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**A Socio-Legal Study on ‘Last Seen Together Rule’ Theory – Is It Followed In
India?**

Koyel Roy & Prarthana Sarmah

1.INTRODUCTION

The theory of 'Last seen together' is one where two persons are 'seen together' alive and after an interval of time, one of them is found alive and the other dead. If the period between the two is short, the presumption as to the person alive being the author of the death of the other can be drawn. The time gap should be such as to rule out the possibility of somebody else committing the crime. Last seen together principle is one of the latest principles which is taken into consideration in establishing the guilt of the accused. In the absence of eye witness and tangible evidence, it is the last resort of the prosecution in the murder case – the person last seen with the victim is presumed to be the murderer, thus, shifting the onus onto the accused to prove otherwise or come up with an alibi. The foundation of the theory is based on probability and cause and connection. Last seen together rule is used when no evidence is recovered after the investigation and it is assumed that the person last seen together with the deceased has a reason to commit the crime¹.

The circumstance of 'last seen together' does not by itself and necessarily leads to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There are cases where on account of the close proximity of place and time between the event of the accused having been 'last seen' with the deceased and the factum of the death a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there are a long gap and possibility of other persons coming in between exists. Last seen theory helps in finding the persons liable for committing crimes like Murder as per S-302 Of Indian Penal Code (IPC),1860, Kidnapping as per S-359-361 of Indian Penal Code and rape as per S-375 of IPC. These crimes are very crucial in nature and in the absence of any direct evidence in the commencement of the crime, Last seen together concept plays a vital role. The case of the prosecution is based on the way they put the circumstantial evidence in a proper manner. All the pieces of evidence should form a chain of evidence. If all the pieces of evidence put together does not complete the puzzle, the accused wins the case. In the case of *Manoharan vs State by Inspector of Police*², the High Court of Madras held that the accused was seen by many people

¹ M. Govindarajan, Tax Management India Article,2016

² <https://www.casemine.com/judgement/in/56090129e4b0149711155f76> - Last accessed on 3rd May,2020.

with the deceased before the crime was committed and thus the court came into the conclusion by applying the rule of 'last seen together' and by the confession made by the accused.

OBJECTIVITY

The general objective of this study aims to provide a clear understanding of the theory of 'last seen together' and what are the circumstances in which this rule is applicable. The specific objectives are:

1. Whether the conviction can be based solely on the fact that the victim was last seen together with the accused.
2. To determine how 'last seen together' theory is used against an accused.
3. To analyze the theory by relating to different types of case laws.

HYPOTHESIS

This research paper is based on the hypothesis that 'last seen together' theory is beneficial for the court of law to determine the guilt when there is no direct evidence against the accused and how circumstantial evidence is used to create the chain of evidence against the accused. It will also explain the importance of time gap and place in this theory and whether it is followed in India or not.

RESEARCH QUESTIONS

1. Whether someone can be convicted only on the bases of 'last seen together'?
2. Relationship between the accused and the victim matters or not?
3. Without any direct evidence, the accused can be convicted or not?
4. Whether the accused can be held by the factum of the death?
5. How time gap and place of the incident play an important role in this theory?
6. Is it followed in India?

RESEARCH METHODOLOGY

Research work cannot be accomplished without adopting a proper method of methodology. In this research paper, analytical and doctrinal method of research is followed. The analytical method is followed in terms of analyzing and scrutinizing the present scenario. The date for this work has been

collected from various statutory provisions, journals, seminar papers, newspapers, reporters, magazines, and web sites. By analyzing the secondary data a conclusion has been established.

STATEMENT OF PROBLEM

It may be stated that 'last seen together' principle has been applied by the courts so cautiously that unless there is corroborating and circumstantial evidence, the conviction is not given. However, the principle helps the courts to shift the burden of proof to the accused and the accused might establish an interface in the chain of circumstantial evidence. Otherwise, he will not get any benefit of the doubt. According to the Supreme Court of India, 'last seen theory' as a facet of circumstantial evidence is a weak kind of evidence if the conviction is to be solely based on it. In India, itself conviction cannot be given only on relying upon the fact that the deceased was last seen together with the accused. In this theory, circumstantial evidence and corroborative evidence play a vital role to develop the guilt of the accused. Deceased seen with the accused and the recovery of the corpse being in very close proximity of time also plays an important role in developing the evidence. The accused owes explanation under section 6 of the Indian Evidence Act under which circumstances the death of the deceased has taken place.

