
THE LAST SEEN WITNESS: WHY THE FINAL STAGE OF A CRIMINAL TRIAL CAN BE ITS MOST DECISIVE

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ABSTRACT

Indian criminal evidence law treats the closing stage of a trial as evidentially privileged, not as a neutral endpoint. This essay traces that structural preference for finality across four doctrinal sites: the chain-of-circumstances rule, which collapses an otherwise complete case if its final link is unproved; the power to recall a witness at any stage, which keeps the evidentiary record open until judgment is pronounced; the last-seen-together doctrine, which treats proximity to the moment of death as grounds for calling upon the accused to explain; and the law of dying declarations, which treats a person's final words as inherently trustworthy precisely because nothing can follow them. Read together with the Allahabad High Court's reversal in the Aarushi-Hemraj matter and the appellate power of re-appreciation, these doctrines suggest that Indian criminal procedure does not merely tolerate the special weight attached to a trial's final moments; it is built around it.

Indian evidence law rests on a quiet fiction: that all testimony, once recorded, is weighed equally once the judgment is written. In practice the sequence matters enormously. Consider a chain of circumstantial evidence with nine links. Eight are proved beyond reasonable doubt. The ninth – often the last, often the one placing the accused nearest in time and place to the offence – fails. The accused walks free, however damning the preceding eight links might have been.

The Supreme Court said as much in *Sharad Birdhichand Sarda v. State of Maharashtra*,¹ holding that the proved facts must form a complete and unbroken chain with no missing links. If any link is broken or missing, the accused will be acquitted. This doctrine rests almost entirely on the premise that the end of the sequence carries the decisive weight.

This is not merely recency bias creeping into judicial reasoning, though it does play a part.

¹(1984) 4 SCC 116.

India has no jury to indulge or guard against such instincts. Rather, the law builds deliberately on the premise that the end of the evidentiary sequence carries special weight – through burden-shifting presumptions, chain-link completeness rules, and the court's own power to recall a witness "at any stage."

The Statutory Architecture of Sequence

In Indian criminal procedure, sequence is not mere scaffolding but a doctrine dressed as process. The order in which evidence unfolds – the prosecution's witnesses, the accused's own statement, the defence's evidence, arguments, and then the judgment – is not neutral machinery that merely holds the trial together. It is the trial's spine, and the law treats it with a seriousness that borders on suspicion of its own outcomes.

Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the successor to Section 311 of the Code of Criminal Procedure) allows a court to summon, recall, or re-examine any witness "at any stage of any inquiry, trial or other proceeding" if such evidence appears essential to arriving at a just decision.² This provision quietly concedes that there is no equivalent power to reopen a closing argument once delivered, and no mechanism to revisit testimony once it has receded into the transcript unchallenged. Evidence, by contrast, remains perpetually reopenable right until the last line of the judgment is written.

This power to recall and re-examine a witness at any stage is a clear admission that whatever is added last can still remake the shape of a case in ways nothing preceding it ever could. A trial, in this sense, is less a sequence of equally weighted moments than a structure that keeps the ending open for as long as possible – because the law is also aware that it is at the ending that a case is truly decided.

The Doctrine of Last Seen Together

The foundation of this doctrine rests on the ordinary logic of probability, cause, and connection: no fact takes place in isolation. An event's occurrence implies that other events – its probable causes or consequences – have also taken place, whether retrospectively or prospectively.

²Bharatiya Nagarik Suraksha Sanhita, 2023, § 348 (corresponding to the Code of Criminal Procedure, 1973, § 311).

The last-seen-together doctrine draws its relevance from Section 7 of the Indian Evidence Act,³ under which facts connected to the occasion, cause, or effect of an event – or facts that afforded an opportunity for its occurrence – become relevant. On the same logic, the person last present with the victim is treated as having had a reasonable opportunity to commit the offence.

What makes the doctrine notable is how openly it inverts the ordinary texture of proof. The prosecution must still establish guilt, but here mere proximity in time – being the last person seen with the victim – becomes enough to call upon the accused for an explanation. The Supreme Court gave the doctrine its clearest articulation in *Trimukh Maroti Kirkan v. State of Maharashtra*,⁴ a case in which a wife's death, staged as a snakebite, was in fact caused by strangulation, with no eyewitness to the crime. The Court held that where an offence takes place inside a dwelling and the accused was the last person shown to be with the deceased, the absence of any explanation from the accused becomes, in itself, an additional link in the chain of circumstances – not because the burden of proof shifts in law, but because the accused alone possesses special knowledge of what occurred in that final, unwitnessed interval.

