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## **ALIBI AS ONE OF THE BEST FORMS OF EVIDENCE TO PROVE THE INNOCENCE OF THE ACCUSED**

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### **ABSTRACT**

When a person is accused of committing a crime, he can take the plea of alibi to show his absence in the crime scene and prove his innocence. Alibi is stronger when it is produced in the initial stages itself which does not give any room for doubts. Alibi is to be proved by witnesses or other accurate records if there is no standard evidence available to prove the alibi then it won't be considered, and this won't reduce the burden of the prosecution. Failure to prove alibi won't make the accused guilty of the crime it can't be the sole reason for conviction. The failure to prove or fabrication does have an adverse effect on the accused the court now becomes sceptical about the accused in the view that he is trying to create evidence because of the consciousness of guilty that he committed the crime, and this could be proved in the court before which he is trying to prove himself innocent so that he would not be convicted. The court takes this point into consideration it becomes a black mark if there is any other evidence that can corroborate and make this intention of the accused stronger then the accused cannot escape from the crime that he is committed provided there is no benefit of doubt left. The prosecution nevertheless must prove the accused guilty beyond reasonable doubt because the burden of proof lies on the prosecution. Alibi is the best evidence to show that the person accused had not participated in the crime because in the first place he was not there in that place instead he was somewhere else, if only he was in the crime scene he could be suspected if not there is no possibility for him to have committed the offence by establishing this fact the alleged accused can be acquitted.

## **INTRODUCTION:**

Alibi is the best evidence by which a man can use to prove his innocence. Alibi is a Latin term which simply means “somewhere else” or “elsewhere”. It is generally used by the defendant to prove that he wasn't in the crime scene and was present somewhere else. No man can be physically present in two places simultaneously as it is highly impossible, this is used as a defence to prove that the accused was not present in the crime scene but in a different place and could not have committed the said crime if the latter was true. It is the Prosecution who has to prove beyond reasonable doubt that the crime was committed by the accused and if the prosecution succeeds and if the plea of Alibi is taken by the accused, then this is also to be proved absolutely beyond any reasonable doubt.

## **PLEA OF ALIBI:**

Alibi is not an exception that is available in the IPC or Indian Evidence Act, 1872 or any other law it is rather a rule of Evidence which is recognised under section 11 of the Evidence Act.

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.<sup>1</sup>

Generally, facts have to be inconsistent with the fact in issue or relevant fact to be relevant but according to section 11 of the Evidence Act even if the facts are not inconsistent with the fact in issue or relevant fact, but they are helpful in proving the existence or non-existence of any fact in issue or relevant fact then such facts will become relevant to prove the accused guilty or not.

This section deals with Alibi which claims the existence a person to be present in some other place. The presence of a person in a particular place in the ordinary course of life isn't necessary but the fact that if the person is guilty of the alleged the crime then the same person could not be present in a different and if there is proof to show that person wasn't in the crime scene it

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<sup>1</sup> Section 11 in The Indian Evidence Act, 1872.

does prove that the person who has been allegedly accused of committing the crime has nothing to do with the crime and the person is innocent. *Binay Kumar Singh V. The State of Bihar*:

Alibi is not an exception in the IPC or any other law. It is a rule of evidence recognised in Section 11 of the Evidence Act that states that the facts which are not inconsistent with the fact in issue are relevant.<sup>2</sup>

The fact in issue whether A killed B, the presence of A in a different city though not relevant becomes relevant as it proves that A was never present in the scene of crime. It is negative evidence unlike other evidence which shows positive relations because of this act or presence this act could be proved. Alibi shows that the absence or presence of the person in a different place to prove that the act was not done by the accused.

### 1. ESSENTIALS OF ALIBI:

1. In the first place, there should be a crime which is committed which is against the laws,
2. Accused should not be present at the crime scene when the crime was committed in,
3. The accused should have been in a faraway place which would make it impossible for the accused to reach the place of crime when the crime was committed.
4. Only the accused can raise the Plea of Alibi,
5. The plea of Alibi should be raised at the earliest.

### 2. WHEN PLEA OF ALIBI CAN BE TAKEN?

The Plea of Alibi should be taken at the earliest possible opportunity in the initial stages where the charges are framed or during the preliminary hearing the earlier the possible it will have more weightage. Alibi should be immediate and not be afterthought.

### *Lakhan Singh @ Pappu V. The State of NCT of Delhi*:

The court in the above case held that, the Plea of Self-defence and the Plea of Alibi cannot be equated and considered as one and the same. The plea of Alibi should be taken in the initial stages and should not be given in later stage.<sup>3</sup>

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<sup>2</sup> (1997) 1 SCC 283.