SIGNIFICANCE OF THE RESEARCH

This theory is one of the new principles, which is taken into account for proving the guilt of the accused. It is a piece of circumstantial evidence. In the absence of any eyewitnesses or tangible evidence, this theory is the last resort to the prosecution. There are large numbers of cases like murder, abduction, kidnapping, rape, etc in India which are still pending and some are declared as unsolved and the case is closed. The 'last seen together' theory has really helped the Court of Law to solve many cases in which there was no direct evidence in the matter. This research will help us to understand how justice has been delivered to many cases in which there was no direct evidence. The base of this theory is the principles of probability cause and connection. The circumstance of the theory does not by itself leads to the inference that it is the accused who has committed the crime. There must be something more establishing connectivity between the accused and the crime. The research is done to understand the validity of the theory in India and how the circumstantial evidence is built to develop the guilt of an accused.

2. MEANING OF CIRCUMSTANTIAL EVIDENCE AND ITS IMPORTANCE IN 'LAST SEEN TOGETHER' THEORY.

According to Bentham – witnesses are the ‘ eyes and ears of justice’ but the testimony of witnesses is not always credible. Therefore, facts are provable not only by witnesses but also by circumstances. Circumstantial evidence is unrelated facts that when considered together can be used to infer a conclusion about something unknown. Information and testimony presented by a party in a civil or criminal action that permits the conclusion that indirectly establishes the existence or non-existence of a fact or even that the party seeks to prove. Circumstantial Evidence is also known as indirect evidence. There’s always a myth lying behind circumstantial evidence that it’s evident enough to prove someone guilty of his act as the evidence is based upon the circumstances rather than direct evidence which has the upper hand in this. However, when there is an absence of direct evidence the case solely depends on the circumstantial evidence. Now, it’s the work of the jury to critically analyze the validity of circumstantial evidence as it’s a string connecting the facts to recreate the crime scene in a courtroom. Circumstantial Evidence is used both in civil and criminal matters but mostly in criminal matters.

An example of circumstantial evidence is the behavior of a person around the time of an alleged offence. If someone were charged with theft of money and were then seen in a shopping center purchasing expensive items, the shopping center might be regarded as circumstantial evidence of the individual’s guilt. Similarly, if a witness arrives at a crime scene seconds after hearing a gunshot to find standing over a corpse and holding a smoking pistol, the evidence is circumstantial. Most criminal convictions are based, at least in part, on circumstantial evidence that sufficiently links criminal and crime.

Essentials of circumstantial evidence:

1. The circumstance from which the guilt is established should be proven.
2. That each one of the facts should be according to the hypothesis of the guilt of the accused.
3. That the circumstances should be conclusive in nature and tendency.
4. That the circumstances ought to, to an ethical certainty, truly exclude each hypothesis except the one projected to be evidenced.
5. The evidence should prove the guilt of the culprit beyond a reasonable doubt.

6. The circumstances from where the conclusion of guilt is to be drawn ought to be established. The circumstances involved 'must' or 'should' and not 'may be' established.
7. The facts, therefore, established ought to be as per the hypothesis of the guilt of the accused.
8. Circumstances ought to be conclusive in nature and tendency.

Circumstantial evidence can be the sole basis for a conviction if circumstances establish the chain of events leading to the guilt of the accused and commission of the crime without other possibilities. The Court should be satisfied that the said circumstances were clearly established and complete the chain of events and prove the guilt of the accused beyond reasonable doubt. Moreover, all the circumstances should indicate towards the guilt of the accused and should be inconsistent with his innocence. The onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The chain of events or circumstances should be complete without gaps to the extent no other conclusion or inference apart from the guilt of the accused can be drawn. In the case of *Sidhartha Vashisht @ Manu Sharma v. State (NCT Of Delhi)*, the court awarded him life imprisonment for the murder of Jessica Lal, on the grounds of circumstantial evidence. The conduct of the accused after the incident (absconding), ballistic report, presence at the scene of crime established by various testimonies, and the circumstantial evidence connecting the vehicle and the cartridges during the commission of crime formed a chain of impenetrable evidence pointing towards the guilt of the accused. There is no inherent requirement to provide proof of motive if the link between the accused and commission of the offence cannot be broken, it is immaterial to establish the motive.

