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Hostile Witnesses and Criminal Justice System in India

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Abstract

In the labyrinth of the criminal justice system in which the burden of proof lies heavily by the prosecution, the whole merit of a case depends on a witness. By its definition, a witness is a person who is present at an event and to give information about them to be able. Indian Evidence Act nowhere mentions explicitly the term "hostile witness" and this terminology were adopted by customary law. In common parlance, a hostile witness is one who understands his, the negative on the position of the part that the witness in question, even if the lawyer has called the witnesses in favor oh testify his client.

Keywords: Hostile, Criminal, Justice, Act, Section, Evidence.

1. Introduction

In the labyrinth of the criminal justice system in which the burden of proof lies heavily by the prosecution, the whole merit of a case depends on a witness. By its definition, a witness is a person who is present at an event and to give information about them to be able. In other words, a witness is a person whose presence can be required to demonstrate an event or an accident during a procedure. As Bentham says, "are the witnesses, the eyes and ears of justice."

However, the word is not clearly defined under the Code of Criminal Procedure, 1973. Similar to the Indian Evidence Act nowhere mentions explicitly the term "hostile witness" and this terminology were adopted by customary law. In common parlance, a hostile witness is one who understands his, the negative on the position of the part that the witness in question, even if the lawyer has called the witnesses in favor oh testify his client. If a witness is openly hostile and contrary, the lawyer ask the court to declare him as hostile and then given the opportunity to examine him in the way. In India, in most cases, people or the rich and influential corrupt politicians involved, witnesses turn hostile, causing him to make a mockery of the rule of law. Very often the witnesses will no longer be found. Sometimes they are only eliminated. The criminal justice system has faced with this serious problem for a very long time, without a valid and complete solution in addition to the same. Before continuing with this article aims to look at the research on the following examples highlight the gravity of the situation:

Twenty-one people were in the best bakery trial and the prosecution depended primarily on the testimony of a survivor Zahira Sheikh named accused. But before the court again created it has refused to identify the accused that he was to the contrary statements had made to the police and the National Commission for Human Rights. He later said he had lied about the threat and fear of his life. It has the current legal system has to offer no remedy in this situation?

The case Jessica Lal, where he was killed by the son of a minister, was also because finally defeated, as the process has progressed, most witnesses turned hostile and retracted their statements.

In a BMW hit-and-run case in 1999, drunken Sanjeev Nanda, grandson of former Chief of Staff of the Navy and Admiral Nanda SL invested allegedly pavement dwellers to sleep in Delhi. Apart from the witnesses who become hostile, the only survivor of the accident also said the court that he was run over by a truck while the main witnesses of BMW declined to identify.

Such incidents hyped the problem of hostile witnesses bring in the center, and it is interesting to note that the cases above are just a fan of the bigger picture, in which the entire criminal justice system mentioned reviled by this issue. It is important that we identify the gaps in the criminal justice system to undermine the unscrupulous witnesses and the rich and influential people, the ideals of justice allowed.

What are the likely solutions the malaise of hostile witnesses, especially in high-profile cases, sensational murder cases where eradicate celebrities and crimes against minorities? What are the changes that must be made in the existing legislation to provide effective controls available and deter witnesses hostile? Is there a witness protection program offers real solutions for the same. To find Looking for answers to the questions raised above, the researcher to present the document to this "hostile witnesses" tried.

2. Hostile Witnesses

Section 162 - An Overview

The object of the main section as the history of the legislation shows and the decided cases indicate, is to impose a general bar against the use of statement made before the police and the enacting clause in clear terms states that no statement made to a police officer will be used for any purpose. The proviso engrafts an exception to the general prohibition i.e. the statement may be used to contradict a witness in the manner provided by S. 145 of the Evidence Act.

Purpose of the Section

A. The section protects are pinned people to the recorded by the police statements, because it contains a prohibition against the police officers take the signature of the person to make the statement.

B. In this section and section 161, in fact, contain legal guarantees to protect a defendant from the action excessive police zeal that due to the fact that an investigation on foot is known at the time the declaration is done, you may be be able to influence the Creator, and also by the hand of prejudices of the people, began with the knowledge that an investigation is already ready to tell untruths.

C. Provides the section a general bar against the user of the testimonies. Before the police in the investigation on the assumption that such statements made there are no circumstances that inspires confidence This Act assumptions in connection with positive proof of the superficial nature of the police investigation would discredit a statement by the police detected.

D. The law allows the police officer to receive such declarations in order to facilitate and promote the free circulation of information, the investigation of criminal offenses. But it makes them inadmissible evidence for the obvious reason that a suspicion about voluntariness would be attached to them that can not be free and fair nature.

