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Hostile witness: Emerging challenges and issues

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Abstract---Witness is someone who has relevant information about a crime. They have to make an oath or solemnly state the truth in court. Witnesses are an important constituent of the administration in justice. Witnesses perform a duty of assisting the court to discover the truth. Hostile witnesses are unfavourable witnesses who can cause unjust acquittal of the guilty. Witnesses turning hostile is a major issue in our country and it can be due to the reason which have been mentioned in this paper. The laws mentioned relating to witness security are not enough due to which they turn hostile. The paper presents the problems faced by the witnesses. The author suggest that it is high time to make laws which are more secure for the witnesses which also improves the judiciary system.

Keywords---hostile, witness, delayed trials, protection, evidence, judiciary system.

Introduction

Going through the day-to-day scenarios of this era we come through the aspect that there are certain issues of in relation to matters which in consideration of the 'Witnesses' and how there is situations and conditions and their audacity of

turning Hostile in certain trials and proceeding. Specifically, a witness in a trial plays a very important and a crucial role in matter dealing with person or persons who committed the crime or any wrongdoer. The witnesses act like a guide for providing direction regarding law enforcement framework. For considering effective conclusive decisions of every stage in crime related regulations and processes through the underlying detailing of the wrongdoing to the actual specific trials basically is dependent on the fact that if that specific individual is participating or not. Their work during the trial recurrently, is like verbal assessment of witnesses, that can then be testified through guarding at a public hearing. The entire situation regarding prosecution; accusation; indictment and trial of any person who is considered to be a criminal, could tend to fall, or it can turn the tables only on the facts, that a deceptive articulation is stated by the witness. It brings about to a conclusive fact that people on a whole tend to be no longer having a rigid trust in acceptability regarding the structure in providing equity to the people in question. However, as long as the witnesses continue to move Hostile they don't make honest affidavits in judicature, equity shall constantly keep endurance regarding a person's trust and faith in adequacy & believability of legal cycle shall continually be diminished and broken.

Hostile witness: interpretation and its characteristics

Keeping in mind more than the average of an instance witness is addressed as threatening, at an instance during the time, the witness brings about any particular assertion regarding anything which he can give the testimony about or have experienced the specific sight of that instance there of regarding any misleading or counterfeiting imitation of an individual who has tend to committed a criminal activity in front of the cops. However, tends to deny or refuse to accept at the time when that specific individual is produced before the keen eyes of the Judicature during the time of the trial process. The term Hostile Witness tend to be the initial person who acquainted in the common regulations which give sufficient shield against the "invention of a tricky-witness, also termed as a cunning one" who determinedly by threatening proof "destroys the reason" relating to the party calling such a witness.

Such activities disturb, the interest of the prosecuting parties as well as the journey of the courts to meet ends of equity and justice. The "protection" as imagined under the common-regulations, comprised of going against witness with their past assertions or reprimanding their acknowledgement (which generally speaking, was not permitted) by the party calling such witnesses. For this reason, custom-based regulation, set out specific quirks of a Hostile Witness, for example, "not envious of coming clean at the occurrence of the party referring to him as" or "the presence of a 'Hostile ill wills to the party calling such a witness." HOSTILE WITNESS is a witness who affirms for the contradicting party or a witness who offers Hostile declaration to the calling party during direct assessment.'

* Mukherjee Subhrarag and Arya Vatsal, "Autonomous Witnesses: a Legal Crisis in India", 2004, Cri. L.

