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TABLE OF CONTENTS

S. No. Title of the Paper/ Author **Page No.**

1. Emerging Role of Just Energy Transition vis a vis Sustainable Development Goal 7
Ms. Amita 1

2. Critical Analysis of Social Security Schemes for Women in India
Ms. Richa Srivastava 19

3. Mass Atrocities and Reparation to Rohingyas in Myanmar
Mr. Mostafijur Rahmani 28

4. Constitutional Discourse on Homosexual Rights in Nepal, India and Singapore
Ms. Mansi Singh Tomar & Mr. Kumar Mukul Choudhary 42

5. Open Prisons: Reserialising Prisoner's rights with Freedom
Ms. Ritika Kanwar 54

6. Victim Participation in the Criminal Justice Process: A Therapeutic Approach
Ms. Neha Singh 70

7. Reassessing Section 498A: Exploring Judicial Interpretations and Statistical Data
Mr. Lalit Anjana 90

STUDENTS SECTION

8. Current Regulatory Framework on Cryptos and Crypto Exchanges in India
Mr. Vedant Lathi 109

9. Taxation of Cryptocurrency in India: The Future Finance
Ms. Meher Sachdeva 118

10. Rule of Law Implementation in India: A Critical Review
Ms. Neha Samji 133

11. Beyond Borders- The Use of Comparative Law in Constitutional Interpretation
Mr. Satyam Sah and Ms. Krati Gupta 142

12. Implementation of Section 12(1)(c) of the Right to Education Act: An Overview
Ms. Anushka Singhal and Mr. Ashmit Raj 151

13. Critical Analysis of the Last Seen Theory
Mr. Chaitanya Thakur 167

14. Juvenile Justice Care and Protection Act: Framework on Adoption in India
Ms. Raghvi Kanwal 181

15. Abortion and Natural Law
Ms. Snigdha Rohilla 196

CRITICAL ANALYSIS OF THE LAST SEEN TOGETHER THEORY

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ABSTRACT

The last seen theory is a fairly recent principle under the Indian Evidence Act,1872. It is a vital component of circumstantial evidence in many criminal trials. It aids the judges in determining who is guilty of offenses such as murder, kidnapping, and rape in the Indian Penal Code. However, the Act does not specify the meaning of the expression "Last Seen Together." Further, the phrase is not defined in any statute, and the interpretation of this theory is based primarily on judicial decisions. This raises the crucial issue of a lack of clarification about the application, scope, and ambit of this theory. This research paper primarily focuses on identifying the scope and ambit of this theory. In pursuit of this, the paper examines its literal interpretation and how judges have construed it. It analyses whether the doctrine requires the continuous presence of the accused with the deceased. In addition, it examines the criteria for admitting the testimony of witnesses and scrutinizes issues involving husbands and wives and the requirement of a homicidal death in such cases. Moreover, it evaluates if there exists consistency and uniformity in the implementation of this evidence. Lastly, it examines if there are there is a fixed standard for determining the time gap for applying this doctrine.

Keywords: *Last Seen Together, Evidence, Time-Gap, IPC, Probative Value*

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I. INTRODUCTION

In the plethora of criminal trials, it is extremely challenging to obtain direct evidence; therefore, the entire case relies upon circumstantial evidence. Under the Indian Evidence Act, 1872 ('the Act'), the term "circumstantial evidence" has not been employed explicitly; nonetheless, the meaning of the term "*Proved*" in Section 3 specifies that "*if the existence of any fact is so probable that the prudent man will believe it to exist then that fact is considered to be proved*", thereby indicating the applicability of circumstantial evidence.[1] The last seen theory is also predicated on similar grounds as in numerous cases wherein there are no eyewitnesses; the final decision for resolving the matter is this doctrine centered on the distinctive facts of the case.[2] This is among the new concepts embraced by the judiciary to prove the guilt of the accused.

Significantly, on July 6, 2022, the Tripura High Court ruled that the prosecution needs to show beyond any reasonable doubt the "last seen theory" tying the defendant to the execution of the crime.[3]

In this context, it is critical to analyse the repercussions of the last seen together principle. This doctrine stipulates that an individual last seen with another must clarify the reasons behind their departure if the other person is subsequently discovered dead or missing.[4] As no event occurs in a vacuum, the notion of last seen together is founded on the concepts of probability, causation, and connection and is thereby derived from Section 7 of the IEA.[5] The Aarushi murder case remains among the very contentious instances wherein this theory was employed to establish a chain of circumstantial evidence.[6] Nevertheless, there are numerous obstacles to this doctrine. Assume that on October 9, 2021, X and Y were last seen together in the same hotel room. On October 10, 2022, the corpse of Y was discovered in this

1 The Indian Evidence Act, 1872 (Act No. 1 of 1872), s.3.

2 M. Govindarajan, "Last Seen Together Theory", Tax Management India, July 8, 2016, *available at* https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=6890 (last visited on March 22, 2023).

