4th Edition

APPLICATION OF EVIDENCE

IN DIFFERENT LAWS

With Digital Evidence & Latest Rulings

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THE EVIDENCE ACT, 1872

[With Amendments 2022]

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CHAPTER-I

Preliminary

People come of to Court with different types of claim or complaints to get redress. When his claim is of civil nature, he will have to file the suit in a civil court which has jurisdiction to try the suit. Evidence may be necessary to determine whether the claim is of civil nature or not. On the other hand, if it is a compliant, the court trying criminal cases is to see whether the court in which the complaint is filed is the proper court to entertain the same. In this connection, as regards civil suit, section 9 of the Code of Civil Procedure and as regards criminal cases, sections 177, 179, 183 and 188, sections 200-204 of the Code of Criminal Procedure may be seen, and necessary evidence may be taken to determine the jurisdiction. Such a claim or complaint is to be established by adducing appropriate legal evidence. "Evidence" is the legal term used in judicial proceedings and sometimes the word "proof" is also used in lieu of "evidence" but it is proper to use the word 'evidence' in judicial proceedings. There is also distinction between "evidence" and "proof". In the Evidence Act of 1872, the word 'evidence' has been defined and explained but the word 'proof' has not been defined or explained. However, in the above Act the words' "Proved", "Disproved" and 'Not proved' have been explained from which we may get an idea as to what is "proof". It appears from the definition and explanation of the above four words, the word 'proof' shall mean the result or effect of the total evidence adduced or led in a case. It means the totality of the evidence adduce before the court on the basis of which the court decides the truth or falsehood of any fact or circumstance claimed by a party and opposed by another party.

Now, let us see what are the definition and explanations given in the Act itself [Section 3 of the Act].

"Evidence"– Evidence means and includes–

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

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

[1][(3) all materials or objects relating to blood, semen, hair, all body material, organ or part of organ, Deoxyribo Nucleic Acid (DNA), finger impression, palm impression, iris impression and foot print or any other similar material or object which may–

(i) establish that an offence has been committed or establish a link or relation between an offence and its victim or an offence and its offender; and

(ii) prove or disprove a fact:

such materials or objects are called physical or forensic evidence.];

"Proved"– A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved"– A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved"– A fact is said not to be proved when it is neither proved nor disproved

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[1] Sub-clause (3) was inserted after words by Section 2(c)(i) of the Evidence (Amendment) Act, 2022 (Act No. 20 of 2022) Date of effect: 20 November, 2022.

In order to understand the full meaning of evidence, the different words and expressions used in section 3 of the Act are to be understood with reference to the decisions of the superior courts of this sub-continent. In the interpretation section 3, first it is stated that all the statements which the court permits or requires to be made before it by the witnesses in relation to matters of fact under inquiry, such statements are called oral evidence. All the statements of a witness will not be evidence unless it meets or fulfills the above criteria. Not only that, the statement must also be related to matters of fact.

In this section what fact means and includes is stated in clause (1) from which we find that facts may be physical i.e. which are capable of being perceived and from clause (2) we find that facts include mental conditions of which a person of which he is conscious. Physical facts may be proved by a witness who saw the fact. When a witness did not see the fact but witnessed the circumstances under which the occurrence took place, those also may be considered as facts because from such a statement those it may be possible to make an inference as to the existence or non-existence of a fact. But mental condition can not be seen. A witness cannot say why accused 'B' stabbed 'A'. But the witness may state about some circumstances which he noticed before the stabbing or after the stabbing. Such evidence is called circumstantial evidence and on consideration of such a circumstantial evidence, it may be possible on the part of the judge to find out as to what was the probable intention of the accused. Section 6 and illustration (a) may be seen.

Besides the above words and expressions, the word "relevant" and the words "facts in issue", "document" have also been used.

The word 'relevant' is often used while recording statement of any person in a court or while admitting a document. Normal rule is that if the statement is not relevant relating to matters or facts of the case, then it is considered to be not admissible and the court does not allow a party to ask such a question to a witness. Even sometimes relevancy is also of importance at the time of cross-examination of a witness, the

CHAPTER-II

Relevancy of facts

While deciding the facts in issue, the court faces the question of relevancy. Specially, at the time of recording evidence or admitting a document in evidence, the question of relevancy is raised by the other side. It has already been mentioned that the provisions of sections 5 to 55 of Chapter II of the Act are to be taken into consideration in order to determine the question of relevancy. In section 5, it is provided that "Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other fact as are hereinafter declared to be relevant and of no others."

From the above, two things are clear: (1) evidence may be given on matters which have been hereinafter declared to be relevant, (2) no evidence can be given on facts which are not declared to be relevant. It means that the facts declared in sections 5 to 55 are only relevant and no more. So, a judge must carefully go through all those provisions to determine which facts are relevant and which are not. Some important sections are discussed below:

Section 6

Facts forming parts of the same transaction are relevant. The expression "same transaction" is not defined in this Act nor it is defined in the Penal Code, though in several sections of the Code, the same expression is used. So, before applying the provisions of section 6 of the Act, the judge must have a clear idea about what is same transaction. This expression has been explained by our higher courts in several cases. On the basis of those decisions, three facts are to be taken into consideration:

(1) proximity of time of the occurrences

(2) proximity of places where the occurrence took place and,