

Circumstantial evidence/ Indirect evidence/Last seen evidence

Circumstantial evidence can be based for conviction

Ss. 302(b) & 365-A---Anti-Terrorism Act (XXVII of 1997), S. 7(a)---Qatl-e-amd, kidnapping for ransom and terrorism---Reappraisal of evidence ---Death sentence---circumstantial evidence ---Effect---Nature of evidence produced at trial is relevant primarily for the purpose of determining guilt or innocence of accused and not sentence to be awarded---No rule exists that sentence of death cannot be awarded in absence of direct ocular evidence , if guilt of accused has been proved beyond reasonable doubt through circumstantial and forensic evidence ---Overall features of occurrence, nature of offence and events leading thereto, including motives etc. are relevant to the extent permitted by law.

(2013 SCMR 1314 SUPREME-COURT)HAMID MAHMOOD vs State

Rule of prudence.....It was required that each piece of circumstantial evidence would be supported by independent corroboration

S. 302(b)---Criminal Procedure Code (V of 1898), S. 103---Qatl-e--amd---Reappraisal of evidence--circumstantial evidence --- a rule of prudence....., it is required that each piece of circumstantial evidence would be supported by independent corroboration, which by itself was sufficient to establish the guilt---Each circumstance was to be connected with each other to make one complete chain, without there any broken link---There were completely broken links of chain to connect the accused with the commission of murder of deceased, therefore, he was entitled to benefit of doubt---Supreme Court set aside the conviction and sentence awarded to accused by the courts below and he was acquitted of the charge---Appeal was allowed. (2011 SCMR 1127 SUPREME-COURT) MUHAMMAD HUSSAIN vs State

Absence of identification parade...not fatal if proved by other circumstantial evidence

S. 302(b)---Qatl-e-amd---Appraisal of evidence-Absence of identification parade---Effect---Where identity of accused is proved by other convincing direct or circumstantial evidence , the absence of identification test proceedings will be immaterial . (2011 SCMR 877 SUPREME-COURT) MUHAMMAD AKRAM RAHI vs STATE

Lead and pointation by the accused of the place of murder and recovery of dead boy.....are relevant information

S. 302(b)---Qanun-e-Shahadat (10 of 1984), Art. 40---Appraisal of evidence---Delay in lodging of F.I.R. was suitably explained by the complainant, father of the deceased child---Complainant and accused were close relatives---Accused had nourished ill will and grudge towards the complainant as he considered the complainant responsible for separation of his wife and daughters and thus thought of teaching a lesson to him---Medical evidence had supported the last seen and other circumstantial evidence ---Multiple circumstances had corroborated the involvement of accused in killing the boy, who had taken him along on a bicycle, killed him thereafter and thrown into the river---In view of Article 40 of the Qanun-e-Shahadat, 1984, the lead provided by the accused and pointation of the place where the minor was killed and recovery of dead body, were all relevant information about which only the accused had the information---Accused had taken life of an innocent child in a merciless and cruel manner and he deserved no leniency---Appeal was dismissed in circumstances.(2011 SCMR 670 SUPREME-COURT) GUL MUHAMMAD VS state

Last seen evidence..... Without corroboration is weak type of circumstantial evidence

Last seen evidence---Scope---Such evidence without corroboration is weak type of circumstantial evidence to base conviction. (2010 SCMR 939 SUPREME-COURT) ZAFAR ABBAS vs State

Last seen evidence

Ss. 302(b), 364 & 392---Anti-Terrorism Act (XXVII of 1997), S.7---Qanun-e-Shahadat (10 of 1984), Art.43--
-Re-appraisal of evidence---Last seen evidence---Extra judicial confession---Joint trial---Statement of one accused against other---Independent witness---Both the accused along with two unknown persons were seen boarding taxi of deceased from taxi stand---Later on dead body of deceased was found on pointation of one accused who made extra judicial confession---Death sentence awarded to both the accused was maintained by High Court---Validity---Presence of prosecution witness at taxi stand where he had seen deceased last time was established in cross-examination as he used to work as auto-electrician and used to repair taxis etc.---As such the prosecution witness was independent witness bearing no relationship at all with complainant or deceased except that he knew the latter, who had given truthful and confidence inspiring narration of incident i.e. boarding of deceased's car by two accused as well as two other unknown persons and their departure---Under cross-examination nothing could be extracted from such prosecution witness except for his denial of having informed complainant regarding last seen evidence, whereas he had stated so in his statement before police, which was a minor discrepancy and could be ignored---Prosecution witness had no reason whatsoever to implicate both the accused falsely as no enmity had been remotely suggested by accused in their cross-examination---Testimony of two prosecution witnesses inspired confidence and could be relied upon---Accused, who made extra judicial confession had fully implicated other accused in his confession before prosecution witness which was approved by Supreme Court---Where, in a joint trial, confession of one accused was proved, under Art.43 of Qanun-e-Shahadat, 1984, the same might be taken into