3 "Prosecution Must Prove 'Last Seen Theory' Connecting Accused with Commission of Offence Beyond All Reasonable Doubt", Live Law, July 25, 2022, *available at* https://www.livelaw.in/news-updates/tripura-high-court-last-seen-theory-section-302-ipc-eye-witness-204665 (last visited on March 22, 2023).

4 Koyel Roy & Prarthana Sarmah, "A Socio-Legal Study on 'Last Seen Together Rule' Theory – Is It Followed In India?" Vol 1 Issue 6 *Lex Forti Legal Journal* 7 (2020).

5 *Ramesh Harijan v. State of U. P.,* (2012) 5 SCC 777*; Kiriti Pal v. State of W.B.*, 2015 CrLJ 3152 (SC).

6 Asthavyas, "Circumstantial Evidence and The Doctrine of Last Seen*", Legal Service India*, August 12, 2022, *available at* https://www.legalserviceindia.com/legal/article-3523-circumstantial-evidence-and-the-doctrine-of-last-seen.html (last visited on March 22, 2023).

room. Could X be immediately convicted on the basis that he had been seen with the Y? Also, if X is unable to recount and elucidate what occurred in that room, would the courts instantaneously convict him? Will additional circumstances have a bearing on the court's decision? The objective of this paper is to provide answers to each of these issues.

II. THE AMBIT OF THE DOCTRINE OF LAST SEEN THEORY

Generally, when the accused and the victim were last seen alive together and the subsequent inability of the accused to provide a satisfactory explanation for the sudden disappearance of the latter are deemed to be circumstances of an inculpatory nature. [7] Nonetheless, neither the Act nor any other legislation or regulation explains this doctrine. This theory's implementation is largely based on judicial decisions and interpretation.[8] In the lack of positive, precise evidence establishing the accused and the victim were last seen together, it could be perilous to reach for the court to deliver a guilty verdict.[9]

Lack of Clarity Regarding the Scope of "Last Seen Together"

In this context, it is imperative to scrutinise the literal connotation of the phrase "last seen together." The "Last seen theory" stipulates that two individuals were "*seen together alive*" and, following a period of time, it is discovered that one of the two is "*dead*" while the other is "*alive*".[10] However, it is unclear if "*seen together alive*" refers to a single instance of the accused's presence with the victim or the accused's continued presence with the victim. The latter situation applies to cases wherein the victim was discovered dead in a bedroom where the accused was seen with him the preceding day. Consequently, it is highly probable that he spent the entire evening with the victim. In *State of Rajasthan v. Kashi Ram*, [11] for example, the court held that the last seen theory applied when the defendant was last seen with the spouse in residence in the evening; however, after 3 days and the forcible entering into the residence, the corpses of the spouse and the kids were discovered inside.

7 *Pohalya v. State of Maharashtra*, AIR 1979 SC 1949; *State of Uttar Pradesh v. Satish*, (2005) 3 SCC 114.

8 Pathlegal, "The Theory of "Last Seen" In Cases Based On Circumstantial Evidence*", Path Legal,* May 18, 2021, *available at* https://www.pathlegal.in/The-Theory-Of--Last-Seen--In-Cases-Based-On-Circumstantial-E-blog-2389151 (last visited on March 22, 2023).

9 Rishabh Sachdeva, "Doctrine of Last Seen Theory*"*, *Soo Legal*, January 24, 2020, *available at* https://www.soolegal.com/roar/doctrine-of-last-seen-theory. (last visited on March 22, 2023).

10 R. Rajshekhar Rao, *"*Last seen' theory has to be established to convict the accused*", New Indian Express,* September 30, 2019, *available at* https://www.newindianexpress.com/states/telangana/2019/sep/30/last-seen-theory-has-to-be-established-to-convict-the-accused-2040960.html (last visited on March 22, 2023).

11 (2006) 12 SCC 254.

