SECTION -11

When facts not otherwise relevant become relevant ---

Facts not otherwise relevant are relevant---

1) **If they are inconsistent with any fact in issue or relevant fact;**
2) **If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.**

Illustration:-

a) **The question is whether A committed a crime at Calcutta on a certain day.**
   The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.
b) **The question is, whether A committed a crime**.
   The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D is relevant.

This section has been expressed in very wide terms, but it does not mean that any and every fact which has a bearing however, remote, on any fact in issue or relevant fact, is relevant. If it were so that would amount to wiping out the theory of relevancy unfolded in the preceding sections and would let on record a mass of collateral facts and would create confusion in Court and prejudice to the parties.

Before a fact can be relevant under this section it must be shown to be admissible.

Section 11 deals with facts which ordinarily have nothing to do with the facts of a case and are not in themselves relevant, but they become relevant only by virtue of the fact that they are either inconsistent with any fact in issue either highly probable or improbable.

Section 11 attempts to state in popular language, the general theory of relevancy, and may, therefore, be described as the residuary section dealing with the relevancy of fact.[1]

While the seventh section defines the meaning of the term 'relevancy' in a quasi-scientific language, the present section contains a statement in popular language of what in the former section is attempted to be seated in a scientific language. The practical effect of those two sections is to make every relevant fact admissible as evidence.[2]

The section applies when the question is whether a fact is relevant and not when the question is whether a particular method of proof is admissible under any provisions of the Evidence Act.[3]

The sort of facts, which the section was intended to include, are facts which either exclude or imply, more or less distinctly, the existence of the facts sought to be proved.

Is Section 11 a Catch-all Dragnet? Different Views:-

Section 11 has given rise to a difference of opinion as to its interpretation and operation.

1. **One view** is that the section makes all the logically relevant facts with high probative value admissible under it, even if those facts are not legally relevant under other section. This view virtually blurs the distinction between facts which are logically relevant and those which are legally relevant and "that would amount to wiping out the theory of relevancy."[4]
   As stated in the Chapter on the theory or relevancy, under the Evidence Act, facts are relevant only if they are declared to be relevant by the Act and there is no other way. If S. 11 covers all logically relevant facts with high probative value, then, there is no need for other sections relevancy of facts.
2. Section 11 is stated to be so widely worded as to render the whole scheme of relevancy nugatory.
   West J., observed in R vs. Prabhudas:[5]

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[1]Rangayyan vs. Innasimuthu, AIR 1956 Mad 226, 230, (1955) 2 MLJ 687.
[2] W. Markby, Elements of Law, Vol. 9, Little, Brown & Co. Boston, 1940. Pp. 17, 18.
[3]SoneyLall vs. Darbdeo, AIR 1935 Pat 461, 16 PLT 199 East CrC 649.
[4] M. Monir, Textbook on the Law of Evidence, 8thedn., (Delhi, 2010), p. 60.
[5](1874) 11 BHCR 94.

> …..is, no doubt, expressed in terms so extensive that any fact which can, by a chain of ratiocination, be brought into connection with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connections of human affairs are so infinitely various and so far-reaching, that thus to take the section in its widest admissible sense would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties. One of the objects of the law of evidence, is to restrict the investigations made by court within the bounds prescribed by general convenience, and this object would be completely frustrated by the admission on all occasions, of every circumstance on either side, having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and a determination of fresh collateral issues, growing up in endless succession as the inquiry proceeded.

That such an extensive meaning was not in the mind of the legislature, seems to be shown by several indications in the Act itself.

The illustrations to S. 11 do not go beyond familiar cases in the English law of evidence.[6]

All evidence, which would be held to be admissibly by English law would be properly admitted under this section.

Justice West's objection that S. 11 is too widely framed is itself subjected to the criticism that his objections are also too widely formulated.[7]

It is said that S. 11 ***lets in only those facts which make the existence of fact in issue "highly probable or improbable***".

It is submitted that **Justice West's objection** is that ***S. 11 obliterates the distinction between legal and logical relevancy, and leaves the matter of relevancy to the unguided judicial discretion***.

The objection that can be taken against the view mentioned in (1) above is that ***the definition of the term "proved" in S. 3 leaves the question of proof to the "belief" of and assessment of "probability" by the judge, and S. 11 leaves***

[6]R vs. Parbhudas (1874) 11 BHCR 90, 91.
[7]Vepa P. Sarathi, Law of Evidence, (Lucknow, 2010), reprint, p. 41.

the question of relevancy to the assessment of "high probability" to the judge again.