Case Study – *Rajesh Kumar Talwar & Anr. v. CBI* (Allahabad High Court, 2017)⁵

The Aarushi-Hemraj double murder shows the chain-completeness standard at work on a fact on which a conviction and an acquittal both turned – not as an abstract doctrine. The CBI's special court, in 2013, examined a long sequence of circumstantial evidence – presence in the house, the absence of any established intruder, and the conduct of the parents after discovery of the bodies – and found it sufficient to convict, sentencing both parents to life imprisonment. On appeal, the Allahabad High Court did not disturb most of that evidentiary sequence. What it disturbed was the closing inference: whether the final, cumulative circumstance excluded every hypothesis except guilt. The Bench of Justices B.K. Narayana and A.K. Mishra held that the circumstances on record did not establish the parents' involvement to the standard the law demands, and extended the benefit of the doubt.

The trial court and the High Court examined substantially the same record. What changed the outcome was not new evidence but a different answer to the last question in the chain: whether

³The Indian Evidence Act, 1872, § 7.

⁴(2006) 10 SCC 681.

⁵*Rajesh Kumar Talwar & Anr. v. CBI*, Criminal Appeal No. 293 of 2014 (Allahabad High Court, Oct. 12, 2017).

the sequence, taken to its end, foreclosed every other possibility. It is a reminder that in circumstantial jurisprudence, appellate reversal itself often turns on nothing but re-appreciation of the final inferential link.

Dying Declarations as “The Last Witness” in a Different Sense

Every doctrine discussed so far treats “last” as a position in a sequence – the final link, the final interval, or the final piece the court may reopen before judgment. The dying declaration, by contrast, is unique: “last” is not a position on a timeline but a fact about the witness's own life.

Section 32 of the Evidence Act (now Section 26 of the Bharatiya Sakshya Adhiniyam, 2023) ⁶ admits, as an exception to the rule against hearsay, a statement made by a person as to the cause of their death – precisely because it is the last thing they will ever say on the matter.

The Supreme Court, in *Kushal Rao v. State of Bombay*, ⁷ confronted the obvious anxiety this exception creates: the statement is untested by cross-examination, made in the absence of the very person it accuses. The Court held that a dying declaration is not inherently weaker evidence merely because it cannot be cross-examined, and that there is no absolute rule of law, nor even a rule of prudence, requiring corroboration before it can found a conviction. Once a court is satisfied that the declaration is truthful, voluntary, and made in a fit state of mind, it held, no further corroboration is required as a matter of law. Three consistent declarations, recorded in succession by a doctor, a police officer, and a magistrate, were found sufficient in that case to sustain a conviction under Section 302 of the Indian Penal Code.

What the dying declaration reveals, then, is a second and quite different register in which “last” carries evidentiary weight in Indian law. Where the last-seen-together doctrine treats proximity to the end as grounds for suspicion, the dying declaration treats proximity to the end as grounds for trust: the last words of a witness are given more credit, not less, precisely because nothing can follow them. It is the clearest instance in the entire trial of finality being read not as a procedural accident, but as a guarantee of truth.

Judicial Psychology Without a Jury

It is tempting to explain all of this as recency bias dressed up in doctrinal language – the human

⁶The Indian Evidence Act, 1872, § 32 (corresponding to the Bharatiya Sakshya Adhiniyam, 2023, § 26).

⁷AIR 1958 SC 22.

tendency to weigh most heavily whatever was encountered last. Yet India's criminal trial has no jury to protect or to blame. There are no twelve people retiring into a room with whatever they encountered last. Instead there is a judge, trained to record reasons for every finding and to neutralise the psychological pull of whatever came last.

Yet that discipline does not eliminate the phenomenon; it simply relocates it. A judgment is written only after the last witness has stepped down and the last argument has been made, so whatever conclusion is reached is necessarily reached last, and the reasoning that follows is built backward from that final vantage point. This is not misconduct; it is how judgment-writing works. But it means that what a judge remembers most vividly is often whatever arrived closest to the moment of writing.

The appellate system exists, in part, to correct for this. Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 386 of the Code of Criminal Procedure)⁸ empowers an appellate court to re-appreciate the entire evidence afresh, unburdened by the sequence in which it was first heard – the law's quiet acknowledgment that a single mind, however trained, cannot fully escape the order in which a case was presented to it.

Conclusion

No trial ends where it appears to. It ends, in truth, wherever the law has quietly decided the last word belongs – in the final link of a chain, the final hour before a death, the final words a dying person ever speaks. Indian criminal jurisprudence does not treat these moments as incidental. It builds around them.

Long before psychology gave the phenomenon a name, the law had already decided that endings deserve more scrutiny than beginnings, and built doctrine to match. A trial, properly understood, is not a sum of equally weighted parts. It is a structure that keeps building toward its last witness, because that is where, more often than the law cares to admit, the case is actually decided.

⁸Bharatiya Nagarik Suraksha Sanhita, 2023, § 442 (corresponding to the Code of Criminal Procedure, 1973, § 386).