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Abrogation of Law by Hostile Witnesses

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When citizens lose faith in the judicial system to resolve their issues in a court of law or when they are rendered helpless, they will resort to extra constitutional or extra-legal methods, which will jeopardise the rule of law. The rule of law, the basic foundation of democracy, is under threat. Only in writing does the concept of hostile witness exist. The statutes relating to hostile witnesses are no longer in effect. The provisions concerning the hostile witness were in jeopardy. In any country's cardinal justice system, the function of a witness is crucial. The case centres on the testimony of witnesses. What happens, though, if these witnesses become hostile or withdraw their statements? As a result, the importance and priority of the trial process quality of the witness are incapable of acting as the eyes and ears of the law, the trial progresses. It has been paralyzed, and it can no longer be considered a fair trial. This article highlights the problems of witnesses turning hostile and its effect on the justice delivery system. It also analyses the importance of witnesses and protection of witnesses in the criminal justice system and the probative value of their testimony crucial to the trial to meet the ends of justice and focuses on the need for effective legislation in order to curb the hostility in witnesses and suggest some practical measures to prevent hostility of witnesses.

Keywords: *judicial criminal justice system, hostile witness, perjury, victim.*

INTRODUCTION

In the criminal justice system, witnesses play a critical role. “Witnesses are the eyes and ears of Justice,” according to Bentham because every statement they make in front of a court of law

aids the Court in delivering justice. Justice is a term used in the criminal justice system. It is impossible to carry out without the active and honest participation of witnesses in criminal cases proceedings. Despite this, the Indian legislature has not provided a proper definition of the term "witness" in any of the Indian statutes, and neither the Code of Criminal Procedure, 1973, nor the Indian Evidence Act define the term "witness" in any of its sections. Nonetheless, according to the dictionary, a witness is a person who is present at an event and may provide information about it.¹To put it another way, "a witness" is someone who "witnesses" something one who sees, knows or vouches for something, or one who testifies under oath affirmation in person, or by deposition (oral or written), or by affidavit."²

Witnesses and their involvement in determining case outcomes are critical in courtroom trials. When a favourable witness gives positive testimony, it strengthens the case of the side who called that person. This testimony, though, could be useful. During the cross-examination of the witness, the opposing party discredited the witness. When a favourable witness becomes hostile, it creates a difficult position that can influence the outcome of a case. It becomes a difficult chore to work with one's own witness to shift the case in one's favour. The credibility and impeachment of one's own witness cause the trial to drag on and, in some situations, resulting in an unjust trial, leaving the court in a frustrating predicament when it comes to determining the truth in a case. It is also contingent on whether a witness was either a key witness or one who could be ignored in a case of a trial that is both just and fair. If a key witness becomes hostile, the court may reconsider relying on his or her testimony and instead rely on circumstantial evidence rather than the witness to determine the case's outcome. If, on the other hand, a witness isn't a key player, the court may come to the opinion that the witness testimony is untrustworthily discarded, and it would seek out alternative, more dependable solutions. The vital role that the witness may play in certain cases may have disastrous consequences if the court is forced to depend on other evidence instead of the testimony. Furthermore, in some circumstances where the accused or injured parties are strong citizens of

¹ Dorling Kindersley, *Illustrated Oxford Dictionary* (Dorling Kindersley Ltd & Oxford University Press, London 1998) 958

² Bryan A Garner, *Black's Law Dictionary* (17th edn, West Group, St Paul, Minnessola) 1596

a country, the trial may be hampered by certain psychological preconceptions about their status, which the court should dispel and not allow guiding the case.