However, Sir Stephen accepted the validity of criticism and said:

My theory was expressed too widely in certain parts, and not widely enough in other; and Mr. Whitworth's pamphlet appears to me to have corrected and completed it in a judicious manner. I have accordingly embodied his definition of relevancy, with some variations and additions, in the text. The necessity of limiting in some such way the terms of the 11th section of the Indian Evidence Act may be inferred from a judgment by Mr. Justice West (of the High Court of Bombay), in the case of R. vs. Parbhudas and other….[8]

3. **Sir James Fitzames Stephen gave his own explanation of the section and said**:

   It may possibly be argued that the effect of the second paragraph of S. 11 would be to admit proof of such facts as these (*viz*. statements as to factsby persons not called as witness; transactions similar to but unconnected with the facts in issue; opinions formed by persons as to facts in issue or relevant facts).

   It may for instance, be said:

   A (not called as a witness) was heard to declare that he had seen B commit a crime. This makes highly probable that B did commit that crime. Therefore, A's declaration is a relevant fact under S. 11.

   This was not the intention of the section, as is shown by the elaborate provision contained in the following part of Ch. II (S. 31-39) as the particular classes of statements, which are regarded as relevant facts either because the circumstances under which they are made invest them with importance, or because no better evidence can be got.

   The sorts of facts which the section was intended to include are facts which either exclude or imply more or less distinctly the existence of the facts sought to be proved.

   Some degree of latitude was designedly left in the wording of the section (in compliance with a suggestion from the Madras Government) on account of the variety of matters to which it might apply. The meaning of the section would have been more fully expressed if words to the following effect had been added to it:-

[8] Sir James Stephen, Digest of Law of Evidence (London, 1876), Macmillan and Co., p. 136, Note 6 to Article 9. See also, John D. Heydon, "Reflections on James Fitzjames Stephen, Queensland Law Journal, July 2010, p. 10.

"No statement shall be regarded as rendering the matter stated highly probable within the meaning of the section unless it is declared to be relevant fact under some other section of this Act.[9]

4. ***The above explanation by Stephen was criticized by Field. He said***:
   The section can hardly be limited, as has been suggested, to those facts which are relevant under some other provisions of the Act, for this would render the section meaningless.

In a similar vein in State vs. Jagdeo,[10] Desai J., observed:

> If a fact is relevant under S. 32, it can be proved notwithstanding that it is not relevant under S. 11 and to say that a fact relevant under S. 11 cannot be proved unless it is covered by the provisions of S. 32 is nothing short of striking out S. 11 from the Evidence Act.

In C. Narayanan vs. State of Kerala,[11] speaking for the Full Bench of the Kerala High Court, Thomas J., (as he then was), observed:

> There is nothing in S. 11 of the Act to suggest that it is controlled by any other section. On the other hand the words used in S. 11 indicate that the provision is an exception to other general provisions.

5. It is submitted that Sir Stephen was not speaking of relevancy of "facts" but only of "statements".
   The question whether statements could be brought under S. 11 even if they were not relevant under sections like 8 and 32 was also a much debated question[12] and Sir Stephen, perhaps, was only saying that statements ought not to be brought under S. 11 if they do not comply with the conditions of sections like 6, 8 and 32.
6. It is evident from the above discussion that Stephen's explanation has been criticized as rendering S. 11 otiose and redundant.
   The other view that all logically relevant facts with a high degree of probability which do not fall under any of the other sections are covered by S. 11 is open to two criticisms:

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[9] Sir James Fitzjames Stephen, The Indian Evidence Act: With an Introduction of the Principles of Judicial Evidence (London, 1872), Macmillan Co., pp. 1600161.
[10] 1955 All LJ 380.
[11] 1992 Cri.LJ. 2868.
[12] The 69th and 185th Reports of the Law Commission of India on S. 11.

Firstly, it presupposes that facts which are so relevant because of a very high degree of probability are omitted by Sir Stephen in all other sections. ***Secondly,*** that view gives such a long arm to S. 11 that it would render all other sections superfluous and redundant. If a cat can get in through a bigger hole, where is the need for smaller holes!