E. It is clear that due to lack of confidence in the police, the legislature has ensured that not have witnesses the police statements provided any evidence before the Court. But at the same time, is the first witness of the testimony of a witness shortly after the incident, contained a contradiction in the fact would be a great help to discredit the testimony of the witness and the section was therefore conceived in an attempt to find a happy way - media. The whole basis of the procedure referred to in paragraph (1) of the section is the principle that a witness makes contradictory statements unreliable.

The Proviso to Sub-Section 1

The arrangement allows limited use of the previous statements, in some specific cases, which are as follows :

• The witness has been called for the prosecution.

• The person who is the defendant or with the consent of the court, the prosecutor's office.

• The command is used for the purpose of contrary to the information under S. 145 of the Evidence Act .

• The testimony of the witness in question has been writing notes.

• The written statement must be demonstrated.

Some of these conditions have been briefly discussed as follows:

A. The witness has been called for the prosecution. If a defense witness is called, its earlier statement can be used either for the prosecution or the defense, to contradict or corroborate under the provisions of the Evidence Act. The same applies also called for witnesses by the court.

B. Only the defendant and with the permission of the court may use the statement the prosecutor's office, In this section, the statement for the limited purpose of section allows to use the prosecution, but only with the permission of the court. In addition to the procedures under this section, section 154 of the Evidence Act allows the court to allow the accused to question witnesses who might be called. On the contrary, the accused / defense have the right to use the statement in this section, without the authorization of the court.

C. Any confirmations you can, the testimonies of the police were recorded during the investigation, cannot be used to obtain security for the history indictment. A statement that can be used completely for the purpose of contrary to the information under S. 145 of the law and evidence "and not" for other purposes in this section. Cannot be used as material evidence for or against the accused. However, the case can be used to demonstrate the degree of elasticity of the witness, the one who told police.

D. The declaration must be adequately demonstrated, The parts of the statement used to contradict the statement are to be tested and removed files. The words "part of the explanation, unless they have been proved" to emphasize the need to prove the testimony that is to be noted that the portion of the recorded statement that was used for the purposes of the opposition, in reality, the, what is said, by the testimony of the investigator.

This can be done by specifically asking the policeman when he comes into the witness that the witness has made such a statement to him, when a record of him was taken. That sounds a bit "feasible given the fact that most of the cases in the test are recorded after such statements, and in view of the frequent transfers is impractical for the investigators about the

correctness of the statement to testify. However, due to the absence of any other effective mechanism, it must rely on the same.

It is also suspended or expelled all of the instructions of the whole case; the Journal was not to prove a statement. Of course, the statement, by receiving the certificate is to provide evidence that he has actually done, but the task correctly the statements prove difficult in light of the above arguments are decisions. The top ridiculous, to the extent that the same policeman who him that suggests the CRPC problem calls her adopted, will leave appropriate to demonstrate the declaration. Secondly, if such evidence is admissible, it is surprising, because it makes the case diary and every statement is not enough. Conversely, it would also be ridiculous, "not" the evidence of a police officer, taking into account the assumption that there are no cameras in the police station and not too many people around him constantly, he was instructed to listen and then show that actually happened is.

E 'was incorrectly stated in a particular case that a registration is not required to be proved before the attention of the witnesses drawn in cross-examination. It is argued that the use of the word "must" is aimed at a clear commitment from it to draw attention to the witness first. The above observation Court also to a certain extent makes the discretion judges, others of which must be preceded by, and subject to such a point

Section 162 of the Crpc V. Section 145 of the Evidence Act

The provision of this section, in contrast to S. 145 of the Evidence Act authorizes the immediate set up the opposition to the recorded statement proves under S. 161 (3). Section145 is in two parts, both of which have to do with interrogation. The first part of different cross-examination by contradiction and the second with contradiction. Ahead of the first paragraph of page 162, the first part of s. 145 of proof for law shall not apply with respect to cross-examination may have said statements in this section.

The prosecution witnesses "not" only asked if he made an earlier statement on the contrary to the police investigation and the matter left there. In all honesty, his attention must consciously reminiscent of the corresponding passage in the statement that is inconsistent, and simply ask if he did another earlier statement is generally not enough. However, while doing the same thing, you read the entire testimony of the witness was considered improper procedures. The answer of the witness cannot be used as evidence, but only to contradict the testimony of such a letter. In addition, the witness must give a reasonable opportunity to explain the contradiction.

Section 145 would allow the court to call in its discretion, the person to allow a witness to put any questions to him, which could be put in cross-examination by the opposing party. It means that could be explained hostile when presented with a prayer for the same. But the authorization should be granted only on the exhibition hostile animus. Simply enter inconvenient witnesses or commit a note here and not there only the witness explained milled to get hostile.