However circumstances leading to "last seen together", does not necessarily imply that it was the accused who has committed the crime. If the circumstances are limited to just "last seen together" without further corroboration, a conviction cannot be based on the said assertion. The doctrine of "last seen together" shifts the onus onto the accused to establish his innocence. Thus, last seen together is not conclusive proof establishing guilt, it is imperative to look at surrounding circumstances such as victim relationship, history of hostility, weapon recovery, the relationship between the victim and the accused among others. The various kinds of evidence which can be used as corroboration of circumstantial evidence are the opinion of an expert, handwriting, fingerprint, DNA test analysis, witness, the discovery of an object connecting to the offence. Eyewitness testimony cannot be considered accurate or proper at times, and many persons have been convicted on the basis of perjured

or otherwise mistaken testimony. Thus, strong circumstantial evidence can provide a more reliable basis for a verdict. Circumstantial evidence normally requires a witness, such as the police officer who found the evidence, or an expert who examined it, to lay the foundation for its admission.

It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In *Jaswant Gir v Punjab(2005) 12 SCC 438*, in this case, the deceased was traveling in a vehicle with the accused. The body of the deceased was recovered from a culvert. The apex court did not convict the accused and he was acquitted as the time gap between the deceased boarding the vehicle and his body being found was not as considerable and even the other chain of evidence did not fall together to convict the accused. Thus, in this case, it was not possible to convict the accused solely based on last seen together.

3. IMPORTANCE OF TIME GAP AND RECOVERY OF THE CORPSE.

The 'last seen together' theory is the last resort of the prosecution in a case where there is no direct evidence against the accused. The prosecution has to prove that the accused who was last seen with the deceased have committed the crime. In this theory, the time gap between the time of death and the person last seen with the deceased should not be very long as it weakens the theory. The prosecution should prove that there is no chance of any third person committing the crime and should prove that there was a minimum time gap between the death of the deceased and the person last seen with the deceased. The time gap plays a vital role in proving the guilt of the accused in the theory of 'last seen together' as the foundation of this theory is based on the principle of probability, cause, and connection. In *'Bodhraj V. State of J&K' – 2002 (9) TMI 858 – SUPREME COURT*, the Supreme Court held that the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

In *'State of Karnataka V. Chand Basha' – 2015 (9) TMI 1450 – SUPREME COURT* - Ganesh, a daily wage mason went missing on 16.1.2001. On 21.01.2001, D. Ramu, dhobi, saw a dead body floating in a well near the dhobi ghat with hands tied at the back, and the ankles were also tied. He

informed the police and the police recorded the dead body and shifted it to the mortuary. The police published a photo of the dead body in the newspaper. The father of the deceased identified the dead body as that of his own son Ganesh. The police caused the investigation. On suspicion one Chand Bahasa was arrested on 23.01.2001. The investigation revealed that the accused and Ganesh had gone to a wet party at Sindhu Bar at Lingarajapuram. The bar boy, the owner of the bar testified that on 16.1.2001 that the accused along with one other visited the bar. Another witness a shopkeeper deposited that the accused along with one other person and bought cigarettes from his shop on 16.1.2001 at 10 p.m., The accused was arrested on 23.01.2001 but the deceased was never seen as alive. The police filed a charge sheet against accused Chand Basha. The Trial court vide its judgment and order dated 14.02.2003 convicted the accused of the offence punishable under Section 302 IPC and sentenced him to rigorous imprisonment for life and a fine of ₹ 15,000/- and in default of payment of fine, further rigorous imprisonment for six months was awarded. The High Court, on appeal, allowed the appeal of the respondent on the ground that the prosecution might have proved the motive but had miserably failed to prove the incriminating last seen circumstance and has also failed to provide the discovery evidence. The death may be homicidal, but there is no evidence to connect the accused with the crime.