The Supreme Court ruled in *Himanshu Singh Sabharwal vs. State of M.P. and others*³ that "free and fair trial is a sine qua non of Article 21 of the Indian Constitution." It is common knowledge that justice must not only be done but also shown to have been done. It is pretty apparent that justice must not only be done but also shown to have been done. If a criminal trial is not free, fair, and without bias, judicial fairness and the criminal justice system are at risk of losing public trust the participation of the general people in the system, as well as the rule of law"⁴

Whether that is the Best Bakery case, Jessica Lal case, or Phoolan Devi case, it's been observed that eyewitnesses turn hostile throughout the trial of the case in most high-profile and even ordinary instances, which not only makes the prosecution more difficult. Although the case is weak, the victim is also subjected to great injustice. In a country like India, where there is no rule or mechanism in place to safeguard witnesses, the judiciary has become a puppet for the wealthy. Even during an inquiry, the investigating officer is not required to record a statement made under oath and signed by the witness under Section 161 of the Criminal Procedure Code. . That is why, after making a statement under section 161 Crpc, witnesses become hostile at trial, which has a negative impact on the prosecution process since, according to Part 193 of the IPC, "This section provides that The penalties for giving false evidence, as specified by Section 191, are as follows: Section 192 of the Code defines creating false evidence. According to the law, anyone who intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of using it in any stage of a judicial proceeding, will be punished with simple or rigorous imprisonment for a term of up to seven years, as well as a fine and anybody who wilfully gives or fabricates false evidence in any

³ *Himanshu Singh Sabharwal v State of MP & Ors* (2008) 4 SCR 783

⁴ *Ibid*

other matter not mentioned above is subject to simple or rigorous imprisonment for up to three years, as well as a fine.⁵

“Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being legally bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence,” according to Section 191 of the Indian Penal Code. As a result, a witness who made a statement to the police and then became hostile in court is not punished. Numerous times, it has been discovered that the investigating officer did their best to gather evidence against the accused, but that owing to mistakes and a lack of provision for the protection of the witness, the accused profit from it and make false accusations mockery of both the judiciary and the executive (Police department), Not only does this have a detrimental influence on society, but it also discourages people from coming forward to make statements in cases where their lives are at risk and they are harassed by the authorities agencies in charge of investigations and prosecution. It is past time to enact legislation to safeguard witnesses, as well as alter the Criminal Procedure Code. As a result, it's important to keep an eye on a hostile witness's stance and credibility.

3.1 Legal position of a Hostile Witness:

A "hostile witness" is not defined in Indian law. When a witness makes a statement to a police officer about an offence and subsequently refutes it in court, he is referred to as a hostile witness. In none of India's laws, the term "hostile witness" is defined. It doesn't matter if it's CrPC or Evidence.

According to the Law Dictionary, a hostile witness is someone who the court believes is antagonistic to the party for whom they are expected to testify. If they are called, they can be cross-examined. Their own credibility can be used against them. Make reference to a negative situation witness.” In the matter of *Sat Paul vs. the Delhi Government*⁶ “To avoid the debate about the wording of the statute,” the Supreme Court stated. The terms ‘hostile’ witness,

⁵ Indian Penal Code 1860, S 193

⁶ *Sat Paul v Delhi Government* AIR 1976 SC 294

'adverse' witness, and 'unfavourable' witness were used to describe witnesses who were unfriendly, adverse, or unfavourable. In England, there is a lot of trouble and disagreement; the framers of the Indian Evidence Act of 1872 appear to have wisely avoided using any of those terms so that in India, a party's permission to cross-examine his own witness is referred to as "authority to cross-examine his own witness. "It is not contingent on the witness being labelled as "adverse" or "hostile." A hostile witness is one who refuses to speak the truth at the request of the party summoning him, whereas an unfavourable witness is one who is called by a side to prove a specific fact in the dispute or pertinent to the problem but fails to do so or proves the contrary test. If a witness fails to prove his statement in court, he will no longer be considered hostile. When he makes a comment that is harmful to the party calling for his favour or just contradicts his prior statement, he is said to be hostile.