consideration as circumstantial evidence against co-accused---Extra-judicial confession of one accused as well last seen evidence was corroborated by arrest of accused along with car belonging to deceased which was proved by prosecution through evidence of recovery witness--Under cross-examination nothing could be gleaned from recovery witness as to alleged false arrest of one accused and recovery of car in question---Supreme Court maintained death sentence awarded to both the accused by two courts below---Appeal was dismissed.(2009 SCMR 1133 SUPREME-COURT) MOBASHAR AHMAD vs state

Last seen evidence....extra judicial confession.....recovery on pointation of accused.....accused convicted

Ss.302(b), 377 & 201---Anti-Terrorism Act (XXVII of 1997), Ss.4(a) & 7(a)---Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979), S.12--Qatl-e-amd, unnatural offence and causing disappearance of evidence of offence or giving false information to screen offender---Reappraisal of evidence---extra judicial confession ---Last seen evidence---Recovery of Shalwar---Substitution of accused---Sentence of death awarded to accused by Trial Court was altered by High Court into imprisonment for life---Validity---Three independent pieces of evidence comprising of extra judicial confession , last seen evidence and recovery of Shalwar belonging to deceased on the pointation of accused from a place which was in exclusive knowledge of accused only which was witnessed by two prosecution witnesses... Supreme Court declined to interfere in conviction and sentence awarded to accused by High Court---Appeal was dismissed. (2010 SCMR 939 SUPREME-COURT) ZAFAR ABBAS vs State

Proved Confession of one accused is admissible against other co accused as circumstantial evidence

---Where, in a joint trial, confession of one accused was proved, under Art.43 of Qanun-e-Shahadat, 1984, the same might be taken into consideration as circumstantial evidence against co-accused---Extra-judicial confession of one accused as well last seen evidence was corroborated by arrest of accused along with car belonging to deceased which was proved by prosecution through evidence of recovery witness-.(2009 SCMR 1133 SUPREME-COURT) MOBASHAR AHMAD vs state

Abscondance....circumstantial evidence....shows accused's guilt

Abscondance---Effect---Long abscondence of accused without any plausible and reasonable explanation indicates his guilt, when considered in conjunction with the ocular and circumstantial evidence. (2009 SCMR 471 SUPREME-COURT) QAISAR KHAN vsState

Last seen evidence...circumstantial evidence.....should be like a well-knit chain

Ss. 302, 392 & 34---Qanun-e-Shahadat (10 of 1984), Art.22---Criminal Procedure Code (V of 1898), S.103---Re-appraisal of evidence---circumstantial evidence -- ---Validity---circumstantial evidence

should be like a well-knit chain whose one end should point to accused and the other to deceased-(2009 SCMR 407 SUPREME-COURT) IBRAHIM vs State

Last seen evidence...circumstantial evidence..... known as indirect evidenceshould be in chain

Evidence---Circumstantial evidence---Conviction could be based on direct or substantive evidence---Guilt of accused could not be based on high probabilities---Circumstantial evidence was known as indirect evidence and was an exception to the said principle---Requirement of proof in such cases, basing on circumstantial evidence only, was that every link had to be proved by good and convincing evidence---When circumstantial evidence, was based on last seen, extra judicial confession , recovery of stolen goods, recovery of incriminating material i.e. weapon of offence, pointation of dead body at instance of accused, recovery of articles belonging to deceased; it was to be established on record that every piece of circumstantial evidence fit in with another piece of such evidence in the chain and corroborated each other---Role of prosecution agency collecting evidence against accused was very important; and it was to be seen that same was above board and free from any doubt and suspicion. (2014 YLR 782 KARACHI-HIGH-COURT-SINDH) AKBAR ALI SHAH vs State

CIRCUMSTANTIAL EVIDENCE--LAST SEEN TOGETHER ETC

All judicial evidence is either direct or circumstantial. By direct evidence is meant when the principal fact is attested directly by witnesses, things or documents. To all other forms, the term circumstantial evidence is applied.