3. When an Omission Amounts To A Contradiction

The Declaration states in explicit terms that an omission of a conflict is, and only if the same seems significant short and still relevant, and the same is a question of fact. And therefore "the duty of the court to decide the case by applying the above test. And "well established that an omission should be an important aspect of what the witness was usually tied, or

to reveal even plans with more answers without question the new release date in the box when arguing against what has been said and operates as a decoration. Minor omissions do not conflict. Rather, only the omissions that would by necessary implication lead versions of the statements of the police and the court made conflict will amount to contradictions. However, it is noteworthy that the courts were aware not to widen the scope of the omissions in the amount of opposition too far. Primarily, which are recorded under S. 161 of the police statements generally the content of the declarations and small details are always omitted. These omissions were not counted as contradictions. Faulty memory, especially, called when the witnesses testify before the court, long after the statement was actually made, another important reason for the failures, and the court has enough room for the same, also correctly recognized the fact that the recorded statement, in most cases is not a text rendition of what is said by the witness. It has been said that an error in the police report cannot be regarded as an objection, but that which is deposited in court, in contrast to the police statement.

4. Declaring a Witness As Hostile

At the end of this chapter the researcher has tried to provide a brief summary of how one can witness hostile and the sequence of steps to be explained, that must be followed for the same.

(A) First, a witness is cross-examined, without the writing is shown to him. The witness is required to reformulate to court, what I said during the investigation. But he cannot do it or even ever made such a declaration not conceal. If it is clear that the witness had become hostile to the prosecution can pray that the witness hostile and permission has turned to him get to cross-examine. Up to this point, "properly to prove", the declaration is not needed, since the formal procedure has not yet begun for the opposition.

(B) Then, the attention of the witness should be given to those parts of the statement to be used for the purpose of contradicting him.

(C) Then the statement should be "duly proved" that is usually the investigators in this case it would be necessary to testify that the statement was actually made.

(D) If the statement is duly proved, the prosecution or defendant, with the permission of the judge can use it to contradict the witness, so relieved credibility of his office.

It is a very important but subtle difference between the first and last step. The first step may provide only the pursuit of the witnesses in question; refer to its previous statements and not to dismiss its credibility of his office. This would help to increase the benefit of party materials by such cross-examination without recourse to the procedure in the second part. S. 145 do not have the right of cross-examination in any way limit, without showing the testimony of his previous written statement. What it is staged, that if it is intended to contradict him, his attention should be called the letter. The distinction between cross-examination and opposition must be kept at all times in the eye, to resolve any ambiguities that may arise 162 and 145 in a superficial reading of portions.

Implications of Declaring a Witness as Hostile

Since there is no rule of law , stating that an earlier statement should be treated as correct and the next to be false , the declaration made by the witness should be discarded , the only program that the credibility of the witness that test derives ,

If the court finds that the witness was contradicted by his statement, he can reject his performance completely or partially, but this cannot be the ground to assume that the witness has spoken falsely in court and the judge do not initiate procedures to S. 344 of perjury, only for this reason, if no other material is that the declaration by S. 161st

After the process at explaining hostile witnesses involved to study, it is essential to examine the shortcomings of the law , turning the little discouraged witnesses hostile.

5. Flaws, Analysis, Amendment & Solutions

"**Flaws" - a review of the Law**

(A) Section 162: In this section, as it stands, can now be used only recorded a witness in relation to his earlier statements under S. 161 of the CRPC to disagree and in this sense is categorically imposes a ban.

• The section is too narrow, so that the examination of witnesses the prosecution alone, and so make the statements of the defense witnesses under S. 161 absolutely unnecessary. This also means that the accuracy of the statements of the witnesses for the defense and the court made cannot be called into question, what is a crass error and must be fixed. In some cases, the courts have also noted that that the Indian law does not allow the cross-examination of defense witnesses in relation to his earlier statement to the police is unfortunate.

• Secondly, another great failure of this section is that it does not allow the confirmation of the testimony of witnesses and in this way the provisions of S. 157 of the Evidence Act contrary. This approach is clearly not conducive to the administration of justice. Distrust in the police, although developed over a century ago, as strong as ever continues, extends beyond what is actually required.

• Third sets the section to obtain a strict ban on the signed statements of the accused, to protect them from coercion and duress in police custody, which is born by the lack of trust in the police again. It should be noted that the problems associated with such a suspicion is high costs, encourage witnesses to come back on their words and to make contradictory statements during the process. Get signed statements can be a tool to deter witnesses hostile and turn control of perjury.