HISTORICAL BACKGROUND

As the roots of the rule and its uniqueness of not impeaching a party of his witnesses cannot be traced with confidence, it is most likely derived from a trial by compurgation.⁷ During the Middle Ages, this method of the trial was popular on the continent as well as in England, where it was known as trial by wager of law. ⁸If compurgators testified that they were not compurgators, a party could establish his plea of defence by taking an oath, he was convinced he was telling the truth.⁹ The compurgators were little more than character witnesses because they merely testified to the veracity of the party's oath. In the beginning and subsequently, they were chosen by the party himself from among his immediate kinsmen....¹⁰The rule's credibility dates back to ancient England when the impeachment of a party's own witness was unheard of because a party's own witness was a party's own testimony. The party calling him as a witness would be delivering a positive and truthful account witness. The judge would next rule on the witness's credibility based on the evidence presented in the case. The ancient Indian writings provide certain outmoded viewpoints that were prominent at the time and were used in ancient communities. False evidence in court has been prohibited by the

⁷ Wigmore, *A Treatise on Law of Evidence* (2nd edn, Little Brown & Company, Boston 1923) 896

⁸ James B Thayer, *Preliminary Treatise on Evidence* (Little Brown & Company, Boston 1898) 24,34

⁹ Moschizisker, 'The Historic Origin of Trial by Jury' (1921) 70 U Pa L Rev 80

¹⁰ *Ibid*

Dharmashastras, pragmatically committing individuals to their obligation of stating the truth, which has been bound by society. "The judge's rebuke to witnesses is a unique feature of the Hindu judicial system."¹¹ They warned the witness to regard the genuine declaration as to his dharma and to uphold its dignity in accordance with the morals common in those civilizations. A clear presentation of the moral implications of perjury also instilled terror in them. Growing up associating truth with virtue and positive natural energies with merits made him a witness to speak the truth regardless of his caste rank. "It is an axiomatic principle that 'giving true evidence is rewarded with an afterlife in heaven, hence the corollary is that giving true evidence is rewarded with an afterlife in heaven Perjury is the road to hell."¹²

OBJECTIVE

This study primarily, inter alia and non-exhaustively, aims at achieving the following objectives:

1. This paper highlights the problems of witnesses turning hostile and its effect on the justice delivery system.
2. It also analyses the importance of witnesses and the protection of witnesses in the criminal justice system. Focuses on the need for effective legislation in order to curb the hostility in witnesses.
3. It also seeks to evaluate the extent and nature of its import in the provisions of the Indian Evidence Act 1872 and the manner in which it has been construed by the Indian judiciary.
4. To identify the causes for the reluctance of people being witness to a criminal incident in the context of the characteristics of the witnesses.

RESEARCH PROBLEM

According to Edward G. Bulwer, "Whenever man commits a crime, heaven finds a witness." As a result, witnessing is unavoidable. Witnesses can play an important role in bringing the

¹¹ *Ibid*

¹² *Ibid*

perpetrators to justice. In an adversarial criminal justice system, where the prosecution bears the burden of proof, the prosecution's witness becomes crucial in the investigation of the case. Witnesses can become hostile for a variety of reasons. The lack of police protection during and after the trial is a crucial factor. As a result, the witness is on the receiving end of the wrath, intimidation, threat, or inducement from the aides of the president (as stated by the Delhi High Court). The convicts who may have ties to the criminal justice system In other words, a witness may give multiple versions of stories of the same incident to law enforcement agencies, advocates, courts, and others for a variety of reasons. This is especially common in high-profile criminal trials in India, when the accused or anyone connected to him may impose mental pressure on witnesses who may have witnessed the alleged crime. Threats or the threat of death are frequently used to exert pressure on the witness, as well as his or her friends and relatives. This research study examines the above problem seriously and proposes that the major solution is to devise adequate victim and witness protection measures that can be applied, as well as to review the probative value of their evidence.

RESEARCH QUESTION

1. Reasons for witnesses to turn hostile? Rights, Problems, and Victimization of Hostile Witnesses?
2. What are the other safeguards which can be made towards a hostile witness?
3. What are the consequences of a witness turning hostile?

RESEARCH METHODOLOGY

The study is based on the doctrinal and secondary method of research, which is mostly concerned with referring to books, reports journals, articles, websites, and other online resources. The research methodology will be based exclusively on the literature review. The study also relies upon primary sources such as the Bare Acts

ANALYSIS

Any criminal justice system recognises the critical role played by a witness in bringing an offender to justice. In an adversarial legal system, where the prosecution must establish its case by presenting evidence, frequently in the form of oral examination of witnesses, which can then be disputed by the defence at a public hearing, their job becomes even more important. As a result, it has become a hot topic not only in India but on an international level too.