J. 186<<http://www.grkarelawlibrary.yolasite.com/resources/SYLLM-CRM-I-Halima.pdf>> accessed March 13 , 2022

Consequently, a hostile witness, is likewise called as Hostile witness, who debilitates the instance of the side the individual should be supporting for example rather than supporting the arraignment who has introduced him as an witness in the courtroom, the witness either with his proof or statements became adversarial to the lawyer and along these lines "ruin the case" of the party calling such witness. In such a case, additionally, it is the lawyer who requests that the Judge pronounce the witness a hostile witness. In this way, it is the court and no other than the court that has power to proclaim a witness a hostile witness. It must be recalled here that the court without help from anyone else proclaim a witness a Hostile witness however it can do so just on the solicitation made by the arraignment lawyer. †

In Sat Paul v. Delhi Administration‡. For this situation, Particular official considered to accused for taking bribe, this happened because the pitfall which incline to be laid by the Officer of the Department Against corruption. Soon as the exchange of cash happened between the person and the officer, the authorities of the department quickly attacked the workplace of the blamed. The accusation's verification by the judicature keeping in mind that those persons were approximately problematic people in the ambush besides, the two other free witnesses pertaining to the side of arraignment requested difficult manners which were in mystery to the matter. The investigation with respect to the validity of the witnesses was facilitated. The Judicature, respecting the specified circumstances, asserted that a threatening witness is the person who isn't desirous of coming clean at the circumstance of the party who has called him though a startling viewer is one who is rejected to indicating a particular sensibility, thus, disregards to ascertain such truth or demonstrates a contrary reality.

In Gura Singh v.State of Rajasthan§. The Supreme Court characterized hostile witness as one "who isn't envious of coming clean at the occasion of one party referring to him as"

Concept of hostile witness under Indian law

However, there are insufficient arrangements under homegrown regulation managing the issue however there are arrangements under the Indian Evidence Act, 1872 and 'The-Code of Criminal-Procedure, 1973' which are useful in making sense of the idea somewhat.

†AtriAjit, "Hostile Witness: Not sufficient to earn acquittal", 2008 Cri.L. J (Jour.) 191<<http://www.grkarelawlibrary.yolasite.com/resources/SYLLM-CRM-I-Halima.pdf>> accessed 14 March 2022

‡ 1976 Cri.L.J. 295: A.I.R. 1976 S.C. 294<<https://indiankanoon.org/doc/1192461/>> accessed on 14 March 2022

§ 9 2001 Cri.L.J. 487: A.I.R 2001 S.C. 330<<https://main.sci.gov.in/judgments>> accessed on 16 March 022

Code of Criminal Procedure, 1973

*Tahsildar Singh v. State of Uttar Pradesh.***

The Supreme-Court enables the Police Official making an examination, to require the mandatory participation previously himself, of any individual who gives off an impression of being familiar with current realities and conditions of the case being scrutinized. This arrangement is to be perused in combination with Section 161 according to which the Police Officer making the examination can look at orally any individual expected to be familiar with the realities and conditions of the case. Section 161[3] likewise allows the Police Officer to diminish into composing any assertion made to him over an assessment under this section. In any case, whenever this is done, Section 162 of the Code comes into play. Section 162[1] comprises of two principles parts.

- Statements made by any person to a police officer in course of investigation shall not be signed by the person making it if reduced to writing.
- Any part of the statement reduced to writing if duly proved may be used by the accused with the permission of the court to contradict such witness.

As indicated by the Apex Court, the official plan behind this arrangement was to provide security to the criticized individual from cops who might be in a situation to impact the creators of such articulations, and from third people who might be leaned to make bogus statements before the police. This is a profoundly commendable goal and is genuinely intelligent of the endeavour to guarantee reasonableness during the time spent criminal examination. Simultaneously, it was basic that there be some instrument for recording admissions and different explanations in a fair and secure way, particularly in circumstances where the police thought the witness were probably not going to adhere to the statements made by them under Section 161. It was definitively this objective that brought about vesting of expert in the Judicial Magistrate to record explanations by witness as well as admissions by blamed people, under Section 164 of the Code.

State of Uttar Pradesh v. Singhara Singh††. The Supreme-Court additionally, saw in that Section 164 would be delivered entirely worthless assuming the system endorsed by that arrangement was not held to be obligatory. Section 164 finds some kind of harmony between the interests of the exploring organization and the denounced individual, and this is the essential justification behind legal emphasis on severe consistence with the endorsed technique.

