

HOSTILE WITNESSES AND EVIDENTIARY VALUE OF THEIR TESTIMONY UNDER THE LAW OF EVIDENCE

Introduction

- Witnesses and their role in determining outcomes of cases are crucial for trials in the courts. A favorable witness in providing favorable testimony works for strengthening the case of the party producing that witness. However this testimony may be discredited by the adverse party while examining the witness. A tough situation arises when the favorable witness turns hostile leading to change in the outcome of a case .

Hostile witness

- Hostile witness is said to be when a party calls in a witness to depose in its own favor, instead the witness goes against the party calling him. This situation arises in many of the cases where witnesses do not give answers in favor of the party calling the person as a witness. The court has to declare the witness as a hostile one. It is not the option of the party calling the witness to do so. The adverse reference by the witness towards the person who calls him is a manner which helps the court to uphold or reject the statement of witness if crucial to a case and the trial

Indian Evidence Act, 1872

- Chapter X of the Indian Evidence Act, 1872 deals with the provisions relating to examination of witnesses in court which are rendered competent and devoid of privileges may be compelled to answer questions which are important to throw light upon the case. The presumption which may be taken in respect to witnesses in the current chapter is the witness who are not capable of deposing are rejected by the court and those considered compellable along with their competency may be produced before the court for testimonial acknowledgement. It provides a regulatory framework which has to be followed and cannot be dispensed with by any court.

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- The procedural law calls for a precise legal and systematic procedure for examination of witnesses. The order of evidence is ruled by criminal and the civil law procedures in criminal and civil cases respectively. It is the judge who shall decide as to the admissibility of evidence as it is put forth by the parties. The order of calling the witnesses for testimony is that there shall be an examination-in-chief, cross examination and a re-examination of the witnesses when the witnesses are called in by parties for examination. Leading questions that is which suggest an answer to the questions asked may be put to witnesses during cross-examination and the court permits this to be done.

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The court decides in most cases when the witnesses may be compelled to answer questions (Sec 148) and questions which are scandalous, indecent or intended to insult or annoy may be forbidden by the court (Sec 151-152). The credit of a witness may be impeached by the adverse party by showing that the witness is unworthy of credit, or showing that witness has been bribed or by proof of former statements contradicted with the current statement (Sec 155). A witness may refresh his or her memory by referring to anything which he feels will help him or her recall the facts (Sec 159).

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- Examination of hostile witnesses (S.154) The law states that, 'The court may, in its discretion, permit the person who also witness to put any questions to him which might be put in cross-examination by the adverse party'. Section 154 confers a discretion not limited by the criteria relevant to determining hostility, though in practice similar ideas appear to have been applied, at least in standard cases. "A majority of American jurisdictions now permit a party to impeach the witness so called, on the ground that a party is not responsible to the court for the testimony merely because the party has called the witness in the hope of supporting his case.

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- These witnesses under the law are said to be 'hostile' witness which the court is required to declare. A party cannot on his own declare a witness hostile, for any reason including that he has answered some questions which might not have gone in his favor in a trial. It does not discredit the witness to be hostile, or reflect upon him an impression of dishonesty, having malice or any adverse feeling. He may otherwise also not recollect the details for which he is called to testify.

Kinds of hostile witnesses

- The persons who may be called in witnesses as per the law are those who are major and of a sound mind and attained the age of maturity to testify. However the courts do consider evidence given by children or those who have not attained the age of maturity. With children a twist in the situation is they are not subject to testimony under oath. Those who are persons with disabilities also may testify in a manner in which they communicate and otherwise testify reliable facts. A person of unsound mind may testify during the period he may be declared sound and then relapses into unsoundness. The testimony of such people is also treated in the same manner by the courts in case they are declared hostile as that of other witnesses

Case Laws

- Koli Lakhman Bhai Chanabhai, it was held that the evidence of a hostile witness remains admissible and is open for a Court to rely on the dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record. Yet in other cases the court did not reject the testimony only because the prosecution found their witness to be hostile and cross examined the witness. The testimony of a hostile witness subject to scrutiny may be relied or nullified would depend on circumstances of each case.

Case Laws

- The Hon'ble Supreme court in Krishan Chander v. State of Delhi held that, " the mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness so as to exclude his evidence from consideration altogether." And in the same judgment further held: "the cour cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer.

Conclusion

- A cursory glance at the testimonial witness law makes it apparent that witness law guided by the legal principles calls for activism on the legislature and the judiciary to provide for adequate measures to protect witnesses from turning hostile. A competent and satisfactory evidence can only be procured where a trial calls for the same to throw light on the facts of a case. The circumstances qualifying to provide the appropriate proof, needs to be acquired in a safe environment. The test is of the authorities and the legal system to satisfy the ordinary people testifying in extraordinary circumstances to offer truthful testimony for justice to prevail. It is not difficult to perceive by the legal minds why testimonial failure takes place in most of the cases.