8.1 Grounds for which a witness turns hostile: In *Sat Pal v. Delhi Administrator*¹³, the Hon'ble Supreme Court attempted to define hostile witnesses and laid out that, in order to avoid confusion and disagreement over the meaning of hostile witness, adverse witness, and unfavourable witness, the authors of the Indian Evidence Act, 1872 appear to have wisely defined hostile witness, adverse witness, and unfavourable witness, avoid using any of those terms in India so that a party's permission to cross-examine his own witness is not contingent on the witness being labelled hostile or adverse.

DELAYED AND EXTENSIVE TRIALS

In Swaran Singh's case, the Hon'ble Supreme Court said: "It's almost become a fad to have a criminal case adjourned over and over until the witness gets tired and gives up. Unscrupulous counsel plays a game of getting adjournments for one reason or another until a witness is persuaded or tired....by adjourning the case without a valid reason, the Court unknowingly becomes a party to a miscarriage of justice. Being a witness is something that no one wants to do. The administration of justice is the one who suffers." For a long time, the Indian judiciary has been plagued with the curse of endless adjournments. They are one of the most common causes of hardship and trouble for witnesses and parties. They are obliged to travel considerable distances to the courts at their own time and expense. They may be unable to go large distances without abandoning their families, or they may lack the funds. This frustrates the witness, giving the other party an opportunity to intimidate or coerce them into not speaking the truth. If he does to appear on the scheduled date, he will face severe consequences. If he does to appear on the scheduled date, he will face severe consequences. The Justice Malimath Committee on Criminal Justice Reforms recommended that Section 309

¹³ *Sat Pal* (n 6)

of the Criminal Procedure Code, which governs adjournments, be altered to make it mandatory to award costs to the side that gets adjournments.¹⁴

DEFAULTS IN PAYMENT OF ALLOWANCES:

The Law Commission of India 154th Report¹⁵ the allowances granted to witnesses for appearing before the courts are insufficient, and fast payment is required, whether or not they are examined. Any Criminal Court may “if it seems suitable, impose payment, subject to any rules made by the State Government,” according to Section 312 of the CrPC. the reasonable expenses of any complainant or witness attending for any investigation, trial, or other procedure before such Court under this Code on the part of the government.” The majority of the time, however, proper diet money is not paid to the witnesses.

EASY AVAILABILITY OF BAIL TO THE ACCUSED

When it comes to high-profile individuals or terrible crimes, courts frequently grant bail to the accused, leaving witnesses subject to threats and intimidation by the accused. Unquestionably, Section 439(2) of the Code of Criminal Procedure allows for the arrest of someone who has been freed on bail, The State rarely uses it in cases where there is a fair suspicion that the accused is attempting to sway the witness.

LACK OF ADEQUATE FACILITIES IN THE COURTS

Despite the vital role that witnesses play in criminal cases, the resources available to them are limited and inadequate. Witnesses are forced to wait under trees in Court campuses or on the verandas of courthouses in numerous states, according to the 14th Law Commission Report¹⁹.¹⁶ They are not shielded from the effects of the elements. Even the courthouse outbuildings are in disrepair.

ABSENCE OF WITNESS PROTECTION PROGRAMS

¹⁴ 178th Law Commission Report 2003, 142

¹⁵ 154th Report, Fourteenth Law Commission, 1996

¹⁶ *Ibid*

Many witnesses do not come forward to provide their testimony in India, either because of unjustified delays in police or judicial proceedings. They may also refuse to come forward if they receive threats or warnings. In India, there has always been a need for robust witness protection legislation. In India, there has always been a need for robust witness protection legislation. Before delivering testimony in court, witnesses are frequently threatened, wounded, and even murdered. "Not only is a witness threatened; he is maimed; he is done away with, or even bribed," the Supreme Court said in Swaran Singh's case. He isn't protected in any way."¹⁷The key reason for witnesses recanting their previous testimony made during the trials is the threat to their lives. The Indian Evidence Act of 1872 protects witnesses from being asked obscene, scandalous, or offensive questions, as well as those that are intended to insult or disturb them. Aside from that, there are no legal safeguards in place to protect witnesses from external threats, inducement, or intimidation. According to the Directorate of Civil Rights Enforcement's recent survey (DRCE),¹⁸ the following are the main reasons for the low conviction rate: –

- Hostile witnesses – 26 percent,
- Hostile victims – 27 percent,
- Lack of abysmally low at 6.8 percent.

