

CRITICAL ANALYSIS OF HOSTILE WITNESSES

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"Witness is one who sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition, or by affidavit", Black's Law Dictionary.

"Witnesses are the eyes and ears of justice", Bentham.

"A criminal case is built on the edifice of evidence, evidence that is admissible in Law. For that witnesses are required, whether it is direct evidence or circumstantial evidence", J. Wadhwa¹

Introduction

Witnesses play a crucial role in the determining of outcomes in court trials. When a witness provides a favourable testimony, he is strengthening the case of the party that produced the witness.

However, during the process of examination by the other party, the testimony of the witness may get discredited owing to differences in facts or unwillingness in sharing the entire truth among other signs. When a witness's testimony is discredited, he becomes what is known as a hostile witness.

A tough situation arises when the witness who was in your favour just a while ago now turns hostile causing a chain reaction that would ultimately lead to a significant change in the final outcome of a case than what might have been if the witness was not discredited.

The immediate solution for this would be to check the credibility of witnesses. But a solution that easy is far complex than it appears- it can lead to lengthening of the trial process and if by chance there is a mistake, it can result in an unjust trial. Further, when the court is supposed to verify the credibility of the witness and there unfortunately happens to be a mis trial or injustice, it would lead the courts in a messy muddle trying to grasp at the truth.

It also depends on whether a witness was a prime witness or one who can be dispensed with for the case of a just and fair trial.

If a prime witness turns hostile, it would lead to the court reconsidering the whole case and question relying on the primary witness's testimony. This would thus lead to the court having to resort to depending on the circumstantial evidence more than the witness when it comes to the determination of the final outcome of the case.²

A witness is an integral piece of evidence in any case and to do away with the biggest decision swayer does not reflect well on the overall case outcome. Having to rely on circumstantial evidences when the key witness turns hostile may lead to devastating effects in the penultimate judgement.

¹ India: Examination of Witness: Legal Aspects, Priyanka Godora, 5 June, <https://www.mondaq.com/india/trials-appeals-compensation/947522/examination-of-witness-legal-aspects>

² Hostile witnesses and evidentiary value of their testimony under the law of evidence, Dr. Shabnam Mahlawat, ILI Law Review Vol. II, Winter Issue 2017

In short, the role of a witness is paramount in the justice system of any country³. A witness acts as the main evidence in a trial court and forms the backbone of any case. If this backbone falters in its purpose or is proven to be hostile, there is a high chance that the whole case would collapse.

Who is a hostile witness?

The term hostile witness has been derived from Common Law, where it was introduced to provide adequate safeguards against witnesses that, by providing hostile evidence, ruin the cause of the party calling them. When one party calls upon a witness to suit their version of events in the trial of a case and then the witness who was priorly helping the introducing party turns hostile, the case would collapse for one, and would also lead to a lot of wastage of precious time of both the courts and the involved parties. A hostile witness not only puts the whole case at risk of crumbling, it also puts the courts ability to dish out justice at a precarious state.

Hostile witnesses can destroy carefully constructed cases and cause unjust acquittals of the guilty. They can make a mockery of an investigative process. These witnesses are brought in by a party to provide a deposition in its favour and help the prosecution build its case, instead when the witness turns up in court and gives a version that is different and contradictory to its earlier statements.⁴

This is not to say hostile witnesses are always contained with malicious intent, many times, in fact most times they are blackmailed and threatened to say the untruth for the price of their life or that of their close ones.

The safeguards in Common Law consisted of the party who had called such witnesses for their case and illuminated the contradiction created by the witness on the basis of their previous testimonies. However, to initiate this safeguard, it was important for the court to declare the witness as hostile.

For a declaration that the witness is hostile on the basis of which the safeguards could be placed, Common Law emphasized on certain characteristics of a 'hostile' witness such as the lack of a desire in wanting to tell the truth or the existence of an 'unfriendly animus' towards the opposite party i.e., the party calling for the witness.

Provisions related to Hostile witness in India

The domestic law has contrasting provisions with respect to Common Law.

Indian Evidence Act

“Section 154- Question by party to his own witness

Section 132- Witness not excused from answering on ground that answer will criminate”⁵

³ Hostile Witnesses and Laws relating to hostile witnesses in India, <http://www.legalservicesindia.com/article/1692/Hostile-Witnesses-and-Efficacy-of-Law.html>

⁴ Hostile Witness: Laws Across the World, Vipasha Verma, June 16, 2016, <https://blog.ipleaders.in/hostile-witness-laws-across-the-world/>

⁵ Indian Evidence Act, 1872

Criminal Procedure Code

“Section 161- Examination of witnesses by police

Section 162- Statements to police not to be signed: Use of statements in evidence”

Section 164- Recording of confessions and statements

Section 311- Power to summon material witness, or examine person present”⁶

Indian Penal Code

“Section 191- Giving false evidence.

Section 192- Fabricating false evidence.

Section 193- Punishment for false evidence.

Section 194- Giving or fabricating false evidence with intent to procure conviction of capital offence.

Section 195- Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

Section 202- Intentional omission to give information of offence by person bound to inform.

Section 203- Giving false information respecting an offence committed.”⁷

Case laws

The Jessica Lal Case⁸

The best case involving hostile witnesses in a large number is the case of Jessica Lal’s murder. Around a total of eighty witnesses turned down their previously given testimonies and had been declared hostile in the case of Sidhartha Vashisht and Manu Sharma vs State (2010).

Jessica Lal was an aspiring model working in an unlicensed bar in Delhi. One night upon refusal to serve liquor to Manu Sharma, son of former Union Minister Venod Sharma, and his three friends, an annoyed Sharma pulled out his gun and shot twice, one of the bullets hit Jessica in the head and she died instantly.