Appraisal:-

S. 11 is considered to be a residuary section as most of the facts that are typically admissible under this section are also relevant under one or the other sections of the chapter on relevancy.

Illustration (a) to S. 11 is an example of the plea of alibi and Illustration (b) deals with proof of exclusive opportunity to commit a crime. Alibi and opportunity are relevant under S. 7 and S. 9 respectively.

Hence, the section is very rarely, if ever, has been relied upon as the sole basis for admission of facts which are not covered by the other sections.

The words "facts not otherwise relevant" in the beginning of S. 11 have to be taken to mean what they plainly say, that is, facts not relevant under other sections of the Act.

It is submitted that if those facts are statements, they need not be relevant under sections like 6, 8 and 32 but they must not be violative of the safe guards contained in those and other sections pertaining to the relevancy of statements.

In fact, in SeviganChettiar vs. Raghunatha,[13]Varadachariar J., pointed out:

As regards S. 11, it seems to us, that S. 11 must be read subject to the other provisions of the Act and that a statement not satisfying the conditions laid down in S. 32 cannot be admitted merely on the ground that, if admitted, it may probablize or improbablize a fact in issue or relevant fact.

It is submitted, with great respect, that the above view of the eminent judge with regard to statements places S. 11 in its correct and logical perspective.

If facts other than statements are to be brought under S. 11, those facts need not be relevant also under other sections, because that would render S. 11 redundant, but they cannot be admitted in the name of "high probability" if they

[13] AIR 1940 Mad. 273.

are repugnant to basic and fundamental notions of hearsay and ***res inter aliosacta ('A thing done between others')***[14] contained in other sections of relevancy.

Thus, for instance, the bad character of the accused which is declared to be inadmissible by S. 54 cannot be admitted under S. 11 on the ground that it makes the guilt of the accused "highly probable".

In other words, "facts" or "statements" can be relevant under S. 11(a) if they do not offend against any of the other sections of the Evidence Act relating to relevancy and admissibility, and (b) if they render the facts in issue or relevant fact "highly probable or improbable."

Collateral facts which, by way of contradiction, are inconsistent with a fact in issue or another relevant fact, i.e. which make the existence of a fact in issue or a relevant fact probable or improbable, or which, by way of corroboration, are consistent with the existence of a fact in issue or a relevant fact i.e. tend to render the existence of a fact in issue or a relevant fact highly probable, are themselves made relevant by the S. 11 of the Evidence Act.

The S. 11 of the Act, however, does not admit of collateral facts which have practically no connection with the main fact.

To make a collateral fact relevant and admissible under S. 11 of the Act, two requirements of law have to be fulfilled—

Firstly, the collateral fact must itself be established by reasonable conclusive evidence and,

Secondly, when established, it must afford a reasonable presumption or an inference as to the matter in dispute.

The admissibility under S. 11 in each case depends on how near is of the facts sought to be proved with the facts in issue, to what degree do they render facts in issue probable or improbable when taken with other facts in the case, and to what extent would the admission of the evidence be inconsistent with principles enunciated elsewhere in the Evidence Act, 1872.

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[14] If a treaty has not been incorporated into English law by legislation, no one living in England would be subject obligation, derive any benefit nor suffer any diriment by the treaty because they would be not be a party, 'res inter aliosacta'.
This common law doctrine, as applied to contracts, means that the rights of a person who is not a party to the contract cannot be adversely affected.
In evidence, res inter aliosacta prohibits facts from strangers to the litigation as being admissible.

The sort of facts which the S. 11 was intended to include are facts which either exclude the fact in issue or another relevant fact (clause 1) or

Make the existence or non-existence of the fact in issue or relevant fact highly probable (clause 2).

Section 11 controlled by other section –

The terms of S. 11 are no doubt wide, but they must be read subject to the other sections of the Act and, therefore, the fact relied on must be proved in accordance with the provisions of the Act.

If the fact is a statement made by a person who is not called or cannot be called the statement cannot be admitted unless it comes within the subsequent sections of the Act (i.e., S. 32 & 33).