Nevertheless, when the accused was merely seen sitting with the victim, and there was no continuous presence, the problem emerges as to whether this qualifies for applying this theory. In the case of *Amit Kumar Das vs. the State of Jharkhand*, [12] the appellant's counsel contended that no eyewitness saw the accused and the victim "*walking together*," so the last seen theory is not applicable in the matter. The court outright rejected this contention, which held that this theory did not necessitate the accused and the victim to walk together. It was concluded that merely sitting together or being seen together is sufficient to apply this principle. Furthermore, in the case *Makhan Singh v. the State of Punjab*, [13] the judges emphasised that if it is asserted that the victim was last seen with the accused on a given day, it must also be shown that the victim was not seen by anyone acquainted with him following that particular date. Henceforth, a mere one-time presence at a particular point of time is sufficient for applying this doctrine.

Whether A Threshold Exists for Accepting Testimony of Witness for Proving Last Seen Theory?

Pertinently, another concern that emerges is what must constitute a valid testification for proving the last seen theory in courts. Interestingly, in the case of *State of Karnataka v. Chand Pasha*, [14] both the bartender and the bar owner claimed that the defendant and another individual entered their bar. The judges ruled that the prosecution barely demonstrated that the defendant walked to the bar with one another, and the identity of this other individual has not been conclusively proven; therefore, the last seen theory cannot be applied. In conjunction, the court has determined in the case of *Harishchandra Ladakku Thange v. State of Maharashtra* that this theory will not apply if the witness merely stated that the accused had been present at a distance close to the area where the victim was present and did not see them together. [15] Similarly, in *Dalpat Singh v. the State of Rajasthan*, [16] the court decided that doctrine does not apply as the witness acknowledged in his testimony that he wasn't able to see the victim's face because he was at a distance of ½ kilometre, and the demeanour of this witness generated reasonable doubt as he had not discussed the situation with those individuals who interacted with him immediately following the incident. Henceforth, it can be said that the witness has to see both the accused and deceased together before the crime and clearly recognise their faces and identity to apply this theory.

12 2017 (4) AJR 622.
13 AIR 1988 SC 1705.
14 (2016) 1 SCC 501.
15 AIR 2007 SC 2957.
16 2005 CrLJ 749 (Raj); See also Gopal *Singh v. State of Uttaranchal*, 2007 CrLJ 1972.

In addition to this, in another notable case of *Venakatesan v. State of Tamil Nadu*, the eyewitness who last saw the victim with the accused testified merely that he had seen both on a Tuesday evening, without mentioning a specific date. The witness was unaware of which of the accused accompanied the victim. The court ruled that his testimony was insufficient to hold the accused guilty. [17] Likewise, in the case of *Tulsi Ram vs. State*, the judges determined that the testimonies of witnesses were not entirely credible since they were delivered quite informally and said they saw the accused and the victim together the day before the occurrence. In light of the appellant's frequent visits to the victim, as well as the presence of other frequent visitors to the victim besides the appellant, this testimony is insufficient to substantiate the last seen theory. [18] However, the judges have acknowledged that last seen together evidence cannot be rejected solely based on a disparity in the witness's account regarding the date and time of the event in the FIR.[19] In the case of *Golakonda Venkateswara Rao v. the State of A.P*, the court held that the witness, a rustic village lady, could not be expected to have recalled the crime after 4 years. Yet, the fact that she reiterated that she last saw both the victim and the offender conversing while seated at the location makes her testimony valid for applying this doctrine. [20] Consequently, it can be inferred that the witnesses must testify that they had seen both the victim and accused together at a particular time.[21]

Scrutinizing Cases Relating to Husband and Wife and The Requirement of Homicidal Death: Can the Last Seen Theory Apply in Suicidal Cases?

In matters of dowry death wherein a crime is perpetrated in secret within a residence, the initial duty of the prosecution to prove the accusation would be relatively lower. Specifically, in light of Section 106 of the Act and the application of the last seen theory, the residence's occupants would be required to provide a reasonable justification regarding how the incident occurred. [22] Nevertheless, the occurrence of homicidal death should be proven before transferring the burden upon them.[23] In cases wherein the prosecution's evidence is insufficient to prove the

17 AIR 2008 SC 2369.

18 LQ/RajHC/2019/102.

19 Krishnadas Rajagopal, "Murder convictions can't be based solely on last seen theory", *The Hindu,* March 28, 2016, *available at* https://www.thehindu.com/news/national/murder-convictions-cant-be-based-solely-on-last-seen-theory-sc/article7620281.ece/amp/ (last visited on March 22, 2023).