CRIMINAL CONSEQUENCE OF A WITNESS TURNING HOSTILE

1. SECTION 193: False evidence is punishable. Anyone who willfully gives false evidence in any stage of a judicial procedure, or fabricates false evidence for the purpose of being utilised in any stage of a judicial proceeding, is subject to imprisonment of either sort for a duration up to seven years, as well as a fine; In any other circumstance, anyone wilfully gives or fabricates false evidence is subject to imprisonment of either description for a time that may amount to three years, as well as a fine.

¹⁷ *Swaran Singh v State of Punjab* 2000 Cri LJ 2780 (SC)

¹⁸ Aakash Chaturvedi & Shivangi Sharma, 'Witness and Hostile Witness: Emerging Issues and Challenge' (2016) 4(1) *Galgotias Journal of Legal Studies*

2. SECTION 503: Whoever threatens another's person, reputation, or property, or the person or reputation of anybody in whom that person has an interest, with the goal to induce alarm or to cause that person to do something he is not legally obligated to do, or to omit something he is legally obligated to do, undertakes illegal intimidation as a way of avoiding the execution of such threats.
3. SECTION 199: Whoever, in a declaration made or signed by him, which any Court of Justice, public servant, or other person is bound or authorised by law to accept as evidence of any fact, makes any statement that is false, and which he either knows or believes to be false or does not believe to be true, is guilty of perjury, He will be punished in the same way as if he presented false evidence if he touches any point material to the object for which the declaration is made or used. Section 195 of the Criminal Procedure Code¹ applies in the case under the preceding sections. The Court shall only take cognizance of such offence on the complaint of such Court or any other Court that is subordinate to it, according to this provision.
4. Loss of faith in the judiciary: The overwhelming frequency of acquittals in criminal trials is eroding the public's faith in the justice system. A witness turning hostile at critical periods in criminal trials has swayed verdicts in the past, particularly in situations involving high-profile parties.

AN OVERVIEW ON THE CONCEPT OF PERJURY

Perjury is defined as lying under oath in legal terms. Taking a false oath during a court trial is primarily a voluntary act. Perjury is when someone tells a lie that could jeopardise the outcome of a trial. Ordinary lies, such as lying about one's age, may not be considered perjury unless they are significant to the case. The concept of "safeguard," as defined by the Common Law, consisted of the party calling witnesses disputing witnesses' past statements or impeaching their credit (which was typically not allowed). It was critical to declare such a witness "hostile" in order to start the "safeguard." Common Law established specific characteristics of a 'hostile witness for this reason, such as "not desirous of stating the truth at

the instance of the party calling him" or "the existence of a 'hostile animus' against the party calling such a witness."

The bravado displayed in the BMW case, where lawyers were caught in a sting operation by a TV station for buying a key witness to turn hostile, is a blot on the country's judicial heritage. Such circumstances necessitate the imposition of severe penalties. The legal remedy for this criminality, which too often involves the "buying" of witnesses by powerful accused, can only be handled by strictly implementing the penal legislation on perjury, as we have seen in many sensational cases where the witness became hostile. Zaheera Sheikh was handed notices for "perjury" or "false evidence" by the Bombay special trial court in the Best Bakery case, as she had backtracked her claims multiple times. Later, in an extraordinary case, the court sentenced Zahira to one year in prison for hostility. In the Jessica Lall murder case, the Delhi High Court has taken suo motu cognizance of the police/prosecution notion of "hostile witness." Though Zaheera is not an isolated case of perjury, misleading evidence or retraction of testimony is a typical occurrence in Indian courts. Due to the fact that it is nearly unrevoked, in court circles, perjury provisions have practically become a rare occurrence.