<sup>3</sup> Delhi HC CrI. Appeal No. 166/1999.

**DELAY OF RAISING ALIBI:**

The credibility of the Alibi reduces with time this is because as time goes the risk of forgetting what happened a week ago or a month or a year the accuracy of the details or the chances of death of the person etc are the reasons that has to be considered by the judge to rely on the Plea of Alibi.

Alibi if proved beyond reasonable doubt is definitely the best defence to get a person out of the case but if not able to prove it can go against the defendant.

However, a delayed disclosure alone cannot weaken the Alibi evidence it cannot be excluded on the mere ground of delay. It does not mean to say that the disclosure should be immediately during the first investigation or on the day of arrest itself it simply means that the Plea of Alibi should be given before the trial so there is sufficient time for investigation. The Plea of Alibi if not proved or if found to be fabricated then it goes against the defendant.

***Dhananjay Chatterjee v State of West Bengal***,<sup>4</sup>

The Apex court held that, the Plea of alibi has to be proved by clear and satisfying evidence which helps in exclusion of the possibility of the accused to be presenting the place where the crime was committed. The court also highlighted that the plea of alibi has to be taken at the initial stages of the case if it is taken after a very long delay then it is considered to be an afterthought which takes away the credibility of the alibi and the accused cannot be acquitted based on that instead will be convicted and the plea of alibi will not be accepted.

**ADMISIBILITY OF ALIBI:**

Alibi is to be proved by witnesses, the strength and weakness of the alibi is depended on the witness who testifies. Even the friends and family of the defendant can testify the alibi but there will be a doubt but such testimony whether their statements could be just to save accused from being convicted. The judge decides the credibility of the witness after hearing the testimony.<sup>5</sup> The judge could decide the credibility of the testimony given by the family or friends this could weaken the evidence but could not discard the defence as a whole.

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<sup>4</sup> AIR 1984 SC 454

<sup>5</sup> <https://www.criminaldefenselawyer.com/resources/criminal-defense/criminal-defense-case/alibi-defense.htm>

A witness who has no connection or does not know the defence can testify the Alibi and such will strengthen the Alibi. When there are more than one witnesses testifying the Alibi it can strengthen it more.

The Plea of Alibi can be made stronger with the help of other corroborative evidence such as photos, videos, GPS etc are more reliable too as they don't lie but there can be doubts regarding the accuracy of records too which has to be proved.

If the Alibi is not proved, then prosecution has to prove the defendant guilty beyond reasonable doubt without which the defendant won't be convicted just because the Alibi is not proved with sufficient evidence or no evidence at all. The failure to prove the Alibi alone won't prove the presence of the accused in the crime scene it has to be supported by other evidence by the prosecution.

#### **CHALLENGE THE CREDIBILITY OF THE EVIDENCE:**

The credibility of the witness can be questioned saying the witness is a close relation of the accused and is trying to protect the accused by lying. If such a doubt placed on the witnesses proved, then the judge will not believe the credibility of the witness. The physical evidence produced can also be challenged by questioning the accuracy of the evidence produced for example the voice records or the video tapes can be challenged saying that they were tampered or morphed and it is not the defendant.

*State of UP v Mukunde Singh:*<sup>6</sup> in this case the plea of alibi was for the first time taken before the High court when the appeal was pending and the evidence for the same was also produced before the appellate court. There were so many questions raised for the delay that was caused in producing the evidence for the plea of alibi when there was so much time when the case was going on in the lower courts and the reasons given was not satisfactory in nature. Also, the credibility of the eyewitnesses was questioned as both of them were injured and the testimony given by such witnesses was also questioned which cannot be ignored it should also be noted.

#### **FABRICATION OR FALSE OF THE ALIBI:**

Where the Alibi is found to be fabricated it can be used as circumstantial evidence to prove that the accused has tried to manipulate the court to escape from being convicted for the crime

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<sup>6</sup>(1994) 2 SCC 191

for which he has been accused. The trial is now more cautious because of the false alibi claimed and it does affect the investigation process as well.

***Hari Chand v State of Delhi:*<sup>7</sup>**

The accused was alleged to have committed a crime and he took the plea of alibi and stated that he attended an examination on the day of the commission of the crime and established his absence in the crime scene but during investigation it was found that the scheduled exam was held a day before the day on which crime had happened and there was no examination on the day of the commission of crime. The plea made by the accused was false and the accused was not able to establish otherwise.