In Bela Rani and Others vs. Mahabir Singh and others[15]

On Beni Ram, who died in 1866, owned the property in dispute. He was succeeded by his wife Mst. Mathuri who died in 1878 and was succeeded by her daughter Mst. Dasodari. Mst. Dasodari transferred the property in dispute to the ancestors of defendants. The plaintiffs purchased the property from the persons who would be entitled to the property on the death of Mst. Dasodari. The plaintiff filed the suit for possession. The main defence was that Mst. Dasodari died more than 12 years prior to the filing of the suit which was accordingly barred by limitation. At the death of Mst. Dasodari applications were made for mutation of some of the property in possession of which she had been. These applications were supported by depositions of the reversioners. Copies of the applications and the depositions were filed by the plaintiff in the present suit. In all these copies the date of the death of Mst. Dasodari was stated to be the 16th of March, 1898. It was argued that the depositions make it highly probable that Dasodari died on the 16th of March, 1898 and therefore they were admissible under S. 11 of the Evidence Act.

Statements:-

[15] 19 ALJ 351.

From the wording of this section it seems that facts not relevant under nay of the section in the Chapter of Relevancy of Facts (S. 6 to 10 & 12 to 55) are relevant under S. 11.

A statement is included in the definition of the term "Fact" and statements can, therefore, be relevant under S. 11 of the Evidence Act.

S. 17 to 39 deal with the admission in evidence of the statements of persons. If a very wide interpretation is to be given to the words of S. 11, the statements of persons inadmissible under S. 17 to 39 would be admissible under S.s 11,

For instance

at a trial of 'B' of a crime it may be said by a witness that he heard A to declare that he had seen B committing the crime for which he had been charged. This statement of A certainly makes it highly probable that B did commit the crime. Therefore A's declaration may be said to be relevant under S. 11(2). But this was not the intention of the section.

Section 17 to 39, deal with the relevancy of the statements. Statements not relevant under those sections cannot be said to be relevant under S. 11.

The statement of *A* referred to above is not relevant under any of the S. 17 to 39 and so it cannot be relevant under S. 11.

Stephen, in his introduction has very rightly remarked that "the meaning of this section would have been more fully expressed if the words of the following effects had been added to it.

"No statement shall be regarded as rendering the matter stated highly probable within the meaning of this section unless it is declared to be relevant fact under some other section of this Act."

The reason why statements as to fact made by persons not called as witnesses are excluded except in certain specified cases under S. 17 to 39 are various.

In the first place it is a matter of common experience that statements in common conversation are made so lightly, and are liable to be misunderstood or misrepresentation, that they cannot be depended upon for any important purpose unless they are made in special circumstances.

If the statements not admissible under S. 17 to 39 are not admissible under S. 11.

S. 11 makes the existence of 'fact' admissible and not 'statements' as to such existence, unless of course the fact of making that statement is itself a matter in issue.[16]

Analysis of the section:-

S. 11 contain two clauses.

1. The first clause lays down that the facts, which are inconsistent with the facts in issue or relevant facts, are relevant.
2. Under the second clause the facts which by themselves or in connection with other facts make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable are relevant.

I. <u>Facts inconsistent with any fact in issue or relevant facts</u>---

Under sub-clause (1) of S. 11, facts are relevant because they are inconsistent with any facts in issue or relevant fact.

They are so diametrically opposed to the facts in issue that the existence of those facts makes the existence of those facts in issue or relevant fact impossible.

Under sub-clause (1) of S. 11 the facts are relevant because if they are proved to exist the fact in issue or relevant facts can in no case exist.

The usual theory of inconsistency is that a certain fact cannot co-exist with the doing of the act in question, and therefore, if that fact is true of a person of whom the act is alleged, it is impossible that he should have done the act.

According to Wigmore, "The usual theory of essential inconsistency is that a certain fact cannot co-exist with the doing of the fact in question, and, therefore, if that fact is true of a person of whom the act is alleged, it is impossible that he should have done the act…..The inconsistency to be conclusive in proof, must be essential i.e. absolute and universal, but since in offering evidence, we are not required to furnish demonstration but only fair ground for inference, the fact offered need not have this essential or absolute inconsistency, but merely a

[16]NaimaKhatun vs. Basant Singh, AIR 1934 All. 436.

probable or presumable inconsistency; and its evidentiary strength will increase with this approach to absolute or essential inconsistency."

'Inconsistency' implies opposition; antagonism; repugnance, containing legal contradiction; showing difference in agreement.

One definition of 'inconsistency' given by the lexicons is repugnance, and one definition given of 'repugnance' is inconsistency.

These words, though not exactly synonymous, may be, and often are, used interchangeably.