20 AIR 2003 SC 2846; *State of Karnataka v. Marulasiddaiah,* 2006 CrLJ 1825, 1833.

21 The Desk, "Justice Sinha's Impact on Criminal Law", *SC Observer,* September 15, 2021, *available at* https://www.scobserver.in/journal/justice-sinhas-impact-on-criminal-law/ (last visited on March 22, 2023).

22 Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 1 SCC 681; State of Rajasthan v. Jaggu Ram, AIR 2008 SC 982.

23 *Krishna Mahadev Chavan v. State of Maharashtra,* 2021 SCC OnLine Bom 191.

victim's homicidal death, and the probability of suicide cannot be completely excluded, the accused cannot be held guilty solely based on the last seen theory.[24] As a matter of fact, to convict an offender under Section 302 of the Indian Penal Code, the prosecution must establish the fact of homicide.[25] Fascinatingly, in the case *of Sharad Birdichand Sarda v. the State of Maharashtra,* [26] it was ascertained that except if the prosecution precludes the prospect that the spouse committed suicide, no adverse inference of guilt could be derived against the plaintiff based on the circumstance that he was last seen with his wife on the particular evening.[27] It was stated that the fact that the room was not locked from the inside doesn't imply that the victim didn't commit suicide.

On the other hand, whenever courts eliminate the possibility of suicide and the pair were discovered together in the same bedroom, the onus is on the alleged perpetrator to provide any justification as to how his spouse was discovered dead.[28] In circumstances when the accused attempts to depict the homicide as a suicide, the last seen theory would be applicable. In the case of *Manoj Kumar vs. The State of Uttarakhand*,[29] the accused strangulated the victim and then arranged the suicide. During this incident, though, 2 eyewitnesses went to the plaintiff's residence, where they saw the accused, who told them that no one was inside. The court determined that circumstances such as the closeness of the deceased's home to the accused's, the accused's demeanour, and the accused's refusal to explain how he sustained the facial injuries reinforced the testimony of witnesses. In addition, the post-mortem reveals that the victim was hung after falling unconscious rather than committing suicide. All the aforesaid circumstances further substantiated the last seen theory to convict the accused.

III. THE EVIDENTIARY VALUE OF LAST SEEN TOGETHER

Is there a Set Standard and Uniform Probative Value of the Last Seen Theory?

The probative value of "*last seen together*" evidence depends on the circumstances of each

24 *Chandrapal v. State of Chhattisgarh,* 2022 SCC OnLine SC 705.

25 *Madho Singh v. state of Rajasthan,* 2003 (1) ACR 317 (SC).

26 AIR 1984 SC 1622.

27 Prachi Bhardwaj, "In the absence of corroborative evidence, last seen theory cannot be made the basis of conviction", *SCC Online,* May 26, 2017, *available at* https://www.scconline.com/blog/post/2017/05/26/in-the-absence-of-corroborative-evidence-last-seen-theory-cannot-be-made-the-basis-of-conviction/__(last visited on March 22, 2023).

28 *Ravirala Laxmaiah v. State of A.P.*, (2013) 9 SCC 283.

29 107 (2019) ACC 683.

individual case. [30] In these situations, the judges must assess the aggregate impact of all the relevant facts and evaluate those in totality. [31] The inference of guilt can be sustained only if all the implicating circumstances are inconsistent with the accused's innocence. [32] In pursuance of this, the court has ruled that every circumstance must be complete, and there must be no missing links in the chain of evidence. [33] Moreover, in *Hanumant Govind Nargundkar v. State of M.P*,[34] the court declared that the circumstances based on which a determination of guilt is to be made must be "*fully established"* and compatible solely with the "*hypothesis of guilt*" of the suspect. In addition, it was established that the circumstances must be "*of a conclusive character and tendency*" and "*exclude any alternative hypothesis*" than the one sought to be proven. Fundamentally, there needs to be a "*chain of evidence*" that does not support a result consonant with the suspect's innocence.[35]

In the context of "*last seen together*," the circumstances are not always indicative of the fact that the individual is the perpetrator of the offense. [36] A guilty verdict cannot be predicated merely on the evidence that the accused and victim were last seen together.[37] In the case of *Anjan Kumar Sharma v. the State of Assam*, the court determined that there must be a connection and corroboration of facts to convict the appellant. [38] Additionally, the judges in *Dharani Pator v. the State of Assam* found evidence indicating the victim was last seen with the accused in *"proximity to time, space, and location"*, and the accused then absconded, which would be sufficient to establish guilt on the part of the accused. [39]

Alternatively, the court has also held that mitigating circumstances weaken the probative value of last seen evidence in the case of *Lakhan Pal v. the State of MP*. [40] Whenever the links in the series of events cannot be deemed to have led to an unavoidable inference that the accused was the victim's aggressor, he is released due to the benefit of the doubt. [41]

30 Amrit Singh v. State of Punjab, AIR 2007 SC 132; Mohd. Azad v. State of WB., AIR 2009 SC 1307, 1312.

31 *Arjun Marik v. State of Bihar,* (1994) 2 SCJ 604.