The appellants challenged the impugned judgment of the High Court before the Supreme Court. The Supreme Court held that the prosecution relies upon the 'last seen together' theory which resulted in the death of Ganesh. The Supreme Court has time and again laid down the ingredients to be made out by the prosecution to prove the 'last seen together' theory. The Court, for the purpose of arriving at a finding as to whether the said offence has been committed or not, may take into consideration the circumstantial evidence. However, while doing so, the Supreme Court reiterated that it must be borne in mind that close proximity between the last seen evidence and death should be clearly established. The prosecution has failed to prove the evidence which establishes the 'last seen together' theory beyond reasonable doubt to prove the guilt of the accused. The prosecution merely proved the motive which could have compelled the accused and that the accused went to the bar with one other person, but the identity of that other is not clearly established at all. The post mortem report fails to specify any approximate time of death and in light of the recovery of the dead body on 20.01.2001 after 4 days, which is not a small gap since the deceased disappeared on 16.01.2001, it is not appropriate to convict the accused when his role is not firmly established. By referring to this case it

is clear that if the time gap from when the deceased was last seen with the accused and the time of death is not small then it is difficult to establish the guilt of the accused.

4. SHIFTING OF BURDEN OF PROOF AND SECTION 106 OF INDIAN EVIDENCE ACT,1872.

Section 106 of the Indian Evidence Act, which states when a fact is within the knowledge of a person, the burden is upon him to establish his innocence. For example, if the body of B was found in the house of A. The onus is upon A to establish that even know the body of the deceased was recovered from his house, his involvement in the crime is negligible. The inmates of the house are also required to provide an explanation. If the defendant fails to provide a viable explanation and fails to establish his innocence, this would form a chain of circumstantial evidence establishing the guilt of the accused. When there is no direct evidence against the accused and after the prosecution establishes the circumstantial evidence, the burden of proof shifts on to the accused and he has to prove his innocence by describing the circumstance or situation when he was last seen with the deceased. If the accused fails to describe the situation properly or the situation explained by the accused has any false statement, then it becomes clear that it is the accused who committed the crime by considering the circumstantial evidence provided by the prosecutor.

Abnormal conduct of the accused can put the accused in great trouble if he fails to prove his innocence. Conduct of the accused plays a vital role in corroborating or establishing circumstantial evidence. Conduct of the accused which is unnatural and abnormal, such as absconding, inability to provide an explanation, inability to disclose location during the commission of offence, providing false alibis, secretive cremation of dead body, which destroys the presumption of innocence is a relevant factor in establishing guilt and building the chain of events. For example - After the murder of B, the prime accused C went out of the state and subsequently disappeared to avoid arrest. The conduct of C is inconsistent with the conduct of an innocent man. Thus, increasing the presumption of guilt.

In ***'Kashi Ram V. State of Rajasthan' – 2006 (11) TMI 660 – SC***, In this case, the accused Kashi ram killed his wife and two daughters and was awarded death sentence by the court. The Supreme Court held that the provisions of Section 106 of the Evidence Act itself are ambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving

that fact is upon him. Thus if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation to discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 of the Evidence Act lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link, which completes the chain. Kashi Ram was unable to provide a valid or satisfactory explanation and thus it was added as a link in circumstantial evidence.

Circumstantial Evidence also understood as indirect evidence cannot be assumed to be inferior to direct evidence. If the aforesaid conditions are fulfilled, a conviction can be solely based on circumstantial evidence without direct evidence. Circumstantial requires a certain level of corroboration which can be established through the conduct of the accused and surrounding circumstance. The onus is upon the judiciary to critically analyze the evidence. Circumstantial Evidence is applied both in civil and criminal matters, however primarily in criminal matters.

5. 'LAST SEEN TOGETHER' THEORY IN INDIA.

This theory of 'last seen together' is followed in all the courts of India. There are a large number of cases that arise in India in which there is no direct evidence against the accused. The accused is caught on the basis of circumstantial evidence and slowly by joining all the links and evidence to it, the accused is held guilty. In some cases, the police are unable to find any link between the accused and the deceased. In those cases where there is no link nor any evidence is found against the accused, then the accused is set free. The relation between the accused and the deceased is very important in this theory as it points out the possibility of the accused to commit the crime. During the investigation police always tries to find any grudges between the accused and the deceased because it can add as an additional link in the chain of circumstantial evidence.