In total, this section is accused of a perfect reflection of the procedure acts centric. It guarantees an absolute and inalienable right of the accused. Instead, it is a very difficult for the police, so that even the least suspicion would on the testimony of witnesses, erode their value and small program that have otherwise.

(b) Other lacunae in the laws which encourage witnesses to turn hostile

(I) At the moment no offense to knowingly make a false statement before an investigating officer for the relevant criminal section that S. 193 of the Indian Penal Code punishes false statement, only if there is an obligation to tell the truth. When you read this, together with S. 161 of the CRPC, it only means that a person who is being investigated by a police officer, "is obliged to answer all questions" in the course of an investigation regarding the matter, nothing but questions have the answers to a tendency to expose him to a criminal offense or a penalty or loss. Since the word "really" does not appear in S. 161 (2) after the word "reaction", the penal provision in S. 179 of the IPC has asked to answer not apply in relation to a case of refusal to questions from investigators.

This seems a big gap in the police procedural law and encouraged to lie unscrupulous witnesses impunity. In its current form, the section proposes to curb the habit of perjury, which are widely used in our country and hindered the cause of the investigation. If the purpose of the research is to find the truth is, and if it is the duty of the citizen is to help in the discovery of this truth, honest questions in their possession, the section should be amended to make it to the witness, to uphold the truth.

(II) Secondly, the perjury has become a forgotten crime in India and has more serious, as in other countries are taken if it is a serious offense and attracts a severe punishment. Prosecution and punishment for perjury "should be frequently and dissuasive." This can be done quickly just by trying the cases of perjury, summarily and technically. Probably the published reports of such testing should bring the desired result of fear in the minds of witnesses to provide inclined to favor them for ulterior motives accused.

(III) There is no special provision in the law, especially in dealing with people who threaten or intimidate witnesses. For example, section 503 of IPC deals generally with criminal intimidation and is no special protection for witnesses. Although that even cases of intimidation of witnesses can be argued, and so can be brought under the same section, and there is no real need for further legislation, two important questions must be unaddressed:

• Primarily, the penalty for such offenses should be higher, because they interfere with the administration of justice and, therefore, are odious.

• Secondly, the offenses are bailable and lengthy investigations and studies, facilitation is likely to witness or delivered too late, only be refused.

Proposed Amendments

(I) The Indian Law Commission in its 154th report had recommended that S. 164 of the CRPC be amended to make it mandatory to do for the investigators to obtain materials the statements of all witnesses recorded by the magistrate under oath. The statement that will be recorded by great probative value, it would be for the opposition as well as confirmations and keep turn witnesses hostile useful. Consequently, it has the addition of subsection 1A to S. was 164. Although this solution would be desirable and would protect the testimony of coercion by the police, suggested very possible as there are more judges require sole purpose of setting the major explanation would Shot.

(II) in the light of the above restrictions in the proposed amendment suggested the 178th report of the alternative, that the proposal of S. 164 (1A) should be limited under penalty of ten or more years in prison or criminal offenses worth death. It was very loud claims that this proposal does not require the recruitment of new magistrates and the current number of would be sufficient. However, there is no denying that, because the crime rate in India, it would be impossible for judges is performed another function as well as registration statements, whether the proposed S. 164 (1A) is announced.

(III) Section344 of the CRPC must be amended in order to apply for a court, without notice to try where a witness is of the opinion that a witness has knowingly and given deliberately false evidence of false evidence produced in a matter before the Court (currently the court has the option of whether the case without notice or less to try).

(IV) in fact, most of the judges ignore the fact that the witness back on his words and did not even have a complaint against the same file. Perjury has become almost a way of life in the courts. Hence it is that S. 340 proposed the revised

Criminal Procedure Code, which allows any officer of the court to file a complaint against hostile witnesses. It is also respectfully, that the courts should be vigilant in carrying out these problems and giving lower courts their duty to curb the threat of perjury, by training and ask regular reports.

(V) The statements to magistrates under S. 164, it is suggested, should be of considerable value, and if the witness should be covered by their statements that may be used as material evidence against the accused, should say, before statement instead of made inconsistent during the process, because the former is in the heat of battle, and more likely to be true. the probative value of the statements should for the assessment in the light of cross-examination and other relevant issues in the discretion of the court, however, be left. The flip side of this argument is that it creates a great opportunity to exploit the situation for the police and to use coercive methods to obtain favorable testimony of witnesses.

Solution

In addition to the proposed amendments, which would go a long way to rectify the situation, if implemented in full spirit, a possible solution, which also corresponds with the current scenario of the laws and regulations, the testimony is to obtain recorded immediately after 'wear the incident before a judge, punished so that this witness the constant fear pursued, differentiating different statements during the trial for the case.