The fundamental principle of universal application in cases dependent on circumstantial evidence, is that in order to justify the inference of guilt, the incriminating fact must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt. PLD 1954 Lah. 710; Zahid Hussain v. Crown. (SC) 1969 SCMR 388 = 1969 P.Cr.LJ 956, Muhammad Nazir v. Mst. Sairan PLD 1970 SC 56.

In circumstantial evidence case no link in the chain should be missing and all circumstances must lead to the guilt of the accused. 1999 SCMR 955 Ali Khan.

Circumstantial evidence to carry conviction must be wholly incompatible with the innocence of the accused. PLD 1984 SC 445. Muhammad Fayyaz.

Circumstantial evidence for basing conviction must be such that it must be incompatible with any reasonable hypothesis of the innocence of the accused. No link in the chain would be broken. 1992 SCMR 1047, Ch. Barkat Ali v. Major Karam Elahi Zia.

Conviction on circumstantial evidence can only be made when it excludes all hypothesis of innocence of the accused. Circumstantial evidence must be incompatible with the innocence of the accused. (DB) PLJ 1999 Cr.C. (Lah.) 73 Abdul Sattar.

Conviction on circumstantial evidence can only be made when it excludes all hypothesis of innocence of the accused,

Circumstantial evidence supported by defective or inadequate evidence. A mere concurrence of circumstances some or all of which are supported by defective or inadequate evidence, is apt to create a specious appearance, which is calculated to lead to fallacious inference. Hence the necessity of accepting as the basis of inference only such circumstances as are "well authenticated". Where there are indications of design in the preparation of a case resting on circumstantial evidence, the Court should be on its guard against the possibility of being deliberately misled into false inference. Where the Courts below had overlooked certain essential principles applicable to scrutiny of the proof adduced, and to the drawing of inferences in cases resting exclusively on circumstantial evidence, held, that this had resulted in failure of justice. (FC) PLD 1953 214 Fazal Elahi v. Crown.

Cumulative effect of separate items of evidence. Taken separately the circumstances of the case may or not lead to an inference of guilt against the appellant, but considered cumulatively they lead to only one conclusion and that is that the appellant and no one else caused the death of the deceased. Conviction may follow on such evidence if inculpatory facts proved are incompatible with innocence of the accused. (DB) PLD 1953 BJ 17, Ali Muhammad v. Crown.

Circumstantial evidence could be relied upon where either direct evidence was not forthcoming or had not been found satisfactory. 1992 SCMR 1187, Muhammad Arshad. Cases referred; PLD 1983 SC 286, State v. Habib-ur-Rehman; PLD 1992 SC 1, Muhammad Aslam v. Muhammad Zafar etc.

Conviction must be upheld if on the facts proved, no hypothesis consistent with the innocence of the appellant can be suggested; if otherwise the circumstantial evidence can be explained reasonably with the innocence of the accused, the conviction and sentence must be set aside. (FC) PLD 1956 F.C. 123, Siraj v. Crown.

Two possible interpretations of circumstantial evidence. Interpretation unfavourable to the accused not to be adopted unless there is some specific reason for such adoption. Accused pointing out dead body in the wheat field; accused seen with the deceased in the same place

before murder; accused pointed out buried weapon of offence; his, loin cloth stained with semen; unexplained injuries on the person of accused. Held, circumstances enough for conviction coupled with retracted extra judicial confession. (DB) PLD 1960 Lah. 739, Nazra.

Corroborative value only. Circumstantial evidence has corroborative value only and conviction cannot be based on such evidence alone. (DB) PLJ 1977 Kar. 28, Siddiq 1977 P.Cr.LJ 30.

No direct evidence available in a murder case, held accused could not be convicted, on proof of existence of enmity between parties, abscondence of appellant and fathers of appellants trying to compromise the offence by payment of compensation. Accused acquitted. PLJ 1991 SC 152 Muhammad Noor etc. v. Member, Board of Revenue etc. 1991 SCMR 643.