One fact is said to be inconsistent with the other when it cannot co-exist with the other.

For example,

The question is, whether 'A' committed a crime a Hyderabad on a certain day. The fact that 'A' was at Lahore on that day is relevant as they cannot co-exist.

Similarly, 'A' is illiterate a crime at Hyderabad on a certain day. The fact that 'A' is illiterate is a fact and 'A' is charged of writing a defamatory article damaging the fame of 'B' is another fact.

Now, these two facts are inconsistent with each other. They cannot co-exist. Hence, 'A' is illiterate is relevant under S. 11.

So under the first clause of S. 11, facts are relevant only because they cannot co-exist with the relevant fact in issue. If their existence is proved the existence of fact in issue or relevant facts are negated.

According to Wigmore, the following five classes of cases that arise for consideration under the S. 11(1):-

i Alibi, the absence of the person charged at the place of occurrence;
ii The absence of a husband (non-access)—a variety of proceedings.
iii Survival of the alleged deceased person after the supposed time of death.
iv The doing of a crime by a third person—commission; and
v The self-infliction of the harm alleged.

1. Plea of Alibi:-

Alibi (alibis, plural) is a Latin term which means elsewhere. Alibi is a claim or piece of evidence that one was elsewhere when an alleged act took place; an excuse.

The term alibi is used to express that defence in a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime charged against him, offers evidence that he was I a different place at the time (Tomlin's Law Dictionary).

Alibi is a plea by a person accused of an offence that he was 'elsewhere'—that having regard to the time and place when and where he is alleged to have committed the offence, he could not have been present.

In DudhNathPandy vs. State of U.P.[17]

It is stated that the plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. It should be shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed.

Alibi is based on the theory that fact of presence elsewhere is essentially inconsistent with the presence of the accused at the place and time of the alleged occurrence, and the participation in it.

In Munshi Prasad vs. State of Bihar,[18]

It has been held that distance is a material factor in the matter of acceptability of the plea of alibi and the distance of 400-500 yards between the place of occurrence and the place where the accused claimed to be present **cannot be said to be 'present elsewhere'**.

Wigmore states that the argument of alibi is not confined to criminal acts but may be equally applied to the disproof of civil acts, such as the execution of a deed.

Illustration (a) appended to S. 11 of the Evidence Act is the example of alibi. It is as under—

The question is, whether A committed a Crime at Calcutta on a certain day.

[17]AIR 1985 SC 911.
[18]AIR 2001 SC 303 (Para 3).

The fact that, on that day, A was at Lahore is relevant. The fact that, near the time when the crime was committed, A was a distance from theplace where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

Alibi evidence, if it could be established, by unsuspected and unbiased testimony, would be the most satisfactory evidence.

In State vs. Murugan,[19]

It has been held that a plea of alibi of the accused cannot be taken into account merely because a certificate has been produced by the accused from his employer to the effect that the accused was working in the mill at the relevant time of the incident unless he produces some person on behalf of his employer or examines himself in order to make the said document.

Sir Michael states, "It must be admitted that mere alibi evidence lieth under a great and general prejudice and ought to be heard with uncommon caution, but if it appeareth, to be founded in truth it is the best negative evidence that can be offered. It is really positive evidence which in the nature of things necessarily implieth a negative and in many cases it is the only evidence an innocent man can offer."

Alibi evidence is looked down upon by the Courts, very often as highly suspicious and concocted.

In re: M.K. ThiagarajaBhagavathar,[20]

It has been stated that a defence of alibi, if true, is to be raised at the earliest moment.

Strict proof is required to prove the plea of alibi and the burden was on the accused. The accused persons taking the plea of alibi have to make out the case of their alibi and to satisfy the Magistrate that they were not present at place of occurrence on the day and time of incident.

The plea of alibi must be proved with absolute certainty, so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence.

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[19] 2002, Cr.L.J. 670.
[20] AIR 1946 Mad. 271.

Alibi is a plea which must be proved to the fullest satisfaction of the Court and for the same the person who takes such plea must put forward cogent evidence in this regard as the burden of the same heavily lies on him under S. 103 of the Evidence Act.

Where there was no contemporaneous document was produced to prove the plea of alibi, it was not accepted. In order to establish the plea of alibi the accused must lead evidence to show that he was so far off at the moment of the crime from the place of occurrence that he could not have committed the offence.