On the contrary, a more radical line of thinking is, according to which, the police statements made are to be permitted. For example, in the earlier confessions TADA made to the police in 1987 they were admitted as evidence under certain circumstances, depending on whether the policeman had made a certain rank and the confession voluntarily. The same image was also adopted in POTA. As this has been argued that the statements of the police officers should be of a certain rank permitted. On the other hand, this provides ample opportunity for abuse by the police, who seem to have done anything proactive to shed her shyness for others. Secondly, both TADA and POTA were for extreme situations and cannot be implemented on all crimes in all situations.

And "the opinion of the investigator. This solution seems the most effective way and the shortest, to raise the issue of hostile witnesses, however, it would be serious doubts about the criminal justice system to increase and lead to many disputes Definitely you cannot go from one extreme go to another place to load the victim centric. Once a bit 'of faith is instilled in police services, the solution would surely arise as practicable. be played for this important role of the police and the legislature itself. In the present scenario, the distrust has actually in the police Cr.PC. institutionalized unless changed such perceptions, it is believed that such a solution would lead to more noise, and distrust in the courts that persists today. On the contrary, although other solutions, with high costs and time, which seem most promising, stable and acceptable for everyone.

Finally, it is argued that even if all the amendments and the proposed solutions are designed and witnesses from turning hostile only to the induction of Geldgewinnenabgeschreckt , it is difficult to see how a witness he would react if his life was at risk because of the threats the accused . It would not be unreasonable to describe his position, caught between the devil and the deep sea, so he has no choice but to put the wrong before a court, under pressure from the threat to life. It defeats the principles of natural law, if such a witness for perjury punished.

6. Conclusion

- Until Witnesses believe hostile rotate and not to make a truthful testimony in court, justice will always suffer and people's confidence in the effectiveness and credibility of the judicial process and judicial further eroded and destroyed. Only j. Sorabjee, former Attorney General states that "nothing because witnesses public confidence in the criminal justice delivery system over the collapse of the prosecution shakes turning hostile and withdrawing their previous statements."
- And "from the discussion of the research paper, the concept of an independent witness has almost become a utopian demand. If you were to go to the statistics, the majority of the acquittal as a result of increasingly hostile material witnesses. The statements of the investigators under S. 161 (3) of the CRPC have recorded virtually no significant value and are simply used to accuse the credibility of the witness. The social climate still scares strongly every righteous fat and to be given truthful and legal immunity to the witness both feel hostile good faith making or for oblique reasons usually encourages witnesses turning hostile, reckless for the same.
- After the various gaps highlighted in the legislation and analyzes the proposed solutions and modifications within the scope of this article, aims the researchers to present the results I have achieved:
- To make during the statements of a police officer during the investigation, is admissible, it appears to be an effective solution, which is a strong possibility to set, that it placed in the criminal justice system could lead to the loss of faith. With such a high cost it, the solution is clearly not desirable. However, there is no denying that this solution would certainly be ideal if people's perceptions lead to more confidence in the police had to change. As long as the same is not available, it is proposed that such a solution would allow mechanisms of abuse more harm to resolve the situation.
- Under the proposition that all statements of witnesses made during the investigation, should be compulsorily registered by the magistrates, one that appears to be "impractical" at first glance. But it has its advantages as well - pay (a), the intention of the legislator behind witness protection from coercion by the police under consideration; (B) would fall with the public good and does not require any change in perception; (C) is an effective method in addition to the testimony of witnesses for utility, as the rulers made statements can also be used for confirmation, as opposed to the current legal situation, according to which the police officers to hear only be used to the credibility accusing the witness.
- In addition to bringing about a change in the perception of people, it is much more difficult, as they recruit to change a legislative and other authorities, as well as the need arise. However, the solution proposed here would be meaningless if it is not complemented by appropriate legislation on perjury that should be heavily censored from now on.
- Also, all solutions that bring up and set more rigor than perjury would be pointless if the baton between the devil trapping and the deep sea, so on one side of his life by the defendant and the other threatened it is an offense wrong testifies. Faced with such situations, which are quite common, all rational witnesses would opt to right to remain silent before the court and therefore the above solutions do not only discourage witnesses from giving false testimony, but also keep them from testifying court.
- The output is in a dilemma over "witness protection program" that was needed to complete the solutions that have been proposed. So a hybrid of the witness protection program solution, independent of the police, suitable amendments to

the CRPC and strict censorship of perjury, is proposed as a solution the researchers to examine witnesses hostile to rotate without be unnecessarily hard on them.

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