Indian Evidence Act, 1872. Specific different arrangements of the Indian Evidence Act, 1872, administer the utilization of such statements in a criminal preliminary, and subsequently merit our consideration. Section 141 of the Indian Evidence Act, 1872 characterizes driving inquiries, though Section 142 expects that driving inquiries should not be placed to witness in an assessment in chief, or in a reconsideration, besides with the authorization of the Court. The court can

** A.I.R. 1959 S.C.

1012<https://www.indiacode.nic.in/handle/123456789/1398?sam_handle=123456789/1362> accessed on 17 March 2022

†† A.I.R. 1964 S.C. 358<<https://indiankanoon.org/doc/407511/>> accessed on 13 March 2022

anyway allow driving inquiries with regards to the issues which are basic or undisputed or which as it would like to think have proactively been adequately demonstrated. Section 154 approves the court in the circumspection to allow the people who call a witness to put any journey to him which may be placed in questioning by other party. Such inquiries will incorporate:

- 'Leading Questions' [Section-143 of Evidence Act]
- 'Questions connecting with his past statements' [Section-145 of Evidence Act]
- 'Questions, which will quite often test his veracity to find what his identity is and what his situation throughout everyday life or to shake his credit (Section-146 of Evidence Act)
- Initially, the arrangement [Section-154 of the Indian Evidence Act, 1872] as it were discussed allowing "such inquiries as might be posed in interrogation."
- Besides, the law no place makes reference to, the need to pronounce a witness as Hostile, before the arrangement can be summoned.
- Thirdly, the legal thought [under Section-154] is just to be conjured whenever the court feels that 'the mentality uncovered by the witness is horrendous of his obligation to talk reality.

Indian Penal Code, 1860. The Indian Penal Code, 1860 under Section 191 characterizes as "giving bogus proof". A witness needs to give all the data accurately any other way he will need to confront the preliminary under Section 191 of The Indian Penal Code and from that point he might be punished under Section 193-195 of the equivalent for the previously mentioned offense. Section-191 is appropriate just when an assertion is made by an individual limited by a vow or by an express arrangement of regulation to express reality, or who is limited by regulation to express reality, or who is limited by regulation to make assertion upon any subject. In different words it implies that he is under lawful commitment to talk truth taking into account the promise controlled to him or due to the express arrangement of regulation, which ties him to talk reality.

Recent judicial pronouncements

SidharthVashish and Manu Sharma v. State of NCT Delhi^{##}. On April 29, 1999, driving socialite BinaRamani coordinated a party at her café, Tamarind Court Cafe. A few young people and models were serving drinks at the 'Some time ago' bar, including Jessica Lal and her companions MaliniRamani and ShyanMunshi. At around 200 hours when the party was practically finished, Manu Sharma with his companions 'Amardeep Singh, 'Alok Khanna, 'Amit Jhingan and VikasYadav, purportedly entered the eatery and requested alcohol from Jessica. Since the bar was being shut, Jessica let Sharma know that no more beverages would be served. Later some, Sharma blew his top and discharged his weapon - once in the air and the second time at Jessica. The projectile struck her body and she passed on the spot. Sharma escaped from the eatery it was subsequently moved by his to

^{##}SiddharthVashish and Manu Sharma V. Stateof NCT Delhi, 2001 Cri.L.J. 240, CRIMINAL APPEAL NO. 179 OF 2007.

<http://https://indianlawportal.co.in/sidhartha-vashisht-alias-manu-sharma-vs-state-nct-of-delhi/>

leave his vehicle which companions. Then, at that point, on third August-1999, delhi police recorded the charge sheet in the court of metropolitan justice, where Manu Sharma was named the primary denounced charged under Section 302- punishment for murder, 201- giving false information to screen offender, 120(b)- punishment for criminal conspiracy and 212- harbouring offenders, of Indian Penal Code and sections 27- punishment for using arms,54- licence at its expiration should ne renewed ny the authority specially mentioned in Schedule II of Arms Act,1959. While other blamed, as VikasYadav, Coca-Cola Organization authorities Alok Khanna and Amardeep Singh Gill (annihilating proof of the case and scheme); were completely energized differently under sections 120(b), 302, 201 and 212 of the "IPC" [for giving sanctuary to the denounced and obliterating proof].

