony of the witnesses as to principal fact to be proved, e.g., the evidence of a person who says that he saw the commissions of the act which constitutes the alleged crime. It also includes the production of an original document. Direct evidence is generally of a superior cogency. The presumptive proof when the fact itself is proved by direct testimony.²¹

¹⁹ B. Puthunaniar v. P.H. Pandian (1996) 3 SCC 624

²⁰ Mausam Singh Roy v. State of West Bengal (2003) 12 SCC 377

²¹ Powel on Evidence, 20th Edn., p. 109.

An instance of a rule propounded to determine direct evidence is as follows:

Where there are a number of eye witnesses, the Supreme Court said that there must be a string joining evidence of all witnesses so that the test of consistency is satisfied.²²

II. Documentary Evidence

Document as defined in Section 3, means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter.²³

Documentary evidence deals with evidence produced in the form of a document in order to prove a disputed fact. The subject-matter of documentary evidence can be divided into three parts:

- (i) how the contents of a document are to be proved
- (ii) how the document is to be proved to be genuine
- (iii) how far and in what cases the oral evidence is excluded by documentary evidence

The meaning of the document or of a particular part of it is to be sought for, in the document itself. That is undoubtedly, the primary rule of construction to which sections 90 to 94 of the Indian Evidence Act, give statutory recognition and effect with certain exceptions contained in sections 95 to 98 of this Act. Of course to "document" means the "document" read as a whole and not piecemeal.²⁴

III. Oral Evidence

All statements which the court permits or requires to be made before it by witnesses in relation to the matters of fact under inquiry; such statements are called oral evidence.

Further, oral evidence is the evidence, which is confined to words spoken by mouth or gestures. Where a fact which can be proved by oral evidence, it is not necessary that the statement of the witness should be oral. Thus, a dumb person may be testified by signs or by writing. The facts can also be proved by oral evidence.²⁵

"Oral evidence" includes not only the one adduced by examining the witnesses, on behalf of such party, but also the cross-examination of witness by the opposite party, in relation to it.²⁶ Oral evidence, when reliable, is sufficient without documentary evidence to prove a fact or title.

Section 60 of the Act states that oral evidence must be direct.²⁷ This implies that a witness can tell the Court of only a fact of which he has the first hand personal knowledge in the sense that he

²² C. Magesh v. State of Karnataka AIR 2010 SC 2768

²³ Fajjan Rizvan Khan and Rafiq Madar Khan v. The State of Maharashtra 2010(112(7))BOMLR2957

²⁴ Delhi Development Authority v. Durga Chand Kaushish.; AIR 1973 SC 2609; 1973 Ren CR 708; (1973) SCC 825; (1973) 2 SCWR 642.

²⁵ Singh Avatar, Principles of the law of evidence, 19th ed. 2011, Central Law Publications

²⁶ Nandam Mohanamma v. Markonda Narasimha Rao, AIR 2006 AP 8; 2006 AIHC 662

²⁷ Section 60 of the Act

perceived the fact by any of the five senses. For instance, where the question is whether a particular statement was made, a person who heard the making of the statement may appear in the court of tell the court of the fact that the statement was made in his presence or hearing.

IV. Primary and Secondary Evidence

Section 61 of the Evidence Act provides that contents of the documents may be proved either by primary or secondary evidence. Section 62 provides that primary evidence means the document itself produced for the inspection of the Court.

Secondary evidence means that which can be given in absence of the primary evidence. Where a copy of the document or recollection of the witness who has read the original document are tendered in evidence they will be called secondary evidence of the document.²

Where the original has been destroyed or lost, and when party has made diligent search for it and exhausted all sources and means available for its production then the secondary evidence is admissible²⁸

V. Electronic Evidence

The definition of evidence was amended by the Information Technology Act, 2000 to include 'electronic records' within the same. An electronic record²⁹ means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

VI. Circumstantial Evidence

Justice Fletcher Moulton once had, in respect of circumstantial evidence, observed "proof does not mean rigid mathematical formula since that is impossible. Further Lord Justice Coleridge observed, "the circumstantial evidence is like a grassamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches". He had further observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape."³⁰

In the context of competing and various kinds of evidence, in very few cases direct evidence of facts is available.³¹ Keeping in mind, the manner in which crimes are committed victims in many cases are silenced altogether and the criminals leave no trail of evidence behind thus making prosecution difficult. Thus, in these situations the main action needs to be reconstructed before

²⁸Sattamma v. Ch. Bhikshapati Goud, AIR 2010 AP 166.