***Babudas v State of MP:*<sup>8</sup>**

The supreme court again in this case said that the false plea of alibi itself won't prove the accused guilty of the crime for which he was allegedly accused. The alibi is to say that the person was not present in the crime scene when the crime was committed but when the plea of alibi was taken, and it is discovered that such defence was falsely made this alone cannot be the sole reason to hold the accused guilty but there has to be other evidence to corroborate the false plea of alibi. The false plea of alibi goes against the accused as it shows that he is trying to fabricate evidence in order to escape from the guilt. The supreme court has repeated this point in many cases to understand that alibi is independent and the failure to prove or false alibi won't prove the accused guilty of the crime it has to be proved with corroborative evidence by the prosecution.

**OBLIGATION TO DISCLOSE ALIBI:**

Any person accused of a crime has right to stay silent. The constitution gives them the right to not be forced to testify against themselves and use the same against their favour. The defendants are allowed to use Alibi as a defence without giving up their fundamental right to remain silent and right against self-incrimination.

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<sup>7</sup> 1996 AIR 1477

<sup>8</sup> 2003 Cr LJ 2536 (SC)

## **ALIBI AS A RULE:**

### **1. SURVIVAL OF THE ALLEGED DECEASED:**

Survival of the alleged deceased applies when the person who is to be murdered is found alive in a different place or on a different time then such existence of the person becomes relevant to prove that the murder did not take place itself. E.g., if A is accused of killing B on 20<sup>th</sup> February of 2005, but later B is found alive on 4<sup>th</sup> March 2020 both facts are relevant as to section 11 of the Evidence Act.

### **2. THIRD PERSON COMMITTING THE OFFENCE:**

Where a person is accused to have murdered the deceased and the accused has proof to show that a third party has committed the offence and not has been wrongly framed in the case. For example, where A is accused to have stolen the valuables of B and A has proof to show that C existed in that particular place and not A then it is said to be relevant.

### **3. SELF-INFLICTION OF HARM:**

When A is alleged to have committed murder of B and it is proved that the cause of death is not caused by murder but by suicide then such evidence can be used in the court of law as admissible evidence.

### **4. NON-EXECUTION OF DOCUMENT:**

Where a case has been filed by A for possession of land that has been purchased from B and it is proved by the opposite party i.e., B that the document has not yet been executed which means there is no right to claim at all. Only if the document is legally executed the right of the part emerges without which the document is not valid.

### **5. TO PROVE ILLEGITIMACY OF THE CHILD:**

In a marriage where the husband claims not to be the father of the child and the illegitimacy of the same there must be proof to show that there was no co habitation of the husband and the wife. Because cohabitation of the husband wife will prove the legitimacy of the child.

## **SECTION 103: BURDEN OF PROOF AS TO PARTICULAR FACT:**

The burden of proof as to any particular fact lies on that person who wishes the Court to believe

in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.<sup>9</sup>

After the prosecution has proved the charges made against the accused it is the defendant's chance to prove his innocence. The one who claims the plea of Alibi has to prove it beyond reasonable doubt for the court to take it into consideration. The accused has to prove his presence in a place which is not anywhere near the crime scene when the crime was committed. The Plea of Alibi does not reduce the burden of the prosecution if it is not proved. The Alibi and the prosecution's burden to prove that the crime was committed by the accused both of which have to be proved independently and they shouldn't be linked with each other.

The reliability of the alibi depends on the time when it was raised if there is an unreasonable delay in the plea then the court is free to have its doubts regarding its reliability. Where the court feels that the plea of Alibi was not spontaneous and there was time where it was thought and planned the court can reject the plea after taking into consideration the facts and circumstances of the case. The plea of Alibi is however always accepted provided that the accused is able to make the judge believe the alibi is not fake and is true.

### **3. PRESUMPTION OF INNOCENT**

The Presumption of innocent is being followed in India as a legal principle which assumes every person as an innocent man until he has proved guilty beyond reasonable doubt. The burden to prove the accused guilty is on the prosecution and if the accused is not being proved guilty beyond reasonable doubt, then the accused is acquitted even if there is reasonable doubt remaining.

### **4. BURDEN OF PROOF:**

#### ***Jumni and others v State of Haryana,*<sup>10</sup>**

The Supreme court has clearly explained that the plea of alibi has to be proved by the one who claims it, which is not always the accused it can be the petitioner as well who ever claims the plea of alibi the onus of proof lies on them to prove the guilt of the accused beyond reasonable doubt. The defence of alibi should be testified like how any other evidence should be testified

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<sup>9</sup> Section 103 in The Indian Evidence Act, 1872

<sup>10</sup> 2014 (7) Scale 588



by keeping in mind that an accused is considered to be an innocent until the charged alleged on him is proved beyond reasonable doubt.

