



Spreading Legal and Economic Awareness

A Social Initiative by
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Special points of interest:

- The onus to prove innocence lies with the accused
- Emails are legally valid
- CCTV footage is a strong evidence
- Information not disclosed under RTI
- Co-op Soc cannot expel members arbitrarily
- Company fixed deposits are risky

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What is Circumstantial Evidence?

Circumstantial evidence is a presumptive theory which must lead to one conclusion. In a criminal case of murder, if the prosecution reliably establishes that the missing person was last seen in the company of the accused and was never seen

again thereafter, it is obligatory on the part of the accused to explain the circumstances in which the missing person and he accused parted company. This was the latest decision of the Supreme Court in a case of circumstantial evidence decided on 26. 11. 2014- (Vasanta Sampat Dupare Versus State of Maharashtra). An example to explain the situation of circumstantial evidence (not this

case) would be a situation where there is no eye witness but some one sees the accused with a knife or with bloody hands and he was last seen with the deceased victim and while he entered the room, the accused was

the theory of circumstantial evidence is to be used mainly in heinous crimes where the State has an onus to disprove with to the masses. Although it is not a thumb rule that in other cases it cannot be used. Circumstan-

tial evidence is of interest to advocates, judges and also common men and there is no **straight** jacket formula.

The theory should therefore result only and only on one conclusion and as far as possible there should be minimum number or rather only one conclusion to succeed. It is a presumptive theory and therefore must be used strictly.



Do emails have legal validity?

Email is a communication addressed to a definite person and is admissible in evidence if sent to a person whose identity can be ascertained. Similarly acknowledgment of debt by email constitutes valid and legal ac-

knowledgment. Not replying to a debt communication does not mean acknowledgment. If email evidence is to be used then acknowledgment has to be express. Sale of secured assets by way of e-auction is

not barred by limitation. However if assets are immovable and covered by Registration Act and Transfer of Property Act, the registration and related legal procedure can be completed later.

Laws that Protect Men from Wife's Cruelty

In the startling judgment which shows cruelty by wife against husband, a wife has been held for the doing cruelty on a husband-not doing any domestic work, abusing her in-laws and her husband, not caring in his illness, quarrelling with him, lodging fake criminal case against him and in-laws for demand of dowry only to harass. This behaviour proves cruelty by wife on a husband, according to Chhatisgarh High Court 2014 AIR Chh 81.

Similarly in another case reported in AIR 2014 P & H 91 (Punjab and Haryana High Court), where a wife was having illicit relations and was squandering the hard earned money of her husband and sub-

jected husband into litigations, the court found these grounds strong enough to treat this as a matter of cruelty on her husband. Decree of divorce granted in favour of the husband.

Similarly when family members were acquitted in a fake criminal case, the Court upheld the view that it amounted to cruelty of wife on her husband. Punjab and Haryana High Court – AIR 2014 P & H 89.

Wife admitted in a petition that she had avoided sexual relations with her husband as she wanted to preserve her physical appearance and looks. The Punjab and Haryana High Court held that it amount-

ed to cruelty on the husband and granted divorce. AIR 2014 P & H 6.

Filing false petitions by wife before Women's Commission, Lokayukta and State Human Rights Commission against husband amounted to mental cruelty by wife.

Threats issued by wife to commit suicide amounts to mental cruelty. In addition to that, suppression of fact that before marriage the wife had removed her uterus, making false allegations on husband of having extra marital affairs, also amount to a serious case of cruelty of wife on a husband and the law deals with them strictly.

Co-op Society cannot Expel Members Arbitrarily

Section 25 of Maharashtra Co-operative Societies Act 1960 lays down that a person shall cease to be a member of a society when he – (1) resigns from membership of a society and his resignation is accepted, (2) transfers whole of his share or interest in society to another person, (3) is removed or expelled from society (4) on his death and when a firm or company or body corporate is a member, on its dissolution or cession of existence. Merely because member has expired, right of the heir or the legal representative to claim membership or value of the share or the interest is not taken away. The statute ensures the right of the heir or legal representative to claim membership and/or value of the share or interest of deceased member. Any breach of bye-law would not result into automatic cessation of membership but a procedure for removal or expulsion from membership would be required to be followed.

Before the names of the defaulters are removed from the register of members, it is necessary to issue notice to those members whose names are proposed to be deleted, either to show cause why their names should not be deleted or to wipe out defaults. This is mandatory under Section 25 A of the said act. Rule 28 of the Maharashtra Co-operative Rules

provides for Expulsion of Member. Any member who has been persistently defaulting in payment of his dues or has been failing to comply with the provisions of the bye-laws regarding sales of his produce through the society or, other matters in connection with his dealings with the society or who, in the opinion of the committee, has brought disrepute to the society or has done other acts detrimental to the interest or proper working of the society (or for the reasons mentioned in section 26 of the Act) may in accordance with the provisions of subsection (1) of section 35, be expelled from the society. Expulsion from membership may involve forfeiture of shares held by the member.

Rule 29 of the Maharashtra Co-operative Society Rules 1961 provides for Procedure for Expulsion of Member – (1) Where any member of a society proposes to bring resolution for expulsion of any other member, or when the society itself wishes to do so, he/it shall give a written notice to the Chairman of the society. On receipt of notice, the consideration of such resolution shall be included in the agenda for the next general body meeting and a notice shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general body meeting to be held not

earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution. (2) When a resolution passed in accordance with sub-rule is sent to the Registrar (along with application, the Registrar may consider the resolution and after due inquiry and giving reasonable opportunity of being heard of such member give his decision within ninety days from the date of receipt of application and communicate the same to the society and the member concerned.) the resolution shall be effective from the date of such approval. Rule 29 provides that the Registrar in matter of giving approval to resolution of expulsion of member has to hold inquiry after notice to member concerned and must give that member an opportunity of being heard. Under rule 29, the question of validity of resolution as passed by society in meeting can also be raised. Before approval of resolution expelling a member the registrar must give a hearing to the member concerned. Procedure contained is mandatory and any resolution passed in violation of requirements of the rule will be illegal.