²⁹ Section 2(1)(f) of the Information Technology Act, 2000

³⁰Words of Lord Justice Coleridge in **OS v DS** [2004] EWHC 2376 (Fam)

³¹ Vilas Pandurang Patil v. State of Maharashtra (2004) 6 SCC 158

the Court with the help of surrounding circumstances such as the cause or effect of the event. Thus, it is herein affirmed that circumstances speak as forcefully as does direct evidence.³² The Hon'ble Supreme Court with regard to circumstantial evidence has observed the following:³³ It is well established that in a case resting on circumstantial evidence all the circumstances brought out by the prosecution, must inevitably and exclusively point to the guilt of the accused and there should be no circumstances which may reasonably be considered consistent with the innocence of the accused. Even in the case of circumstantial evidence, the court will have to bear in mind the cumulative effect of all the circumstances in a given case and weigh them as an integrated whole. Any missing link may prove fatal to the prosecution case.

There are certain Rules of Circumstantial Evidence which can be inferred from various decisions of the Supreme Court on circumstantial evidence:

- (i) The facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused;³⁴
- (ii) All the links in the golden chain of evidence must be proved beyond reasonable doubt and they exclude the evidence of guilt of any other person than the accused;³⁵
- (iii) The inculpatory facts must be incompatible with the innocence of the accused and is incapable of explanation upon any other reasonable hypothesis except his guilt;³⁶

Further it relates to various circumstances which are associated with the real point in issue in such a way to help the court in coming to a conclusion about the existence or non-existence of facts in issue. Circumstantial evidence must show positive inference of guilt.³⁷ Thus, circumstantial evidence does not prove the point in question directly, but establishes it only by inference.³⁸ Thus, if there is no eye-witness to a murder, the fact that A had the motive to murder B or A has been seen running away with a blood-stained knife from B's room where B was found dead immediately after B's cries were heard would be circumstantial evidence as against A. If the evidence relates to a relevant fact, it is indirect or circumstantial.

Proof of circumstantial evidence:

There are four ingredients that are essential to prove guilt by circumstantial evidence:³⁹

³² Singh Avatar, Principles of the law of evidence, 19th ed. 2011, Central Law Publications

³³ Umedhbai v. State of Gujarat AIR 1978 SC 424, Laxman Naik v. State of Orissa AIR 1995 SC 1387

³⁴ Raghav Prapanna Tripathi v. State of Uttar Pradesh, AIR 1963 SC 74: (1963) 1 Cr LJ 70: (1963) 3 SCR 239.

³⁵ State of Uttar Pradesh v. Ravindra Prakash Mittal, 1992 Cr LJ 3693: AIR 1992 SC 2045: (1992) 2 SCR 815: 1992 Scc (Cri) 642 (SC).

³⁶ Musheer Khan v. State of Madhya Pradesh AIR 2010 SC 762.

³⁷ Ibid.

³⁸ Gade Lakshmi Mangraju v. State of Karnataka AIR 2007 SC 1355

³⁹ State of Uttar Pradesh v. Ravindra Prakash Mittal, 1992 Cr LJ 3693: AIR 1992 SC 2045: 1992 AIR SCW 2417: 1992 (2) Cr CJ 85

- (a) that the circumstances from which guilt is established must be fully proved;
- (b) that all the facts must be consistent with the hypothesis of guilt of accused;
- (c) that the circumstances must be of conclusive nature and tendency;
- (d) that the circumstances should, to a moral certainty, actually exclude every hypothesis except the one proposed to be proved;

Value of Circumstantial Evidence:

Ordinarily, circumstantial evidence cannot be regarded as satisfactory as direct evidence. The chain of circumstances may lead to particular inferences and the relation to true facts may be more apparent than real. Hence, such evidence must be used with caution. Where the circumstantial evidence only showed that the accused and deceased were seen together the previous night, it was held to be not sufficient;⁴⁰

VII. Hearsay Evidence

Hearsay evidence means the statement of a witness not based on his personal knowledge but on what he heard from others.⁴¹ It may be called indirect, second-hand or derivative evidence. It is a statement made to the Court by a witness who has not seen the happening of the transaction or facts, but heard that something had happened. Thus, it means that which a witness does not say of his own knowledge but says that another has said or signified to him. The courts do not normally take such evidence much seriously.⁴²

The effect of provision is that if the fact of which the evidence is offered is a fact which could be seen, the evidence must be of a person who personally saw the happening of the fact. Hence, hearsay evidence is not permissible in a court of law.