In TulshiramBhanudasKambale vs. State of Maharashtra,[21]

Where the accused was discharged from a hospital situated 180 kms. away from the time of incident, the plea of alibi was proved.

In Gayadin vs. State of M.P.,[22]

It has been held that the evidence of a highly interested witness supporting the plea of alibi is liable to be rejected.

In Mangru vs. State,[23]

It has been held that the evidence of a highly interested witness supporting the plea of alibi is liable to be rejected.

In Sheo Shankar vs. State,[24]

It has been held that if the alibi evidence be good and no weakness is detected by the Court in it, it should not be given a go-by if the Court comes to know of no weakness in the prosecution evidence. The two cannot be true and the weakness must be found somewhere, however, difficult it might be. If the Court fails to find any weakness in either, the benefit of such a failure must go to the accused and not to the prosecution because a well established alibi must be sufficient to show that the prosecution witnesses were not speaking the truth at least to throw doubt upon their truthfulness. Whenever a defence of alibi is set up and that defence utterly breaks down it is a strong inference that if the prisoner was not in fact where he says he was, then in all probability he was where the prosecution says he was. But the drawing of certain inferences does not mean that

[21]2000 Cr. LJ.1566, Bom.
[22]2005, 12 SCC 267.
[23]1983, All.LJ.3232 (DB).
[24] 1953, Cr.L.J. 1400

the thing is proved. Moreover such inference is to be drawn only when the defence of alibi breaks down and not when it is disbelieved.

In BhuboniSahu vs. The King,[25]

It has been observed that when an innocent is accused as guilty, it is very difficult for the Court to guard against the danger. If an Indian villager is charged with having taken part in a crime on a particular night when he was in fact asleep in his hut or guarding his crops he can rely on the evidence of his family members or friends to support his story, and their evidence is interested and not likely to carry weight. The only real safeguard against the risk of condemning the innocent with the guilty lies an insisting upon independent evidence which in some measure implicates each accused.

In Dharamvir vs. State,[26]

Where the accused who was charged with murder, pleaded alibi in his defence that he visited the town situated at short distance. It has been held that no inference can be raised that he stayed in the town that night and hence alibi evidence is not substantial.

In BikauPandey vs. State of Bihar,[27]

It has been held that the plea of alibi cannot be accepted simply because it was accepted in respect of two other accused. This accused was certified to have been on guard duty from a week upto the day of occurrence on a regular basis. There was no material to show that he remained present in the school on that date throughout, besides no appointment letter was produced, his signature on the attendance register were found to be not acceptable and it was not conceivable that a person was appointed on a regular basis only for a week. The plea was rejected.

In JayantibhaiBheenkarBhai vs. State Gujrat,[28]

[25]AIR 1949 PC 257, 261.
[26]1990, Cr. LJ.839 (All).
[27]AIR 2004 SC 997.
[28]2002 (8) SCC 165.

Where the deceased was assaulted at place 'S' at 8 p.m. and the presence of the accused on the date of incident in city 'A' at least upto after the mid-day was proved. It was highly improbable that the accused could have returned at place 'S' by 8 p.m. the same day.

His plea of alibi was held to be consistent and was also supported by documentary evidence of unimpeachable veracity. Further it has been failed to convince the Court about such alibi evidence, it is not incumbent on the Court to go into the question whether the accused has succeeded in proving the defence of alibi, when the prosecution on which the burden of proving the commission of offence by the accused fastening the liability of guilt on the accused has failed in discharging that burden.

2. Non-access (The absence of a husband):-

Since the legitimacy of a child implies a begetting by the husband, in disproving legitimacy, it would be relevant to prove that the husband had no access to the wife at the probable time of begetting.

3. Survival of the alleged deceased:-

The accused was charged with murdering a person on a particular day. The accused proved that the deceased was alive on a particular date which was two weeks after the day of incidence. This fact is relevant under S. 11, clause (1) only because this is inconsistent with the fact in issue that the accused murdered the deceased person. It is acceptable to a simple common sense that a man alive on a particular day cannot be said to be murdered previous to that date.

For ex.

A is accused of murdering B on the 6th of August, 1951, A tries to prove that B was alive till 31st August, 1951. This fact is relevant under S. 11(1), only because this is inconsistent with the fact in issue that A murdered B on the 6th of August 1951. It is acceptable to a simple common sense that a man alive on the 31st of August, 1951, cannot be said to be murdered on the 6th of August, 1951.