32 *Aftab Ahmad v. State of Uttaranchal,* (2010) 2 SCC 583.

33 *C. Chenga Reddy v. State of' A. P.,* (1996) 10 SCC 193.

34 AIR 1952 SC 343.

35 Kritika Mundra., *Last Seen Together Rules,* Penacclaims 5 (2020).

36 *Mohibur Rahman and Anr. v. State of Assam* (2002) 6 SCC 715**;** *Amit v. State of Maharashtra,* (2003) 8 SCC 93.

37 *Virendra Kumar Yadav v. State,* 1996 Cri LJ 231 (Del); *Raju v. State, by Inspector of Police,* AIR 2009 SC 2171.

38 AIR 2017 SC 2617.

39 2004 CrLJ NOC 15 (Gau).

40 1979 Cri LJ 1217.

41 *Reena Hazarika v. State of Assam*, AIR 2018 SC 5361; *Jagta v. State of Haryana,* AIR 1974 SC 1545.

For the last seen argument to hold, it must be shown that between the period they were last seen together and the victim's death, there were no circumstances that were congruous with the accused's innocence. [42] As a result, it could be inferred that this theory does not have universal applicability and is not enough to hold a conviction if other factors are also not present. [43]

Can Remaining Silent or Giving a False Explanation Under Section 106 Result in A Conviction Where Last Seen Theory Is Established?

Whenever it is proven that the victim was last seen in the company of the accused, the latter is required under Section 106 of the Act to offer an explanation for what occurred. [44] Invoking the last seen theory alone will not transfer the burden of proof to the offender except if the prosecution builds a *prima facie* case. [45] In this scenario, the accused's failure to explain this critical circumstance contributes to the chain of events. [46] In fact, it was held in the *Satpal Singh* case that an adverse inference could be formed against the accused if he is unable to provide a satisfactory justification. [47] Notably, the courts have started mandating that the accused thoroughly explain every intervening fact if medical or other evidence corroborates the last seen theory. [48] It was ruled in *Ram Gulam Chaudhary v. State of Bihar* that the abductors' concealment of the evidence provided a sufficient basis for inferring that they had killed the youngster. [49] Similarly, in *Lakshmana Naya v. Nanjungud Rural Police*, the accused was unable to provide any reason other than denial under Section 313 of the Code of Criminal Procedure ('CrPC'). The court ruled that an adverse inference could be formed owing to additional evidence that corroborated the facts presented by the prosecution about the victim's death and the last seen theory. [50]

42 *G. Gabriel v. State of Kerala,* 1983 Cri LJ 94; *Vithal Eknath Adlinge v. State of Maharashtra,* AIR 2009 SC 2067.

43 *Godabarish Mishra v. Kuntala Mishra and Another*, (1996) 11 SCC 264.

44 *supra* note 11.

45 Saeed Khan, "Conviction cannot be solely based on 'last seen together' story: Gujarat HC," *Times of India*, July 9, 2022, *available at* https://timesofindia.indiatimes.com/city/ahmedabad/conviction-can-not-be-solely-based-on-last-seen-together-story-gujarat-hc/articleshow/92765897.cms (last visited on March 22, 2023).

46 *Liyakat v. State of Uttaranchal, AIR 2008* SC 1537.

47 *Satpal v. State of Haryana* JT 2018 (4) SC 622.

48 *Shyamal Ghosh v. State of West Bengal,* (2012) 7 SCC 646.

49 (2001) 8 SCC 311.

50 2008 Cri. L. J. 4451. (Kant).

Besides drawing adverse inferences, courts have also found the accused guilty if he refused to provide a rational justification or remained quiet.[51] In *Joseph v. State of Kerala*, [52] the deceased's jewellery was recovered based on the details provided by the suspect during the investigations. Yet, when asked under section 313 of the CrPC, the suspect entirely denied any involvement in the offense and made no effort to explain away the evidence linking him to it. The chain of circumstantial evidence demonstrates conclusively that the offender was last seen with the victim, after which the corpse was found; consequently, this led to his conviction because it was impossible for a third party to have committed the crime within that time span.[53] In the case *Shanmughan v. the State of Kerala*,[54] the deceased was poisoned alone in her bedroom with the appellant. The appellant was also inquired about the wounds during his statement under Section 313, but he remained silent. Accordingly, the Apex court reaffirmed the accused's conviction.