The case went up for preliminary in August 1999. Four of the witness who had at first said they had witnessed the homicide in the end turned Hostile. Shayanmunshi, a model and companion who was serving drinks adjacent to Jessica Lall, changed his story totally; concerning prior declaration recorded with the police, that's what he said the composing was in Hindi, a language he was inexperienced with, and it ought to be disavowed. Additionally, apparently the cartridges utilized in the homicide were adjusted. Albeit the weapon was never recuperated, these cartridges were for reasons unknown sent for legal assessment, where it worked out that they had been terminated from various weapons.

State of Delhi v. Sanjeev Nanda^{§§}. On 10th-January, 1999, a BMW driven by Sanjeev Nanda, grandson of the previous Head of Naval Staff and arms seller chief naval officer S.L. Nanda had purportedly run over resting on the road side, tenants in Delhi. Three individuals passed away on the spot and others gotten genuine wounds. As the preliminary advanced, an enormous number of witnesses turned Hostile, Manoj Mallick, the last one standing of hit-n-run, let the court know that he was hit by a truck. Key witness, Hari Shankar, would not distinguish the BMW and another witness fled. None of the witness upheld the indictment, as a matter of fact. Eventually, Sidharth and Manik were allowed bail.

Factors responsible for witnesses turning hostile

A precise examination is had to be aware with regards to why the witness turn Hostile. There are encounters that in the days of early times, it was really interesting to see prosecution witness going threatening. It isn't so much that cash and muscle power factors were missing back then. It appears it has something to do with the nature of examination. The [SHO] himself used todiligently lead the whole course of examination and it was only here and there left to the lesser functionary. Besides, the [SHO] used to stay present during every single hearing and his presence was an unmistakable obstacle to the witness to twist his assertions. As per a new review by the Directorate of Civil Rights

^{§§}The state of Dehliv.Sanjeev Nanda (2003) 10 S.C.C.

670https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fscr.indianrailways.gov.in%2Fuploads%2Ffiles%2F1306497619274-2003mergedsc.doc&wdOrigin=BROWSELINK
accessed on 15 March 2022

Enforcement (DCRE) coming up next are the primary purposes behind the low conviction rate:

- The circumstance has arrived at such a phase that, in cases connecting with lesser grave offenses, there are sure "stock witness" who give proof in preliminaries. The issues in this occasion are compounded by the way that individuals are not ready to approach or are deterred to give proof in cases while the police guarantee that they need to manage with whoever is accessible.

Unavailability of Witness Protection Programs. The requirement for complete witness insurance regulation has been for quite some time felt in India. Much of the time, witnesses are compromised or harmed and once in a while even killed under the steady gaze of giving declaration in Court. In *Swaran Singh's case*,^{***} the Apex court additionally noticed, "not just that a witness is hostile; he is injured; he is discarded; or even paid off. There is no assurance for him". The danger to the existences of witnesses is one of the essential purposes behind them to withdraw their prior explanations during the preliminary. Section- 151 and 152 of the Indian Evidence Act, 1872 safeguard the casualties from being asked profane, outrageous, hostile inquiries also, questions liable to affront or bother them.

Extended Trials of the accused. Aside from the shortfall of witness assurance program one more significant explanation of this developing danger is extended preliminaries. The working of legal cycle is very slow. A few dates are fixed for interrogation of the witness, who becomes puzzled over, due to being called over and over just to find that the date is suspended. The dissatisfaction incurs significant damage, and the witness chooses to go hostile to dispose of the annoyance.