EXAMINATION OF A HOSTILE WITNESS (SECTION 145)

'The court may, in its discretion, let the person who is also a witness to ask any questions to him that might be asked in cross-examination by the adverse party,' according to the statute.¹⁹ In English law, an attorney who had brought a witness who turned out to be hostile was allowed to use at least some cross-examination procedures. Section 154 grants discretion unrestricted by the criteria for detecting hostility, yet comparable concepts appear to have been implemented in practice, at least in standard circumstances. "A majority of American jurisdictions now allow a party to impeach a witness who has been summoned in the aim of bolstering his case, on the grounds that the party is not liable to the court for the testimony simply because the witness has been called in the hope of bolstering his case."²⁰

¹⁹ MC Sarkar and others, *Sarkar's Law of Evidence* (16th edn, vol 2, Wadhwar and Company, Nagpur 2007) vol 2 33

²⁰ D Hayden, 'The Origins of the Indian Evidence Act' (2010) 10 Oxford U L J 1

As a result, any party, including the one calling the witness, can impeach him in certain jurisdictions: see, for example, Federal Rules of Evidence 607." ²¹ When a party offers to establish evidence through witnesses, it is commonly assumed that they will contact people who have negative references for them. These witnesses are referred to as 'hostile witnesses by the law, and the court is obligated to proclaim them as such. A party cannot declare a witness hostile on his own, for any reason, including when he has answered some questions in a trial that may not have gone in his favour. Being hostile does not undermine the witness or give the idea that he is dishonest, has malice, or has an unfavourable attitude toward him. He may not remember the circumstances of the case if he is not summoned to testify. However, if a witness is actually nasty and gives negative replies to all questions, or if it appears that he is attempting to damage the case of the party calling him as a witness, the court should label him a hostile witness. In the instance of a hostile witness, the situational response is to repair the damage that such a witness has made to the case. In other words, the method of impeaching one's own witness is to cross-examine him and ask him the questions that the opposite party may ask.²² In an adversarial system, it is common for parties to call witnesses who testify in their favour, resulting in a favourable outcome that allows them to establish their rights or deny their duties. A hostile witness is one who does not speak in support of the person or party in whose favour he is deposing at the time of the trial." The certain participant in a lawsuit has the right to call all admissible evidence at his disposal that would help him prove his case. The fact that some of the evidence turns out to be unfavourable or insufficiently favourable has no bearing on this concept. As a result, just because a witness proves unfavourable does not exclude the use of any other accessible evidence related to the issues that the witness was expected to prove."

PROBATIVE FORCE OF TESTIMONY OF A HOSTILE WITNESS

The courts have decided in numerous decisions that declaring a witness hostile does not ipso facto rule out the evidence. The precedent of cases indicates that a portion of the evidence that is beneficial to both parties and aids the courts in reaching a decision may be upheld and

²¹ G Richard & M Peter, *Murphy on Evidence* (3rd edn, OUP 2013) 612-614

²² *State of UP v Ramesh Mishra* AIR 1996 SC 2766

declared admissible. It must, however, be subjected to intense analysis and must be accepted with considerable caution. The Supreme Court's judgement ²³states that "it is equally recognised law that the evidence of a hostile witness would not be completely disregarded if uttered in favour of the prosecution or the accused, but it can be submitted to deeper inspection and consideration, Acceptable evidence is that fraction of the evidence that is consistent with the prosecution's or defense's case." "If the judge finds that the witness's credit has not been completely shattered during the process, he may, after reading and considering the witness's evidence as a whole with due caution and care, except in the light of other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it," the court said in another case.²⁴ This is exactly what the trial court and the High Court did in this instance, and the accused was found guilty in the trial. The courts, on the other hand, frown on hostile testimony since the judgements state that they will not be considered as mute spectators and will undertake a thorough examination of the facts and testimony in order to uncover the truth in the case.