Intriguingly, when the accused provided a fraudulent justification, which implied that it was plainly intended to hide the real circumstances, this evidence could also be utilized to prove his guilt. [55] However, section 106 does not absolve the prosecution of its principal responsibility of proving guilt beyond a reasonable doubt. [56] The inability of the accused to offer a reasonable justification is insufficient to establish guilt beyond a reasonable doubt.[57] Additionally, it is not required for the accused to prove his argument beyond a reasonable doubt; rather, he needs merely prove his claim by a *preponderance of probability*. [58] Ergo, the last seen theory alone is not conclusive evidence; however, in conjunction with certain other factors such as relations between the two, any animosity or conflict, the absence of a justification for the murder, etc., a presumption of guilt could be formed. [59] It must be evaluated in the context of all the prosecution's other evidence. [60]

51 Batuk Lal, *The Law of Evidence* 32-48 (Central Law Agency, 2020).

52 (2000) 5 SCC 197

53 Devika Sharma, "Bom HC | Can a person be held liable under S. 302 IPC on the basis of 'last seen' theory and not being able to offer sufficient explanation? Significance of 'last seen' theory in establishing homicidal nature of death discussed", *SCC Online,* February 15, 2021, *available at* https://www.scconline.com/blog/post/2021/02/15/homicidal-death/. (last visited on March 22, 2023).

54 AIR 2012 SC 1142.

55 *Sahadevan v. State*, (2003) 1 SCC 534.

56 M. Monir, *Law of Evidence* 1718 – 1724 (Universal Law Publishing, Volume 1, 2018).

57 Kanhaiya Lal v. State of Rajasthan, (2014) 4 SCC 715 ; Re, Naina Mohd., 1960 Cr LJ 620.

58 V.D. Jhingan v. State of U.P., AIR 1966 SC 1762; Narsimhman v. State, AIR 1969 AP 27.

59 *Ashok v. State of Maharashtra,* (2015) 4 SCC 393; *Rohtash Kumar v. State of Haryana,* (2013) 14 SCC 434.

60 *Surajdeo Mahto v. The State Of Bihar* 2021 (6) SCJ 617.

IV. THE AMBIGUITY OF TIME IN LAST SEEN THEORY

The Indian courts have established that the doctrine of last seen cannot be relied upon to hold the accused guilty until there exists a close connection between the time of last seen and the time of disappearance or death. [61] The prosecution must always demonstrate the exact time of death when the prosecution relies on this theory. [62] Furthermore, in cases when the post-mortem report does not give an exact time of death, the recovery time of the dead body is taken into account. [63] Fundamentally, the doctrine only applies when the prosecution establishes that "*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*." [64] In certain cases, it could be difficult to prove conclusively that the victim was last seen with the accused if there is a significant time difference and the potential of many other people intervening. [65] In these scenarios, the accused's failure to explain, according to Section 313 of the CrPC, is not indicative of their involvement in the conduct of the offense. [66]

Interpreting "Small" And "Long" Time Gap For Last Seen Theory: Is There A Fixed Standard?

In various cases, judges have construed what comprises a small time gap for the application of the last seen doctrine. In the case of *Krishnan Mahadev v. the State of Maharashtra*, the court held that the last seen theory was relevant since the time period between the husband and wife leaving their house together and the wife is discovered dead in the area *'Kolki'* didn't surpass 3 hours. [67] Moreover, in the case of *Jagroop Singh v. the State of Punjab*, the court deemed a 24 hours' time gap insufficient to disprove the prosecution's story. [68] Additionally, the court applied this theory in *Sahadevan v. State*, wherein it was proved that the deceased was last seen with the accused from the morning of March 5, 1985, until at least 5:00 p.m. on March 5, 1985, and that his body was discovered the

61 *Gautam Kamlakar Pardeshi and Anr v. The State of Maharashtra,* 2022 LiveLaw (Bom) 207; *Poshakadantha v. The State of Karnataka,* 2008 CrLJ (NOC) 72 (Kar).

62 *Niranjan Panja v. State of W.B,* (2010) 6 SCC 525.

63 *supra* note 14.

64 *Bodhraj v. State of Jammu and Kashmir,* (2002) 8 SCC 45.