In the same case the word alibi was explained it is used to show that a person is not there in the place where the crime was committed and was far away from the place such that his presence would be impossible as the place where the accused claimed to be when the crime was committed is far away and could not reach the crime scene within the time when the crime was actually committed. The alibi should be such that the person could not by any possible means participated in the crime.

In situations where the evidence provided by the accused to prove the plea of alibi is not according to the standards and the accuracy is not up to the mark then the court can rise the doubts regarding the validity. In such cases the burden of proof of the accused is heavier and it is his duty to prove the court using accurate evidence if not the defence of alibi cannot be availed. The plea of alibi should be proved using strict proof.

### ***Rajendra Singh v. State of U.P.*<sup>11</sup>**

The Supreme court in this case stated that the petitioner with no doubt has the right to take the plea of alibi provided that the same is to be proved like any other evidence which is provided in the court and should not be considered as absolute proof it should be backed up with proper evidence and there should be other evidence to corroborate as well for the court to conclude the case.

### **5. PLEA OF ALIBI IN CIVIL CASES:**

*Plea of alibi is not restricted to criminal cases where a particular document is said to be signed by the party and that person claims that he was never present in that place when the document was signed to show his non-involvement in the document, he can take the plea of alibi. It simply means that when the particular act which the other persons claim to have done the defendant the person can defend himself by saying that he was never present in that place when things took place.*

### ***S.K. Hasan v. State of Maharashtra,*<sup>12</sup>**

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<sup>11</sup> (2007) 7 SCC 378

<sup>12</sup> 2003 SCC OnLine Bom 1167

The appellant in the current case took the plea of alibi since he took the plea of alibi the burden of proof lied on him to establish the fact which he could not properly establish beyond reasonable doubt and the failure to establish the alibi resulted in an adverse inference against the appellant. Adding to this there was documentary evidence produced by the court to show the appellant's involvement in the offence.

#### **CASE LAWS:**

##### ***Sahabuddin & Anr V. the State of Assam:*** <sup>13</sup>

The court stated that if the accused is not able to give any explanation to his statement under Section 313 CrPC and where the court does not believe the Alibi, the court can take an go against the accused.

##### ***Kumar V. State of Haryana:*** <sup>14</sup>

The same which was held in the above case was reiterated in this case where the court as it disbelieved the plea of Alibi took an adverse inference held such inference would support the prosecution.

##### ***Rajesh Kumar V. Dharamvi:*** <sup>15</sup>

The accused who was alleged to have committed an offence used the plea of Alibi stating that he had gone to Panipat and met an advocate for seeking legal advice. The offence was committed in the district of Karnal. The Advocate couldn't provide proper evidence regarding the visit and the time of visit. The plea of Alibi was rejected due to lack of evidence.

##### ***Dudh Nath Pandey v State of UP:*** <sup>16</sup>

The supreme court has held that, the plea of alibi shows that it is physically impossible for the accused to present at the somewhere the offence was committed and also in another place at the same time. The plea can be successful only if it is proved that the accused was present in another place which is far away from the place where the offence was committed.

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<sup>13</sup> Criminal Appeal No. 629 of 2010.

<sup>14</sup> (2012) 6 SSC 2014

<sup>15</sup> 1997(4) SCC 496

<sup>16</sup> (1981) 2 SCC 166

***State of Maharashtra v Narsingrao Gangaram Pimple:*** <sup>17</sup>

The court made it clear that Alibi has to be proved absolutely beyond any reasonable truth to discard any possibility of the presence of the accused person in the place where the crime was committed. In the present case the police officer took the plea of Alibi and stated that he was not present at the station where the alleged bribe was alleged to have offered to him but the defence, he took also shows that he in another place which was within the reach of the place where the offence was committed being a few miles away.

The plea of alibi was not proved reasonable doubt and the place where he was alleged to have gone is not very far from the place of place of commission of offence and hence the plea of alibi was not allowed.

***Puran v State of UP:*** <sup>18</sup> A Government worker was alleged to have committed an offence and he took the plea of alibi and to prove the same he used physical evidence which was maintained by the time-keeper's record which showed the presence of the government worker in the workshop at the time when the offence was committed. Another worker had said that on Sundays all the workers would go away sooner than the other days which is by noon in spite of the statement given by the worker the court continued to believe the record maintained by the timekeeper.