Due to the testimony of the hostile witness, the trial court had acquitted Sharma in the year 2006.

A bar full of people who literally witnessed the incident in front of them, the bar owner being one of the main ones- refused to identify Manu Sharma as the shooter. It is unclear exactly why the witnesses turned hostile, but the fact that Manu Sharma was the son of an ex-union minister is a direct indicator of foul play and improper usage of power and money.

There was a huge public outcry against the decision and the appeal regarding the decision was accepted, however, the evidence was the same as was presented in the lower court. Sharma was sentenced with life imprisonment and a fine.

The acquittal of the accused in the Jessica Lal Murder case was an extra ordinary failure in the carrying out of justice. If the police cannot nab a killer who in a place as open and protected as the national capital region shot his victim at point-blank, before several eye witness, there is a serious necessity for rethinking the investigative and judicial apparatus present in our country.

⁶ Criminal Procedure Code, 1973

⁷ Indian Penal Code, 1872

⁸ Sidhartha Vashisht @ Manu Sharma vs State (Nct Of Delhi) on 19 April, 2010, Supreme Court of India

Best Bakery Case⁹

In Best Bakery case, the powerful and rich accused in the case of Zahira Habibulla H Sheikh ad Anr vs State of Gujarat And Ors (2006), used their advantage and power and forced the witnesses in the case to turn hostile.

Fearing for their lives, the witness's contrary to the actual truth refused to recognise the accused, leading to an acquittal of a guilty man.

Later, the witnesses accepted that they had turned hostile due to intimidation and influence. Zahira Sheikh had disclosed to the social activists that she and other witnesses turned hostile under threats issued by the accused who used their positions of power and money to threaten them.

In this case Zahira having committed contempt of court was sentenced to a simple imprisonment of 1 year and pay fine of Rs. 50,000/-. In case of default of payment within 2 months she would face further one-year imprisonment term.

While Zahira was fined for contempt, that there was a gross injustice that took place which could have easily been avoided had the witness been given sufficient protection against the threats was conveniently ignored.

BMW hit and run case¹⁰

On 10 January, 1999, a BMW driven by Sanjeev Nanda, grandson of the former Chief of Naval Staff S.L. Nanda had allegedly run over sleeping pavement dwellers in Delhi.

Three people died on the spot and others received severe injuries. As the trial progressed, a large number of witness turned hostile.

In this case, there was the buying of witnesses by the accused. Manoj Mallick, the lone survivor of hit and run, testified falsely to the court and said that he was injured on account of being hit by a truck and not a BMW.

Another key witness, Hari Shankar, refused to identify the BMW and another witness conveniently went missing. In fact, none of the witness supported the prosecution.

Since no witness supported the prosecution, the accused was acquitted. In the end, the accused were granted bail.

In all three of these landmark cases the collapse of the case is blamed on the witnesses turning hostile. While the case certainly rested on their truth, the cases were also against affluent people with money and political power on their side. When there is such a blatant miscarriage of justice the question arises- is the law really equal for all? How can a common man have faith in the judicial system of the country when it is apparent that the law is equal for all but if you have money and power on your side any criminal can go scot free.

This is an issue that surpasses that of merely hostile witnesses, anywhere you go the powerful and the rich rule over the weak. The law is in their hands and they above the law.

⁹ Zahira Habibullah Sheikh & Anr vs State of Gujarat & Ors on 8 March, 2006, Supreme Court of India

¹⁰ Sanjeev Nanda vs The State on 20 July, 2009, Delhi High Court

To an extent blaming the judiciary for these incidents is incorrect because the mentality of society and the lack of any civil sense is also equally to be blamed.

What makes a witness turn hostile?

There are many reasons why a witness may turn hostile in a case, few of them are-

1. People are disinclined to go ahead with court proceedings which in India is a long and cumbersome process.
2. Fear and intimidation caused by criminals or goondas. A witness turning hostile is very often caused due to temptations or threats issued by criminals or goondas, basically adult bullies. More often than not threats issued by the powerful people force a witness to retract from his statements. This also reflects our criminal justice system and how it treats victims and witnesses.
3. Witnesses feel a sympathetic attitude towards the accused.
4. There is a lack of a social culture of civil sense in India. The sensibility and desire to stand up for the right and stay by it irrespective of the odds, is just absent in the masses.
5. There is a high rate of bribing and corruption observed in the social setup of India.
6. While the offenders have a wide range of rights and laws in place to protect them, there is a limited range of laws protecting and providing privileges to the witnesses or the victims through the judicial means or by the discretions of the judges.
7. Other factors involve Political intimidation, fear of police and lack of faith in the legal system, absence of fear of perjury, a law enforcement machinery that is usually unsympathetic and finally rampant corruption.¹¹

These are some among the many causes when witnesses make statements against the interest of the party who has called him and turned from their precious statement.

Conclusion

That the Indian legal apparatus is flawed is no new news to many of us. With corruption, bribery and equality a word only in the constitution the state of the judiciary is but a given.

To fix the issue of hostile witnesses the only direct solution would be to implement laws to safeguard the rights of witnesses so that no one would have to give false testimonies in court fearing their lives,

In a way the ignorance to social civil sensibilities has only added fuel to the raging forest fire that the situation already is.

Even if laws safeguarding the anonymity and rights of witnesses are introduced, there should be a dedicated implication of the same. Merely having a law solves nothing, it is more important to follow it- something which is already not being done enough with the existing framework.

Perhaps when civil sense overpowers selfishness and false power derived from top positions falls flat, maybe then one might see a brighter day in the land of Indian Judiciary.

¹¹ Hostile Witnesses and Laws relating to hostile witnesses in India, <http://www.legalservicesindia.com/article/1692/Hostile-Witnesses-and-Efficacy-of-Law.html>