Defaults in Payments of Allowances. The Law Commission of India 154th Report seen that the re-compensations paid to witness for showing up in Court are insufficient, and required a brief instalment, regardless of whether they are analysed or not. Section-312 of the Criminal Procedure Code says that "likely to any standards made by the State Government, any Criminal Court may "in the event that it thinks fit, request instalment, with respect to Government, of the sensible costs of any complainant or witness going to with the end goal of any request of either party, regarding the trial or other procedure under the watchful eye of such Court under this Code". Notwithstanding, by and large legitimate regimen cash isn't paid to the witness. ^{†††}

Absence of Adequate Facilities in Courts. In spite of the critical job of witness in criminal preliminaries, the offices given to them are negligible and inadequate. The fourteenth Law Commission Report featured that in a few States, the witness is made to stand by under trees in Court grounds, or in the outsides of town halls. They are not safeguarded from the fancies of the climate. Indeed, even the sheds in certain courts are feeble and used for other court purposes. Aside from

^{***}Swaran Singh Vs. State of Punjab 2000 Cr.L. J 2780 (S.C.)<https://www.whiteblacklegal.co.in/wp-content/uploads/2020/02/Vol-1-Issue-8-Vaneet-Kaur-Sokhi.pdf> accessed on 17 March 2022

^{†††} Section 312 of Criminal Procedure Code 1973

experiencing such outrages and botheration, they need to invest energy and cash to come to courts from far distances.

Utilization of Money Power by the Accused. Much of the time the witnesses are paid off or "bought" with the utilization of cash. In such cases the people in question/witnesses are for the most part unfortunate who are seriously needing cash. The strategy is basic. The great witness for some situations has reached either straight by the party or through the attorneys contesting that case and afterward offered an amount of cash for not coordinating in the examination as well as are told to take a pre chosen stand at the preliminary.

Danger/Intimidation. The Delhi High court observed that witness in countless cases were turning hostile because of "terrorizing and danger". The Home Ministry in its affirmation conceded that in exceedingly significant case witness were under steady danger from crooks. The oath said, "There is need to do whatever it takes to stop provocation of witnesses with the goal that he doesn't feel baffled. There is likewise pressing need to give sufficient assurance to the witness from terrorizing by lawbreakers".

In National Human Rights Commission V. State of Gujarat^{***}. "No regulation has yet been established, not so much as a plan has been outlined by the Union of India or by the State government for giving insurance to the witness.", the High Court noticed: The about period that India ought to present a witness insurance program. the Law Commission of India Consultation Paper on Witness Identity Protection what's more, Witness Security Programs set out 2 expansive perspectives regarding requirement for witness insurance. Right off the bat, to guarantee that the proof of witnesses gathered during examination isn't permitted to be obliterated by witnesses withdrawing from their assertions, during preliminary, and also, the physically & mentally defencelessness of the witness & dealing with their government assistance, for example the actual insurance of the witness. The regulation ought to likewise essentially incorporate arrangements for treating the witness with pride and decency. The insurance program can't bear to stop after the consummation of the preliminary, yet ought to go on from that point as well.

Amendments in law relating to witness protection

The law-making body has found a way to forestall the evil of witnesses turning Hostile, by establishing Criminal-Law (Amendment) Act, 2005. There has been embedded section 195A in the Indian Penal Code. It gives: "Whoever compromises with aim to make other individual threatened enough that he gives misleading proof will be rebuffed with detainment of one year or the other depiction for a term which may stretched out to seven years, or with fine, or with both; and assuming that honest individual is indicted and condemned in outcome of such bogus proof with death or detainment for over seven years , the individual who compromises will be rebuffed with a similar discipline and sentence in a similar way and to a similar degree such honest individual is rebuffed and condemned".

^{***}81 2003 (9) SCALE 329 <https://www.hkmj.org/system/files/hkm0310p329.pdf> accessed on 18 March 2022

The new arrangement accommodates penalties for compromising any individual to give bogus proof. Additionally, in the Indian Evidence Act, 1872, by the equivalent Alteration Act, Sub-section 2 has been embedded in Sec. 154 which states: "Nothing in this section-will disentitle the individual so allowed under sub-section (1) to depend on any piece of the proof of such witness". The opportunity has arrived that the discomfort of 'threatening witness' is to be taken truly and reviewed right away. The main answer for the issue of threatening witness is to acquire the proposed changes the current regulations (as examined previously) what's more, to authorize a unique regulation to safeguard the freedoms of witnesses so they may dismiss unreservedly and without terrorizing. Correctional and obstacle activities are required to get rid of the danger of aggression of the witness which has become normal these days as there is no worries toward the penalty. Suitable measures should be taken for the insurance of witnesses who show up under the watchful eye of the courts to affirm to render some assistance in allotment of equity.