Court to examine probabilities in the light of the circumstances of the case. Lack of direct evidence connecting the accused or any other person with the murder does not mean that the guilt cannot be fixed. Straining the evidence in favour of the accused or against him is to be deprecated. (SC) PLD 1966 SC 664. State v. Manzoor Ahmed.

Onus heavy on accused to furnish explanation for circumstantial evidence not explainable on any hypothesis consistent with total innocence of the accused. Onus cannot be discharged by merely hinting of "possibilities" or "suggesting remote hypothesis". PLD 1966 SC 664, Supra.

Inference of guilt from circumstantial evidence is to be drawn when the circumstances sought to be relied upon have been established beyond all doubts. But this means only a reasonable doubt such as would assail a reasonable mind and not any and every kind of doubt and much less a doubt conjured up by preconceived notions. (SC) PLD 1966 SC 664.

Deceased last seen alive in the company of the accused shortly before the time she was presumed to have met her death, near the place of occurrence. Accused failed to furnish explanation. It is reasonable to infer that the survivor was responsible for her death. Conviction upheld. (SC) 1969 SCMR 558 = 1969 P.Cr.LJ 1108, Allah Ditta v. Crown.

Last seen evidence not considered enough to sustain conviction on murder charge when the witness had some connection with the deceased and corroboration was required. PLD 1991 SC 718 Ghulam Mustafa.

Witnesses of last seen, had they informed the complainant that the accused was with the deceased on the day of occurrence, he would have been got arrested by the police straightaway. PLJ 1991 SC 434. Ghulam Murtaza.

Last seen evidence not put to accused in statement u/S. 342, Cr.P.C. No corroboration regarding last seen evidence on record. Appellant acquitted. 1991 SCMR 1601 Munawar Hussain.

Last seen evidence for conviction should be close to the time and place of murder to exclude possibility of innocence. (DB) NLR 1988 Cr. 230.

Last seen evidence when not corroborated. Accused took the deceased with him. Next day the dead body of deceased was found hanging from a peg in a school room. As the body was in an advanced stage of decomposition, the cause of death could not be stated. Held, that "no body of men, unless their thinking faculty had been completely paralysed, could have returned a verdict of guilty of murder in the present case". (SC) PLD 1959 SC (Pak.) 269 Shams-ud-Din.

Last seen together is a weak type of circumstantial evidence to base conviction. PLD 1978 SC 21. Naqib Ullah.

Last seen together is a weak type of evidence and conviction solely based on such circumstantial evidence cannot be maintained. 1991 P.Cr.LJ 956 (SAC), Zafar Ali etc.

Last seen: Mere fact that the accused and the deceased were seen together immediately before the occurrence is not by itself sufficient for conviction (DB) PLD 1964 Quetta 6 Rasul Bux 1971 P.Cr.LJ 211, Allah Bux.

Last seen: No conviction can be based merely upon fact of deceased having been last seen in company of accused. 1980 P.Cr.LJ 164. Allah Ditta.

Last seen: Murdered child last seen alive in company of the accused. Accused having exclusive knowledge of the place where remains of the child were found. Held, it was sufficient to establish the charges of kidnapping and murder. (SC) PLD 1964 (SC) 67 Abdus Samad.

Last seen: The accused last seen with the deceased. Mere failure of the accused to furnish explanation for the disappearance of the deceased is not sufficient to hold him guilty (DB) PLD 1971 Lah. 781 Munshi.

Mere fact that the accused was last seen with the deceased is not enough to sustain conviction for murder. No link in the chain of circumstances, should be broken and these should not be explainable on any other hypothesis than the guilt of the accused. Extra-judicial confession disbelieved, recoveries not connected with crime. Motive extremely weak. Accused acquitted. (SC) 1972 SCMR 15 Karamat (DB) 1974 P.Cr.LJ 463.

Last seen together evidence not enough to hold conviction: Deceased alleged to have left for a village in the company of the accused and not have been seen since then. Such last seen evidence

not connected with any evidence to show that the deceased had been seen with the accused any where on the way to the destined village. Possibility of deceased having separated from accused soon after leaving house not altogether excluded. (DB) PLD 1971 Kar. 299 Ghulab Khan.

