



A Study Relating to Importance of Role of Witnesses in Criminal Trial

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Abstract

Witness according to Jeremy Bentham, a Philosopher and Juristic person, said “Witnesses are the eyes and ear of justice” Witness plays a crucial role and assist the court in every civil or criminal proceedings. A witness is the distinct individual from accused, who is summoned by the court to testify and reveal the truth of the incidence. Witness is someone who has information about a case that has gone to trial. They are extremely important in building a strong case before the court. Even in this modern age of AI and Technology eye witness, documentary evidence, primary evidence or secondary evidence plays an important role for conclusion of trial and do to complete justice¹. They are the effective means of determining the fact and allegations in the case before the court. It is in this respect, it is very important that witness should dispose before court without fear and any accuses inducement by accused. A statement made under the influence of threat, fear, inducement can defeat the very purpose of criminal trial and that may result into wrong acquittal or conviction². Here in Present research paper, researcher try to study the importance of role of witnesses in criminal trial.

Key words: Criminal Proceeding, Evidence, Trial, Acquittal, Conviction

1. Introduction

1.1 Who is witness?

Witness is an individual who has knowledge of the incidence and plays a crucial role in a criminal as well as in civil case. His statement is a major proof in finding the truth and providing fair judgement.³

1.2 Who can be a witness?

According to Britannica Dictionary definition, witness is a person who see something happen or a person who makes a statement in a court about what he or she knows.⁴ Section 118 of Indian Evidence Act,1872, establishes the criteria for determining who is competent to testify before the court in trial. According to this section all individuals are deemed to competent to testify unless court determines that individual is incapable to understand the question pose to them or providing the rational answer due to:-

- (i) tender years
- (ii) Extreme old age
- (iii) Disease
- (iv) Whether of body or mind or any other cause of the same kind⁵

1.3 Different Kind of Witnesses:-

- (i) Prosecution witness:- when witness is brought to court by prosecution to give his testimony in his case for trial is prosecution witness.
- (ii) Defence Witness:- Defence witness who is brought by accused to defend his case by giving their evidence before the court. The purpose of defence witness is to giving a statement who discharge him from charges filed against him.
- (iii) Eye Witness:- Eye witness is the direct evidence who perceived the incidence through his senses. He helps the court by describing the acts committed on the scene.
- (iv) Expert witness:- Witness who has special knowledge about the subject. Evidence given expert witness only corroborative piece of evidence.
- (v) Hostile Witness:- A Hostile witness is a witness who provide testimony against the party

¹ <https://study.com/learn/lesson/witness-types-roles-law.htm/>

² <http://blog.ipleaders.in/witnesses-protection-india>

³ Supra note 2

⁴ www.britannica.com/dictionary/witness

⁵ Supra note 2



- (vi) who called him. Leading questions may be asked by examiner to hostile witness.⁶
- (vii) Child Witness:- Under Section 118 of the Indian Evidence Act, 1872, a child is considered competent to testify if the court determines that the child can understand the questions posed and provide rational answers. The law does not specify a minimum age for a witness; instead, competency is assessed based on the individual's intellectual capacity and understanding, regardless of age.
- (viii) A witness unable to speak:- section 119 of Indian Evidence Act, 1872 deals with provision of evidence of witness who is unable to speak. According to this provision a witness who is unable to speak may provide may give evidence through writing or by using sign. There is exception to this rule that is the evidence must be given in open court. Such evidence consider as oral evidence of such witness. Court take assistance of interpreter or special educator in case witness can not communicate verbally. Statement of such witness must be video graphed.⁷
- (ix) Accomplice Witness :- The word "Accomplice" is not defined by the Evidence Act, 1872. An Accomplice is not of the guilty associates or partner in the commission a crime or who in some way or the other is connected with the commission of crime or who admits that he has a conscious hand in the commission of crime.⁸
- (x) Interest Witness:- Interest Witness is the witness who have personal interest in the conclusion of legal proceedings such as in law suits or criminal cases.
- (xi) Police witness :- Police witness is the witness of police finds in course of investigation. Police produce these witness in trial at prosecution evidence stage.

2. CHALLENGES FACED IN WITNESS TESTIMONIES

Giving testimonies in criminal trial is not a cake walk. It is a difficult task due to lack enforcement of laws availability of laws relating to witness protection.

What is testimony?

Testimony is the declaration usually made orally by a witness before lawyer or authorized public official under oath.⁹ Witness testimony is a main source of evidence in trials.¹⁰

Here it is important to discuss the challenges faced by witnesses while giving their testimonies. Some of challenges are as follow:-

2.1 Slow trial procedure affects memory reliability:- This is one of the challenge faced by witness. The time period of trial is so long that effect the reliable testimonies of witnesses. Human memory is fallible. It happen due to slow trial process eye witnesses testimonies influenced by this awaiting time, stress or suggestive questing. This is one of the primary challenge face by witnesses. For better testimony and for doing complete justice, it is important that trial should conclude with in fixed time period of time.