Conclusion

Witnesses are an important part of the administration in justice. Witnesses need to be protected as they are the only ones who can help the judiciary to bring a case to an end. Due to the lack of protection for witnesses they usually turn hostile which delay the cases and judiciary system works slow. The author has mentioned some of the problems that the witnesses face due to which they turn hostile. Above mentioned laws are not sufficient for the witness protection. Amendments made in the criminal law is not able to stop the witnesses from turning hostile. The extended trials of the accused, allowances not paid to the witnesses are some of the problems witnesses face. The author suggest that the problems mentioned in the paper should be solved so the witnesses stop turning hostile. The laws should be made which are more secure for the witnesses. The judiciary system should give protection to the witnesses when they appear in the court and should be treated properly. The police should be told by the judiciary to behave properly with the witnesses.

The Malimath Committee suggested for the witness protection. It suggested that they should be paid proper allowances and on time. It also said that witnesses should be treated with dignity when they appear in the court. It said that judges should be ready to step if the witnesses are harassed during the examination. The long delayed trials in the judiciary system is a big problem for the witnesses. The judges should be more active towards the cases and provide a speedy trial which also helps the witnesses. If speedy trial is provided witnesses will not turn hostile as they will not be facing the problem of coming daily and getting nothing in return. Because of the absence of adequate facilities in the court witnesses face problems due to which they do not want to come to the court. Witnesses when come do not get the proper sitting facilities and are asked to stand outside in the sun. The paper concludes that the problems that the witnesses face should be solved as soon as possible so they are less cases in which witnesses turn hostile.

References

1. S.N. Mishra, The code of Criminal procedure 14th edd (2007). Central Law Publications.<http://www.legalservicesindia.com/article/1692/Hostile-Witnesses-and-Efficacy-of-Law.html>
2. D.D. Basu, Criminal Procedure code, 1973 vol. I 3rd edd.<https://lexisnexis.in/criminal-procedure-code-1973>
3. C.D. Field, Law of Evidence Vol-VI-VII, 10th edd (1973).<https://www.kinggreisen.com/blog/common-evidentiary-trial-issues-in-employment-law-cases-from-getting-the-metoo-evidence-in-to-keeping-the-collateral-source-evidence-out/>
4. S.N. Mishra, Indian Penal Code 20th edd (2004) Central Law Publications. Book <http://www.clplawbooks.com/books/Indian-penal-code>
5. In National Human Rights Commission V. State of Gujarat 81 2003 (9) SCALE 329 <https://indiankanoon.org/doc/168922/>
6. BMW Hit and Run case 7 (2003) 10 S.C.C. 670 <http://www.legalservicesindia.com/article/1692/Hostile-Witnesses-and-Efficacy-of-Law.html>
7. The Case of Jessica Lal 2001 Cri.L.J. 2404 https://en.wikipedia.org/wiki/Murder_of_Jessica_Lal
8. Gura Singh V. State of Rajasthan <https://www.casemine.com/judgement/in/5609ad74e4b014971141178f>
9. Tahsildar Singh v. State of U.P. <https://indiankanoon.org/doc/56195/>
10. Malimath Committee Report
11. Rinatha, K., & Suryasa, W. (2017). Comparative study for better result on query suggestion of article searching with MySQL pattern matching and Jaccard similarity. In *2017 5th International Conference on Cyber and IT Service Management (CITSM)* (pp. 1-4). IEEE.
12. Suryasa, I. W., Rodríguez-Gámez, M., & Koldoris, T. (2022). Post-pandemic health and its sustainability: Educational situation. *International Journal of Health Sciences*, 6(1), i-v. <https://doi.org/10.53730/ijhs.v6n1.5949>