In Landmark case of *Joseph vs State of Kerala, 1998 case no. 656*, the accused (Joseph) falsely representing himself as the husband of the deceased's sister, came to the St. Mary church and went to the deceased and misrepresented her by saying that her mother is sick and has been admitted to the hospital. The deceased agreed to his false statement and went with him to the hospital by taking the permission of one head sister working on the church. The accused who was walking along with the deceased by the side of the railway line in Koratty, and thereafter at a desolate place not only raped her but also robbed her of her ornaments, but also laid her on rail tracks to be run over by a passing train. The key man of the station found the dead body and informed the nearest police station about the body. The police came to the spot and called the Forensic Department to collect all the evidence which was attached to the body. The body was identified after 20 days by the clothes and the accused was arrested after 25 days right after the sister who saw him in the church with the deceased identified him and also said that he took the deceased along himself. The learned session Judge held that there was no direct evidence against the accused that he had killed the victim and raped her. The cause of death being run over by rail and also there were no eyewitnesses who saw this crime.

The state pursued the matter on appeal before the High Court and division bench of the Kerala High Court. High Court held that the accused is guilty for the crime as he was not only last seen with the victim but also the victim was not seen thereafter alive. The accused was questioned under 313 of the Criminal Procedure Code, and he denied bluntly all the incriminating circumstances brought out against him. The decision of the High Court was challenged by the respondent and the appealed in Supreme Court. The Supreme Court held that the first link in the chain of circumstantial evidence is that the accused lied about the deceased mother's illness. After going through the evidence of the Forensic Department, a wound caused to the deceased head can only be caused by the person who is of the same height of the accused and also the accused was last seen with the deceased identified by the head sister. The chain of circumstantial evidence clearly indicates that the accused was last seen together with the deceased and then after the body was recovered and hence, he was also charged with rape as it was not possible for any third person to commit rape between the time frame. Hence, the accused was held liable for committing murder and rape of the deceased.

Though the 'last seen theory' is an important link in the chain of circumstances that would point to the guilt of the accused with some certainty, it is well settled by the Supreme Court that it is not always correct to base the conviction solely on the theory. The 'Last seen theory' should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances

that precede and follow the point of being so last seen. In India, this theory is followed by all the courts strictly as per situation and circumstances of the case. Most of the cases in which there is no direct evidence or any clue, this theory gives an upper hand in those cases. During the time of the investigation, the police have to tie up all the loose ends while dealing in cases related to this theory because any type of mistake could destroy the whole case. Cases related to this theory are very sensitive and critical, sometimes an innocent can also face the punishment because of someone else's mistake. Hence it is very important to link all the circumstances in a single pattern and decide the matter accordingly.

6. SUGGESTIONS.

1. The police have to be very cautious while investigating cases related to 'last seen together' theory as it cannot avoid any connection related to the case.
2. Conviction should not be given only on the basis of last seen with the deceased.
3. Conviction should be given only after corroborative and circumstantial evidence is formed properly and provided.
4. Every small evidence plays an important role in solving cases related to this theory. For example – single hair of a person found on the crime spot.

7. CONCLUSION.

It may be stated that 'last seen together' principle has been applied by the courts so cautiously that unless there is any corroborative or circumstantial evidence, the conviction has not been given. Any mistake or misrepresentation of fact can cause the life of an accused who pleads innocent. The circumstance of the theory of last seen together does not lead to the inference about the fact that it was the accused who committed the crime. The connectivity between the accused and the crime must be something more establishing. However, the principles help the Courts to shift the burden the proof to the accused and the accused might establish an interface in the chain of circumstantial evidence. Otherwise, he will not get any benefit of the doubt. The latest tendency of the court is to take the aid of section 106 of the Indian Evidence Act, in addition to the 'last seen together' principle to hold an accused person guilty whenever there is no evidence available. A situation was based on the close proximity of place and time between the event of accused and the factum of death, a rational mind

may be persuaded to conclude that either the accused should explain that how and in what circumstances the victim suffered the death or own the liability for the homicide.