4. Commission of a crime by third person:-

A is charged with the murder of B. A can prove that one C murdered B. Because the fact C murdered B is inconsistent with the fact that A murdered him.

5. Self-infliction of harm:-

'A' is charged with the murder of 'B' by administering poison. Here 'A' can lead evidence under S. 11(1) to prove that 'B' committed suicide by consuming poison and it is relevant as it is inconsistent with the fact in issue that 'A' administered poison to B.

II. <u>Facts making the existence or non-existence of any fact in issue or relevant fact highly probable or improbable (S. 11(2)</u>:-

Under sub-section (2) of S. 11 of the Evidence Act, facts are relevant because it they are proved they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

It deals with both the affirmative and negative aspects of the fact in issue. On the other hand S. 11(2) deals only negative the existence of fact in issue or relevant fact is disproved.

Under clause (1), the facts proved are conclusive. Under clause (2), the facts are relevant only because if they are proved either it becomes highly probable or improbable for the fact in issue to exist.

'Highly probable' or 'improbable'—Meaning of:-

'Probable' means having more evidence for that against; supported by evidence which inclines the mind to believe, but leaves some room for doubt.

'Probable cause' is the belief founded upon reasonable grounds; that apparent state of facts found to exist upon reasonable inquiry; that is, such inquiry as the given case rendered convenient and proper, which would induce a reasonably intelligent and prudent man to believe that the accused person had committed, in a criminal case, the crime charged; and in a civil case that a cause of action existed.

The term 'Probable cause' as used with reference to an action for malicious prosecution, means a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offence with which he is charged.

The words 'Highly Probable' in clause (2) of S. 11 are of great importance. Only such facts are made admissible by this clause as would carry great weight with the court in reaching a conclusion either way, with regard to existence or non-existence of a fact in issue or relevant fact.

It is not mere reasonable probability that is contemplated; on the other hand, a high degree thereof envisaged.

To be clear the clause (2) of S. 11 allows the admission of those facts only, which after being admitted will be of great help in bringing the Court to a conclusion as regards the existence or non-existence of the fact in issue.

If the facts are of little importance they cannot be admitted in evidence. The words 'highly probable' means more than normal standard of probability.

In Brijlal Prasad Sinha vs. State of Bihar,[29]

The police officials were tried for murder of some alleged culprits in encounter. It was alleged by police official that the occupants of vehicle used by deceased were also firing from their firearms. But ballistic report, showed that the pistol found near dead body, from which the deceased were alleged to have fired, were never used and also that those arms were defective. Thus, the allegation regarding the deceasedhad fired from pistol and the ballistic report that pistol was never used and was defective, were held inconsistent fact. The ballistic reports made it highly improbable that the deceased must have fired from alleged pistol. Thus, the ballistic report was admissible under this section, since it made the existence of fact in issue i.e., whether the deceased fired or not, highly improbable. It was more so when it was found that glasses of vehicle in which victims were travelling were broken and there were no marks of firing in which police officials were travelling. The accused were liable to be convicted.

In a case of election petition on ground *mal practice*, the evidence that truck drivers who were carrying the voters for a candidate were convicted is relevant under S. 11.[30]

In Emperor vs. Yaqub,[31]

[29]AIR 1998 SC 2443.
[30]Pratap Singh vs. Rajendra Singh, AIR 1957 Cal. 709.
[31]15 ALJ 241.

A was charged with having obtained money from B by falsely representing that he was servant of one ***Akbari Begum***, a wealthy lady of Rampur who was anxious to lend money on easy terms. B tried to lead evidence that at about the same time A made such a representation to others. It was held that his was admissible only because the fact that A at the same time made the same representation to others makes the fact "that A made such a representation to B'' highly probable.

A is charged of handing over forged currency notes to B representing them to be genuine. B tries to prove that few days after and before A handed over currency notes of the same denomination to C, D, E and F. This fact is relevant because if it is proved that A handed over forged notes to a number of persons at about the time when he is alleged to have handed over a forged note to B knowing it to be forged.

The question in controversy is whether a certain lease granted by A to B is perpetual. B tries to prove that many leases were granted by A to many other persons at the same time and all of which were perpetual leases. This fact is relevant because it makes the factum of the lease I question being perpetual, highly probable.