2.2 Witness intimidation :- Another challenge faced by witness in giving their testimony is the intimidation from accused person. In past years judiciary in its various judgement analysis this fact that witnesses are threatened by witnesses in course of investigation, inquiry and trial. Intimidation to witness is threat to the integrity of the judicial process of any legal system. Fair decision of any case depends upon the fearless testimonies of witnesses. Honorable Supreme court in its various judgement addressed this issue. In year 2004 in case of Best bakery case was the case highlighted the severe consequences of witness intimidation. In present case, hon'ble Supreme court order re- trial outside Gujrate. When witness faced criminal intimidation ,threat and coercion. Court also emphasized in this case that there is need of measures to prevent the tampering witnesses. In Sohrabuddin Sheikh encounter case, in this case extra judicial killing of Sohrabuddin sheikh was involved. High raking police official arrested as investigation revealed attempt of tamper with evidence and intimidated witnesses. To ensure an impartial investigation, the Supreme Court has, in certain cases,

⁶ <https://www.law.cornell.edu.wex> [Legal information Institute]

⁷ www.advocate.com/library/law reports/evidence act1872,Report No.185.

⁸ Supra note 7

⁹ www.merriam-wenster.com-webster.com+witness+testimony

¹⁰ www.lawshelf.com



transferred the probe to the Central Bureau of Investigation (CBI). For instance, in the Vyapam scam, after concerns about the integrity of the investigation, the Supreme Court transferred the case to the CBI.¹¹

Similarly, in the case of the murder of Pradyuman Thakur, public outcry and a petition by the victim's father led to the transfer of the investigation to the CBI

2.3 Lack of protection law and their effective enforcement :- In India, till date there is no special law relating to witness protection. However, Supreme Court in year 2018 in Mahender Chawal v. approves the witness protection scheme but no satisfaction result comes out till date. However there are various other laws provided under substantive and procedural laws for the protection of witnesses. But what is missing? It is the enforcement of these law is important.

3. IMPORTANCE OF THE WITNESS IN CRIMINAL TRIAL

Witness plays important role in administration of justice. Primary duty of witness in justice delivery system is to give evidence linking to the charges raised against the accused. The very purpose of giving evidence is to finding the truth. Giving evidence in the name of god oath is taken by the witness which is a positive affirmation to speak truth before the court about knowledge of the facts of the case. In this way witness plays an important public duty by assisting the court in determining the guilt or innocence of accused person and evaluating the evidence in legal proceeding before it. Witness for performing his duty sacrifices his time and takes the trouble to travel all the way to the court to give evidence. The witness should therefore be given and treated with respect and effort should be done that no inconvenience should cause to them. The testimony of witness has great significance and importance in criminal trial, some of the important pointer are as follow:-

3.1 Testimony given by witness help in identifying the truth:- Witnesses helps in identifying the accused by providing testimony based on his personal observation of crime scene. The court identify any person or thing for complete adjudication of the case. With time and development in technology police use visual, scientific and other modes to identify the accused. Section 9 of Indian Evidence Act, 1872 deals with the facts which establish the identity of anything or person. There are various mode of identification of witness -

(I) Photofit - In this mode of identification a picture of suspect is reconstructed.

(II) Identification by photograph - identification by photograph is another mode to identify the suspect used by investigation officer at the stage of investigation. The Supreme Court in its judgement make it clear that there is no legal provision that identification by photograph is not substantive piece of evidence. However, if identification by photograph done in court it is substantive piece of evidence.

(III) Test identification parade - Test identification parade is most popular form of identification of suspect of crime. Test identification should be conducted as soon as possible in course of investigation. There is no legal provision provision in code of criminal procedure, 1973 where accused claim test identification as matter of right. It is not substantive piece of evidence, however it is corroborative piece of evidence which help in strengthening the other substantive evidence.

In this way witness are important to identify the suspected person with help of test identification parade.

3.2 Expert witness give expert analysis of subject- According to section 45 of Indian Evidence Act, 1872, expert is an individual with special knowledge, skill, or experience in any of the following areas of foreign law, science, art, handwriting or finger impression. This knowledge must acquire from practice, observation, or formal studies¹². It is always expected from an expert to give unbiased and impartial opinion. Expert called upon in various legal proceedings such as scientific evidence, document examination, Digital forensic, financial Analysis etc. Both prosecution and accused can call for expert witness. Testimony given by

¹¹ en.wikipedia.org

¹² www.lawoctopus.com



expert is corroborative piece of evidence which helps court in completing the chain of circumstantial evidence and concluding the case completely. It was held in *Devi Prasad v. State*; the object of expert evidence is to assist the court in forming its opinion¹³.