65 *Sk. Yusuf v. West Bengal,* [2011] 8 SCR 83; *Chattar Singh v. State of Haryana,* 2008 AIR SCW 7426.

66 *Swamy Shraddannda v. State of Karnataka,* AIR 2007 SC 2531.

67 (2021) 2 AIR Bom R (Cri) 387.

68 AIR 2012 SC 2600.

following morning, March 6, 1985. [69] Nevertheless, even in cases where the time gap is short, judges should always seek corroborating evidence.[70]

In contrast, the judges have made abundantly clear what qualifies as a long-time gap in the framework of the last seen theory. According to the post-mortem findings in *Gargi v. State of Haryana*, between 24 and 72 hours transpired between death and the post-mortem, and the court determined that the likelihood of murder occurring a day after cannot be excluded. [71] Moreover, in the case of *Uday v. The State of Rajasthan*, it was determined that when there was a 2-day gap between the time of the crime and the witness's last seeing the accused, such testimony could not be considered as last seen evidence. [72] Besides, the court in *Nizam and ors. v. the State of Rajasthan* ruled that the prospect of others intruding cannot be ruled out due to the 3-day gap between Manoj's body being left in the vehicle and its retrieval.[73] In addition, the court deemed a 4-day gap to be long in the *State of Karnataka v. Chand Pasha* case.[74] Lastly, in *Krishnan v. State of Tamil Nadu*, a 7-day time gap was deemed long since the prosecution failed to produce evidence demonstrating that the victim was not in communication with anybody during the interim period.[75]

Following the above analysis, it can be inferred that when the time gap does not exceed 24 hours, it is regarded as a small-time gap, and any time gap exceeding 24 hours can be termed a considerable time gap. Yet, it is necessary to comprehend that such inferences are not absolute and universal. Indeed, in *Jaswant Gir vs. State of Punjab*, less than 24 hours had elapsed between the time the deceased entered the suspect's car and the time the corpse was discovered. Nevertheless, the judges ruled that there was a significant time difference for the last seen theory. [76] Likewise, in the State of Goa v. Sanjay Thakran, a time difference of merely 8 hours and 2 hours was deemed to be a considerable time gap.[77] This uncertainty over the interpretation of the time gap leads the author to the subsequent subtheme.

69 (2003) 1 SCC 534.

70 2006 (10) SCC 172.

71 AIR 2019 SC 4864.

72 2001 CrLJ NOC 28 (Raj).

73 *Nizam and another v. State of Rajasthan*, AIR 2015 SC 3430.

74 *supra* note 14.

75 (2014) 5 SCC (Cri) 66.

76 (2005) 12 SCC 438.

77 Mohan Rao, "An Overview of the Judicial Decisions on 'Last Seen Together*", Legal India,* August 5, 2012, *available at* https://www.legalindia.com/an-overview-of-the-judicial-decisions-on-last-seen-together/.(last visited on March 22, 2023).

Can Last Seen Evidence Be Disregarded Outrightly If the Time Gap Is Long?

The doctrine of last seen together is much more fragile after a significant time gap. On all occasions, however, it cannot be maintained that this evidence should be disregarded solely as this period between the last seeing of the accused and the victim and the discovery of the crime is lengthy.[78] In this respect, there can be no definite and rigid criteria for the determining length of the time gap, and the court would rely on the proofs presented by the prosecution to exclude the likelihood of any other individual having met the victim in the interim period.[79]

In instances where the prosecution provides such evidence that the probability of any person besides the suspect being the perpetrator of the offense has become virtually inconceivable, the last seen evidence can be considered for convicting the accused, irrespective of the long time gap. [80] However, as mentioned in the *Dharam Deo* case, this alone is not enough to record guilt.[81] For example, the court held in the case of *Subhajoy Tripura v. the State of Tripura* that if the prosecution proves that the accused was in exclusive possession of the location where the crime took place, and there was no potential of a third person intruding on that location, then a comparatively longer time gap would not hinder the prosecution's case. [82] In fact, the time gap of 2 hours was considered a long time gap in the *State of Goa v. Sanjay Thakran* as the location was a public place and everybody had access to it. [83]

V. SUGGESTIONS AND RECOMMENDATIONS

In the present scenario, the theory of last seen together is of utmost importance. Numerous countries throughout the globe apply this doctrine. In fact, this doctrine is not explicitly mentioned in Nigerian statutes, but a multitude of precedents have established this theory as law. [84] Similarly, the judges in Bangladesh have concluded that the last seen theory is an essential component of circumstantial evidence, and the accused could be convicted when all the other evidence points towards his guilt.[85] Intriguingly, the idea of last seen together

78 V. Kesava Rao, Sir John Woodroffe *et.al. Law of Evidence* 4469-4482 (Lexis Nexis, 18th Edn., 2009).

79 *supra* note 45.