CCTV Footage is the Best Evidence: Supreme Court

The Supreme Court of India in *Tomaso Bruno & Anr. Vs. State of U.P.* dated 20-01-2015 viewed that 'omission to produce CCTV footage which is the best evidence, raises serious doubts about the prosecution case.'

A full bench of Justices Anil R. Dave, Kurian Joseph and R. Banumathi held that 'to invoke Section 106 of the Evidence Act, the main point to be established by the prosecution is that the accused persons were present in the hotel room at the relevant time. Hotel Manager stated that CCTV cameras are installed in the boundaries, near the reception, in the kitchen, in the restaurant and all three floors. Since CCTV cameras were installed in the prominent places, CCTV footage would have been best evidence to prove whether the accused remained inside the room and whether or not they have gone out. CCTV footage is a strong piece of evidence which would have indicated whether the accused remained inside the hotel and whether they were responsible for the commission of a crime. It would have also shown whether or not the accused had gone out of the hotel. CCTV footage being a crucial piece of evidence, it is for the prosecution to have produced the best evidence which is missing. Omission to produce CCTV footage, in our view, which is the best evidence, raises serious doubts about the prosecution case' Court added. Allowing the appeal and setting aside the convictions of the accused under Section 302/34 IPC the Court further held that: With the advancement of information technology, scientific temper in the individual and at the institu-

tional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant.

Electronic documents strictu sensu are admitted as material evidence.

The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act. Sub-section (1) of Section 65B makes admissible as a document, a paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfillment of the conditions specified in sub-section (2) of Section 65B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act. PW-13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it. Production of scientific and electronic evidence in court as contemplated under Section 65B of the Evidence Act is of great help to the investigating agency and also to the prosecution.

The court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and SIM details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non-production of CCTV footage, noncollection of call records (details) and SIM details of mobile phones seized from the accused can-

not be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made. As per Section 114 (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 (g) of the Evidence Act is only a permissible inference and not a necessary inference.

Under Section 114 of the Evidence Act, the Court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 (g) of Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party. The High Court held that even though the appellants alleged that the footage of CCTV is being concealed by the prosecution for the reasons best known to the prosecution, the accused did not invoke Section 233 Cr.P.C. and they did not make any application for production of CCTV camera footage. The High Court further observed that the accused were not able to discredit the testimony of PW-1, PW-12 and PW-13 qua there being no relevant material in the CCTV camera footage.

Personal Information is prohibited under RTI

The performance of an employee or an officer of an organization is primarily a matter between the employer and the employee and those aspects are normally governed by the service rules which fall under the expression 'personal information', the disclosure of which has no relationship to any public activity or public interest and on the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. The details disclosed by a person in his income tax returns are also 'personal information', which stand exempted from disclosure under clause (j) of Section 8(I) of the RTI act. Of course in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed.

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*A law and economics knowledge
sharing initiative*

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Chanderlawpal.com is an online legal advisory portal, for people from all over the world, seeking legal advice on Indian or/and international laws.

This newsletter is an initiative by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help people use the existing machinery to become self reliant.

Company Fixed Deposits To Be or Not To Be

Company fixed deposits offer higher rates of interest as compared to bank deposits- usually 3-5% higher. For this reason, investors fall prey- they expect the same safety of their money as they get in banks, only due to the similarity in name, 'fixed deposits'. You should however understand that nothing is same, other than the name. Companies run a very high risk of repaying the debt that they raise from investors. There is no body to oversee, or punish the defaulting companies. All they have is a rating, though from recognized rating agencies, even these won't help when companies suck up your money. These ratings are meant to caution you and that is all. You cannot approach these agencies asking why the company defaulted in paying you when the agency gave it a high rating. Neither can you hold the rating agency accountable for helping you get your money back. So basically, you lend to a company, without any security, or a regulator or a guard. Though you may complain to the Ministry of Corporate Affairs, or the Consumer courts, or SEBI or the RBI, do you think you would even have the time and the mindspace to

devote to such a procedure where you see no light at the end of the tunnel soon? And the best thing is that the offer document says it all but we never bother to read completely. The new companies act specifies that each company raising money from the public in form of deposits has to disclose that their money is not secured against any of the assets of the company. Other risk factors are also clearly stated in the said offer documents. An aware investor is a safe investor.

When you look at an advertisement of a company offering high rates of interest, you get attracted. But you have to understand that a company would offer high interest only if it runs a high risk of default. That's the basic premise on which all financial instruments are based upon. A company or a bank that has strong fundamentals does not need to attract you with offering higher returns. When investors know their money is safe, they would invest even if the returns are low. A bait of higher interest is required only if there is nothing much to offer, other than the interest bait.

There would still be many who would want to invest. Make sure you make an in-depth research of the company, its repayment history, the office where it deals with money transactions, the premature withdrawal penalty etc. check reviews from investors who have invested in the past and have experience. These are easily available online. Make careful decisions- unlike stocks, you won't be able to sell your corporate fixed deposits in open market if you do not like to hold onto them. And of the company defaults, you would have no one to turn to and complain. Moreover, unlike bank deposits, you wouldn't be able to manage company FDs online- very few companies provide that ease. If you withdraw prematurely, it would take 4-6 weeks to receive your money, online or through cheque. You would again have to take out time to visit your bank to get the cheque encashed.

Company fixed deposits are unsecured, uninsured, unguaranteed and may erode your capital too. Are you ready to take that risk head on?

-Harjot Kaur