The law regarding hearsay evidence has been described by the House of Lords to be technical, rather 'absurdly technical'.⁴³ The rule is not absolute and there are certain exceptions which have been carved out in this regard. There are seven exceptions:

Firstly, the statement of a person may be proved through another person who appears as a witness if the statement is a part of the transaction in issue.

Secondly, an admission of liability or confession of guilt which takes place outside the Court is proved through the testimony of a witness to whom the admission or the confession was made. It follows that admissions and confessions constitute an exception to the hearsay rule.

Thirdly, statements made under Section 32 are the statements of deceased persons and the evidence of these statements is received through the testimony of persons who heard their statements. The evidence of such statements is hearsay and still regarded important.

⁴⁰ Prem Thakur v. State of Punjab, AIR 1983 SC 61: 1983 Cr LJ 155: (1982) 3 SCC 462:

⁴¹ Sakatar Singh v. State of Haryana AIR 2004 SC

⁴² E-Book on Evidence, Available at <www.manupatra.com/types of evidence>

⁴³ Myers v. Director of Oublic Prosecutions (1965)

Fourthly, statements in public documents such as Acts of Parliament, official books and registers, can be proved by the production of the document and it is not necessary to produce before the court the draftsmen of the document.⁴⁴

Fifthly, evidence used in previous proceedings by a witness held as truth can be used in subsequent proceedings.⁴⁵

Sixthly, statements of experts in treatises is accepted as an exception to hearsay evidence. This is recognized by the proviso to section 60 of the Act.

The Supreme Court has held:⁴⁶ "Every article published or a book written cannot *ipso facto* be regarded as conclusive or worthy of acceptance. What is stated therein may not only be a view of the author and may not be based on a data which is scientifically collected from a reliable source.

VIII. Medical Evidence

Medical knowledge is a specialized form of knowledge. A layman may not be in a position to have medical knowledge without proper education and training. The knowledge of the medical expert is always essential in the criminal justice system. The expert evidence given by a medical person comes to the help of the Court in deciding various matters. Particularly, in case of death of a person, medical evidence is inevitable. Such evidence can be obtained through postmortem report. The importance of the post-mortem report is as a tool in the hands of the prosecution. It becomes useful to decide the guilt of the accused.⁴⁷The Supreme Court⁴⁸stated the dictum that medical opinion is admissible in evidence like all other types of evidence and there is no hard-and-fast rule with regard to appreciation of medical evidence.

IX. Expert Evidence

The law of evidence is designed to ensure that, the Court considers only that evidence which enables it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear testimony of the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the Court's knowledge. Thus cases where the science involved is highly specialised and perhaps even esoteric, the central role of expert cannot be disputed.

⁴⁴ R v. Sutton (1816) 4 MNS 532

⁴⁵ Section 33 of the Act

⁴⁶ Hashmatullah v. State of MP (1996) 4 SCC 391

⁴⁷Role of medical evidence, Available at

<<http://shodh.inflibnet.ac.in/bitstream/123456789/1502/1/pednekar%20s%20s.pdf>>> Medical Jurisprudences : HWV cox & Jhala and Raju : Evv Act S. 45

⁴⁸Shivappa v. State of Karnataka (1995) 2 SCC 76]

Rules of Expert Evidence:⁴⁹

1. Expert must be within a recognized field of expertise.
2. The evidence must be based on reliable principles.
3. Expert must be qualified in that discipline;

Conclusion

Whatever the kind of evidence may be, be it testimonial, ocular, documentary; each piece of evidence is an extremely important tool to determine the case effectively. Whether it is a civil case or a criminal case, the role evidence plays is excruciatingly important as proof of facts will not be successful without the presence of evidence. Moreover, the types of evidence are important with regard to their relevancy standards and admissibility standards. Further, there are no water tight compartments in which types of evidence can be fitted. In accordance with several parameters, evidence has been grouped into certain classes for the purpose of ease of studying and understanding the same. There are certain principles of evidence which are important and are applicable in most circumstances unless there is an important concern which could be regarded as an exception, for instance the principle of hearsay evidence. Moreover, the Evidence Act has kept up with the advancing legislations by including digital and electronic evidence within its ambit which is extremely important keeping in mind the influence of the digital world in our everyday lives.

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