***Gurcharan Singh v State of Punjab:*** <sup>19</sup>

The accused established his plea of alibi by saying that he went to buy a thresher and was not there in the scene of the crime and was away due to the fact that he was off to purchase the thresher. During the investigation it was identified that the evidence cannot be testified as the book in which the entries were made was irregular in shape and the had blank pages which did not seem to have been properly maintained and this wasn't considered as good evidence to prove the plea of alibi.

***Dharamvir v State of UP:*** <sup>20</sup>

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<sup>17</sup> (1984 CRI.L.J. 4)

<sup>18</sup> (1994) 2 SCC 520

<sup>19</sup> 1994 Supp (1) SCC 515

<sup>20</sup> 1990 Cri LJ 839

The court once again stated that the place where the accused claims to be present during the commission of the crime should be in a place which is nearby or easily reachable if so then the plea of alibi cannot be proved as it is essential to prove that the accused cannot by any means be possibility present in the place where the crime was committed.

***Surinder Grover v State (Delhi Admn):*** <sup>21</sup>

The accused took the defence of alibi and said that he under treatment as an out-patient in a hospital in some other place and was not there in the place where the crime was committed but he was not able to produce the evidence to establish that he was an out-patient as he did not have the ticket of the out-patient. The medical officer also stated that there were two persons went missing after the treatment and such statement cannot be taken as conclusive proof and the alibi was not established beyond reasonable doubt.

***Govind V. State of MP:*** <sup>22</sup>

The Supreme court in the above case held that just because the plea of alibi is proved it alone cannot be the reason for holding the accused responsible for the crime the plea of alibi and the prosecution to prove the guilt of the accused has to be independently proved.

***Suman Nama v. State of Tripura:*** <sup>23</sup>

The High court of Tripura allowed the appeal which was filed challenging the judgement of the trial court where the appellant was accused of the charges of murder and the trial court convicted the appellant for the offence of murder which is punishable under section 302 of the IPC. The Appellant was accused of murdering his wife. The prosecution to prove these produced witnesses who testified to have seen him the day before and, on the evening, as well when the murder was committed in their rented house and the prosecution claimed that the appellant alone committed the murder and no one else could have committed the murder of his wife. The appellant took the plea of alibi and stated that he wasn't present in the place when the crime was committed.

The High Court went on to explain the meaning of alibi, the plea of alibi should be such that the person who takes the defence should not be in the place where the offence was committed

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<sup>21</sup> 1993 AIR SCW 1972

<sup>22</sup> (2005) 12 SCC 267

<sup>23</sup> CrI. A. (J) No. 33 of 2015

and the place where he claims to be during the crime should be so far that he could not reach the spot by any possible means and there should be no probability of the accused to have committed the crime because he took the plea of alibi and has proved the same beyond any reasonable doubt.

The prosecution has to prove the guilt of the accused by showing the accused was present in the crime scene and in the current case the prosecution was not able to establish that the accused participated in the crime behind reasonable doubt. The plea of alibi not being able to be proved wont lessen the burden of proof of the prosecution. The failure of the plea of alibi to be proved will be considered only when the prosecution has proved the guilt of the defendant to a satisfactory level.

In cases where the prosecution has proved the accused to have participated in the crime beyond reasonable doubt then the court may be sceptical to accept the plea of alibi that does not mean the court wont consider at all it will consider if the alibi is proved with accurate evidence and the evidence should be standard in such cases the burden of proof of the accused is heavier than that which is in the normal course the proof provided should be strict proof to establish the defence of alibi.

In the current case the prosecution was not able to prove that he accused participated in the crime because there was no proof to prove the accused guilty beyond reasonable doubt the court did not convict the accused and left his free as there was still doubt the plea of alibi was not considered as the accused was not proved guilty by the prosecution the question of failure to establish alibi did not come into the picture and the accused was acquitted.

### **SUGGESTION:**

The plea of Alibi is best when taken in the beginning itself to avoid questions regarding its credibility. The reason why it is preferred in the initial stages in because if the person is innocent and was never present in the place of crime what tool him so long to defend himself when there is an unreasonable delay the court in forced to think that the plea of alibi is afterthought so that the accused can escape from the charges. Thus, it is advised that the plea of alibi is taken at the first instance so that unnecessary doubts do not arise and it becomes smooth to establish the alibi.

**CONCLUSION:**

Alibi isn't an exception to a general rule but is a rule of evidence that can be produced before the court of law as defence and has to be proved beyond any reasonable doubt to avail it. The accused is presumed to be innocent until the prosecution proves the charges against the accused absolutely without any doubt in the minds of any reasonable doubt. If other evidence is corroborated with alibi, then the accused can be acquitted. In situation where the prosecution is not able to prove the accused guilty the accused is automatically let free because of the benefit of doubt.

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