3.3 Witness help in establishing the fact:- As it is well known fact that witness in every trial plays a pivotal role in establishing a fact. Witness like eye witness provide a fact. Witness like eye witness provide a first hand information about the crime scene which help the court to reconstruct the sequence of event and help in conclusion of trial fairly. They provides the direct and personal knowledge about the case to the court.

3.4 Witness are important in enhancing legal arguments of case:- Witness plays significant role in enhancing legal arguments by providing their statement and testimony before the court. Witness testimony clarifies the facts of the case, support the claim of parties and leads credibility to a case. Witnesses who are direct witness of fact enhance the legal argument as their testimony narrates their observation and experience of crime scene. Witness statement substantiate or challenge the charges made by the parties to each other.

3.5 Witness assist in preventing wrongful conviction:- witness assist in prevent wrongful conviction by providing their reliable testimony about facts observe by them. The testimony given by them either corroborate or challenge the evidence before the court in present case. Identification of suspect of crime confirm the correct individual involved in crime, which prevent wrongful confinement.

4. Statutory Provision relating to protection of witnesses

4.1 Section 406 and 407 of code of criminal procedure, 1973: As per these provisions, Hon'ble Supreme court and High court has power to transfer the cases for fair trial to other courts. Where courts find that circumstances in that present case are such that it is required to transfer the cases from the one court to another, then the court has power to transfer the cases. In this way, court has power to transfer the cases if it is require to do so in case of protection of witnesses.

4.2 Section 171 of code of criminal procedure, 1973: Complainants and witnesses not required to accompany police officer and not to be subjected to restraint. In practice, Section 171 influences how police conduct investigations and interact with complainants and witnesses. It mandates a respectful and non-coercive approach, which not only protects individual rights but also enhances the credibility of the evidence gathered. This contributes to the integrity and fairness of the judicial process. This help in protection of witnesses.

4.3 Section 271: Power to issue commission for examination of witnesses in prison. 4.4 Section 273: Evidence to be taken in presence of the accused.

4.5 Section 309: Power to postpone or adjourn proceedings.

4.6 Section 327: Court to be open. The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open.

4.7 The Juvenile Justice (Care and Protection of Children) Act, 2000

Section 21 of the Act prohibits the publication of name or any information of juveniles conflict with law. This section does not directly pertain to witness protection however the act includes measure that protect the identities of minor involved in legal matter.

4.8 The Whistle Blower Protection Act, 2011

Section 11 of the Act provides for special provision for the protection of witnesses and other persons. This section ensures to safeguard those who come forward with information about the incidence. This Act prescribes the measures to protect the witnesses which help in encouraging the reporting of unethical or illegal activities without fear of adverse consequences.

4.9 The National Investigation Agency Act, 2008

As per Section 17 of the Act, special provisions are enacted where measures are given to keep the identity of witnesses secret.

¹³ <https://www.legalserviceindia.com/legal/article-13246-evidentiary-importance-of-expert-witness-and-opinion.html>



4.10 Indian Penal Code, 1860

Under section 228A IPC, special provisions deals with disclouser of identity of victim of certain offenses etc. Special focus under this is given to protection of identity of victim of certain sexual offenses. It prohibits the publishing or printing of the name or any information that could reveal the identity of victim. However this section encourage victim of such crime to testify without any fear.

4.11 The Apex court has approved witness protection scheme in year 2018 in case Mahender Chawla V. Union of India¹⁴; This case is known as Asaram Bapu's case. In the present case in hand, the Apex court directed the union and the state government to enforce the witness protection scheme in their respective states. In April 2018, self-styled god-man Asaram Bapu's former aide Mahender Chawla alleged that he was receiving death threats from Asaram and his supporters. Chawla demanded more security for him and his family. He is one of the key witnesses in a rape case, for which Asaram and his son were sent to custody in December 2013. The Apex court has approved the witness protection scheme in this case. The prominent features of this scheme are as follows:-

- a. The scheme describes categories of threat perception.
- b. The State witness protection funds
- c. Filling of application to competent authority
- d. Time of protection measures
- e. Protection of identity
- f. Change of identity
- g. Relocation of witness
- h. Witness to apprised of the scheme
- i. Confidentiality and preservation of record
- j. Recover of expenses

5. Conclusion

Testimony of witness in criminal justice is undeniable. Witness testimony historically pivotal in establishing facts and convicting the accused. Research shows that importance of witness testimony in criminal trial is not infallible. Factor like intimidation, threat, stress, memory distortion affects accuracy of their testimony which leads to wrongful conviction. Study indicates that witness plays important role but these factor reduce reliability and credibility of testimony of witnesses. However testimony of witnesses is valuable component of legal proceedings, it is crucial and great caution, corroboration with other evidences are require to do complete justice. This process raise the credibility and reliability of witnesses.

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¹⁴ Mahender Chawla V. Union Of India 14 SCC 615(2019)