80 *State of Goa v. Pandurang Mohite,* AIR 2009 SC 1066; *Kusuma Ankama Rao v. State of AP.*, AIR 2008 SC 2819.

81 *Dharam Deo Yadav v. State Of U.P,* 2014 (2) UC 1041.

82 2007 CrLJ (NOC) 70 (Gau).

83 AIR 2007 SC (Supp) 61; 2007 AIR SCW 2226;(2007) 3 SCC (776).

84 Jide Bodede, *Criminal evidence in Nigeria* 117-125 (2015).

85 "Last Seen Theory – An Evidence and It's Existence in the Court Room*", Jus Commune*, June 25, 2020, *available at* https://thejuscommune.wordpress.com/2020/06/25/last-seen-theory-an-evidence-and-its-existence-in-the-court-room/. (last visited on March 22, 2023).

is implemented almost identically in all three nations: India, Nigeria, and Bangladesh. Before implementing this doctrine, all the nations necessitate the prosecution to present a *prima facie* case against the accused.[86]

Notably, the principle of last seen together is not codified in India. Its applicability is susceptible to judicial interpretations.[87] To avoid additional uncertainty and miscarriages of justice, it is crucial that the legislature properly establish the norms of this doctrine at this moment. Certain portions of these rules must stay constant, while others can remain flexible. Essentially, the essence and connotation of the phrase "last seen together" must be clarified from the outset. It refers to simply seeing the victim and accused, and constant presence is not needed for its application.[88] In addition, regulations relating to the closeness of place and time should be established since they serve a critical role in determining the probative value of this doctrine. The effective implementation of such guidelines, though, will vary from case to case since there is no definite formula for them. Besides this, there needs to be a categorization of offenses concerning this doctrine and distinct parameters to apply it to different offenses. For instance, the parameters for establishing guilt through the last seen theory in murder cases have to differ from those followed in kidnapping cases.

Likewise, special rules need also be developed regarding the relationship between the accused and the deceased. For example, if the wife's body is discovered in her bedroom, there needs to be further evidence implicating the spouse since his presence inside the place was natural.[89] In simple words, the bar for applying this theory ought to be raised in this situation. Moreover, it needs to be explicitly stated to the accused that he will be held guilty if he provides no justification under Section 313 of the CrPC when multiple indicators corroborate this doctrine. Finally, rules relating to the admissibility of testimony must be specified. The testimony must specify that the victim was seen alongside the accused at a certain time. Casual assertions will not be acceptable in light of this doctrine.[90] This will facilitate the application of this principle to numerous situations.

86 C.D. Field, *Commentary on Law of Evidence* 4660-4661 (13th edn., 2011).

87 *Manoharan v. State by Inspector of Police,* (2020) 2 MLJ (CRL) 202.

88 Ratanlal & Dhirajlal, the law of evidence 1391 – 1397 (Lexis Nexis, 2016).

89 Ayush Rahi, "What is 'Last Seen Evidence", *Legal Wires*, June 25, 2020, *available at* https://legal-wires.com/lex-o-pedia/what-is-last-seen-evidence/ (last visited on March 22, 2023).

90 Rajni Sinha, "Circumstantial Evidence: Conviction Principle", September 24, 2017, https://rajnisinhablog.wordpress.com/2017/09/24/circumstantial-evidence-conviction-principle/. (last visited on March 22, 2023).

VI. CONCLUSION

The last seen theory is indeed a vital part of the Act because, when proven, it effectively shifts the burden of proof towards the accused. Nevertheless, this does not totally relieve the prosecution of their obligation to demonstrate the accused's guilt beyond any reasonable doubt. The prosecution must produce conclusive evidence linking the offender to the victim's death. When merely a single factor raises the possibility that the suspect is innocent, he cannot be held guilty since our criminal justice system is founded on the concept that no innocent should be punished. The last seen theory does not necessitate the conclusion that the accused is the perpetrator of the offense. Therefore, it might be well concluded that the judges interpret the doctrine so carefully that there has been no punishment without corroboration and circumstantial evidence. The latest development of the judiciary is to employ Section 106 in conjunction with the last seen doctrine to determine the individual's guilt.