The Court in *Sidhartha Vashisht*²⁵ underlined the evident flaws in the system, such as the police not appropriately documenting the testimonies and the prosecution witness retracting statements owing to intimidation, inducement, and other forms of manipulation. Courts, on the other hand, are unable to ignore reality. "If a witness turns hostile in order to corrupt the legal process, the Courts shall not stand by as a mute spectator and every effort should be made to bring the facts home," the court stated. Witnesses who act under duress, inducement, or coercion cannot reverse the criminal justice system. Furthermore, section 193 of the Indian Penal Code (IPC) punishes supplying false evidence, but it is rarely used." In another instance, *Raja v. State of Karnataka*,²⁶ the Hon'ble Supreme Court declared that "the evidence of a hostile witness in all circumstances must not be effaced entirely and that it can be accepted to the extent deemed dependable on a careful analysis." ²⁷.

²³ *Ibid*

²⁴ *Anbazhagan v Superintendent of Police* AIR 2004 SC 524

²⁵ *Zahira Habibullah Shaikh v State of Gujarat* AIR 2006 SC 1367

²⁶ *Raja v State of Karnataka* 2016 (9) SCALE 627; *Kulwinder Singh v State of Punjab* (2015) 6 SCC 674

²⁷ *Khujii v State of MP* (1991) 3 SCC 627

When witnesses testify and are discovered not to be telling the truth²⁸, their testimony can be used to discredit their credibility as a witness. ²⁹ The court may enable a person to ask his own witness comparable questions to those that would be asked during cross-examination by the opposing party under section 154. However, granting such authorization does not imply that the witness is a liar because he or she is a "hostile," "unfavourable," or "adverse" witness. His testimony will be judged in the same way as that of any other witness. ³⁰In the case of the Administrator, Municipal Board of Gangapur City, it was decided that a witness who contradicts his earlier version and decides to support the accused, betraying truth and oath, is not to be considered a truthful witness.

The power to authorise cross-examination after finding a witness hostile is unqualified and unrestricted under section 154 of the Evidence Act. The truth is extracted through the use of power. Section 155 enumerates a number of ways in which an adverse party might discredit a witness on the spot (for example, witnesses to credit, proof of a bribe, and proof of earlier contradictory statements).

"The simple fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not render him an unreliable witness so as to disqualify his evidence from consideration completely," the Supreme Court stated in *Krishan Chander v. State of Delhi* the court cannot suo motu make use of unproven remarks to police and ask questions about them that are contradictory with the testimony of the witness in court," the same judgement stated. The words "if duly proved" in section 162 CrPC clearly show that the record of a witness's statement cannot be admitted in evidence or looked into right away, but it should be duly proved for the purpose of contradiction by designed to elicit an admission from the witness during cross-examination as well as during the investigating officer's cross-examination. The statement made before the investigating officer can be used for

²⁸ *Bhawan Singh v State of Punjab* AIR 1952 SC 214

²⁹ *Janardhan v State of Kerala* (1979) Mad LJ (Cr) 49

³⁰ *Ibid*

contradiction, but only if section 145 of the Evidence Act is strictly followed, i.e. by highlighting the parts intended for contradiction." ³¹

CONCLUSION

Witnesses require far more security than they are currently receiving. We need to pass strict witness protection legislation that takes into account the needs of witnesses in our system. To prevent the witness from becoming hostile, rigorous laws are required. The media, too, bears a great deal of blame. The courts and the law should create safeguards to ensure that witnesses are safe. Protracted trials should be avoided at all costs. This backlog of cases that take a long time to resolve, as well as the frequent adjournment of proceedings, should be eliminated. Proper steps should be taken to reduce such acts. Prolonged trials provide fertile ground for hostile witnesses.

The court should regard the witness as a visitor who has been invited to assist him. The care he receives should be excellent. The prosecution should treat him with respect and dignity. The more protection offered to witnesses, the more witnesses will appear in court to deliver their testimony. The witnesses are poor, and they may have to suffer a great deal of financial loss while appearing in court. If the matter is now adjourned, they will be given a new date to appear.

As a result, the conditions governing the distribution of allowances should be enhanced so that the impoverished witness does not become hostile as a result of his or her frustration at having lost a large sum of money. The ease with which bail is granted to the accused in exchange for him threatening the witness should be investigated. There is a pressing need for policy improvements in the way investigations are carried out. Until and unless the witness is educated to understand that the system is designed for him and that he is at ease with it, hostile witnesses will be a typical occurrence in every case.

³¹ *Ibid*