Last seen evidence is not sufficient for establishing guilt of the accused when it requires making conjectures to connect accused with the crime but where the chain of facts is such that no reasonable inference can be drawn except the guilt of the accused, such evidence can be drawn except the guilt of the accused, such evidence can be relied upon. PLJ 1999 SC 901 Jafar Ali.

Last seen with the accused is not sufficient by itself to sustain charge of murder. More evidence is required to link accused with the murder of his companion, e.g. incriminating recoveries, motive, and proximity of time when both seen together at the time of murder. The circumstantial evidence to sustain conviction must be incompatible with the innocence of the accused. (SC) PLD 1977 SC 515 Rehmat.

Last seen evidence for basing conviction thereon as circumstantial evidence must be incompatibly with the innocence of the accused and should be accepted with great caution and be scrutinized minutely for reaching a conclusion that no plausible conclusion can be drawn therefrom except the guilt of the accused. 1997 SCMR 1416, Mst. Reshaman Bibi v. Shirin Khan etc.

No ocular evidence available against accused, the evidence available was that the witnesses saw the deceased and at some distance saw the petitioners going in the same direction. Such evidence could not be treated as evidence of last seen. Evidence of extra judicial confession by itself not sufficient to sustain conviction. Recovery of weapon by itself cannot form basis of conviction. Bail allowed. 1997 SCMR 1279, Ijaz Ahmed and another.

Place of occurrence 15 miles away from place of "Last seen". Such piece of evidence not relied upon. (DB) PLJ 1978 Cr.C. (BJ) 145. Umid Ali.

Deceased last seen in the company of the accused and his companions, not incompatible with innocence. Held, accused entitled to benefit of doubt. (SC) 1977 SCMR 20, Nazo.

Circumstantial evidence for conviction must be authentic. Facts in the case, as alleged, found contradictory to each other and medical evidence indicating possibility of two assailants: Accused acquitted. (SC) PLD 1965 SC 44 Azim.

" must be definite and clear and should exclude the possibility of the innocence of the accused, before conviction can be based on it. (DB) PLD 1958 Pesh. 1 Allah Ditta.

" consisting of; (i) Deceased last seen with accused (ii) accused has exclusive knowledge where body lay buried (iii) recovery of the articles of the deceased made at the instance of the accused (iv) clothes secured from the accused stained with human blood. Held, murder charge established. (SC) 1968 SCMR 378. Allah Ditta.

Discovery of dead body (i) at the instance of the accused (ii) accused had the strongest motive to kill (iii) accused got recovered a spade blade with which injuries on the deceased could have been caused. These circumstances were found to be incompatible with the innocence of the accused. Conviction upheld. (SC) PLD 1958 SC (Pak.) 290, Allah Ditta.

Recovery of weapon of offence (an axe by which injuries to the deceased could have been caused) and some articles belonging to the deceased at the instance of the accused. Accused held guilty. Appeal dismissed. (SC) PLD 1958 SC 313 Bilimoria.

Corroborative circumstances: Recovery of blood-stained key of the deceased and blood at the place where deceased was beaten. A trail of blood drops leading to the ahata of the accused where some more blood was found, and recovery of blood-stained clothes of the accused were considered sufficient corroboration and link to connect the accused with the crime. Dead body was not found in this case. Sentence of transportation for life was maintained. (SC) PLD 1967 SC 217 Sardar Ali.

Question about "Last seen" alive with the accused not put to the accused. held, incurable irregularity. Accused acquitted. PLJ 1978 SC 129 Naqib Ullah PLD 1978 SC 21.

In circumstantial evidence each link of the chain of circumstances must be proved. Held, failure of one link would destroy the whole chain of circumstantial evidence. PLJ 1996 Shariat Court (A.J.K) 145, Muhammad Younas.

No link in chain should be missing for conviction in circumstantial evidence. Both recoveries of gun and empties made on same day, possibility of crime empties having been made to match with the gun could not be ruled out. appellants acquitted for offence u/S. 302(b) but convicted u/S. 404, PPC as motorcycle, wrist watch and purse of the deceased were recovered at the instance of the appellant, Appellant's sentence of 2 years R.I. and fine of Rs. 1,000/- maintained. PLJ 1999 SC 729 Ali Khan.

