

Abstract:-

It is simple presumption that the witness who has come to give evidence, he will give his evidence in favour of the same party which has brought to him. If that witness gives his evidence against it then that party, will have full right after declaring that witness hostile cross examine to him. Such a witness is called adverse unfavorable or hostile the party inviting such a witness is neither bound by the statement made by such a witness nor any part of the statement made by such a witness does not become an acceptance by that party. The cross examination of any witness by the penal authority is not definitely that the penal authority considers him a true witness. Nor the permissionThe evidence of a hostile witness in a case is evidence to that very extent and in that

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very manner just as that of other witness. by the court to cross examine that his evidence is futile and unreliable.

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HOSTILE WITNESS

INTRODUCTION

A witness is considered to be hostile witness when the opinion of court he has feeling which are against the party which has invited him and the witness adopts an adverse attitude to the party that has invited him. The witness, who is complainant or conforms, is not necessarily a hostile witness. A hostile witness is that who gives evidence in his own way but he shows that he does not intend to speak truth. If for a prosecution there is no healthy system that he may say to the court that he has received this information about a particular witness that he has become hostile. The hostility of the witness and his adverse attitude can only be inferred from his statement and his conduct.

The reason for declaring the witness hostile

The court should exercise its discretion very judiciously, with knowledge and sagacity and should also clarify that reason because of which the court the court is permitting the cross- examination of the witness because the witness wants to conceal the truth or who has been won over by the adverse party. Therefore, in the interests of justice this is necessary that he should be declared hostile and the court should permit to cross question him.

A witness is an indispensable and in the justice delivery system in any civilized society. But the Supreme court observed that in cases involving influential people, the common experience is that witness does not come forward to give the statement of fear and pressure. The Supreme Court in Sarwan Singh Vs State of Punjab,¹ Expressed deep concern about the predicament of witness. In the case Supreme Court held that.

“A criminal case is built on the edifice of evidence; evidence that is admissible is law. For that witnesses as are required, whether it is direct evidence or circumstantial evidence”. Even though the witnesses as are an essential part of the criminal justice system but to our utter dismay many a times they are harassed, threatened, bribed and even abducted In case of Murugesan and others Vs Pethaperumal² the Madras High Court observed that is clear under section 154 that a discretion is conferred on court to permit cross examinations of witness by the party who call it and it does not contain any condition or guidelines, which may govern the exercise of such discretion. But it is always expected that the court have to exercise such jurisdiction or discretion judiciously and properly in the interest of justice. A party may generally be not allowed to cross examine his own witness and declare the same to be hostile unless the court is satisfied that the statement of witness exhibits an element of hostility or that he has resiled from Material Statement or where the court is satisfied that the witness is not speaking the truth or has exhibited the element of hostility to the party for whom he is deposing before the witness can be declared hostile and the party examining the witness is allowed to cross- examine. The witness is speaking the truth which may not suit the party on whose behalf he is deposing and the same is favorable to other side, the discretion to allow the party concerned to cross examination its own witness not be exercised.

In another case of Dada Buddappa Gouli Vs Kalu Kana Gouli³ it was held that section 154 prohibiting the asking of leading questions to a party to his own witness must be necessity be related when the witness exhibits an opposite feeling, namely, when by his conduct attitude demeanor or unwillingness to give answer or to disclose the truth, shows that he is hostile or unfriendly to the party calling him. The court, in such a case permit a party to put any question to his own witness which might be put in cross examination by his opponent that it may permit him to lead. This in fact, means that the court may, in a fit case, permit a party to cross examine his own witness. When the witness is hostile if tries to injure his party's case by suppressing the truth. The discretion under this section (154) might be exercised only when the court feels that witness shows a distinctly antagonism feeling or hostile mind

In the case of Koli Laxman Chana Bhai Vs State of Gujarat⁴. The Supreme Court held that it cannot said that high court erred in relying upon some portion of evidence of witness who was cross examined by prosecution (Hostile Witness). The Supreme Court observed that it is clear law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as waste of record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated it by other reliable evidence.

The Term ‘hostile’ witness has its geneses in the common law. The function of the term was, to provide adequate safeguard against the “contrivance of an artful witness” who will fully by hostile evidence “ruin to cause” of the party calling such a witness. Popular the Best Bakery case related to hostile. The drama began with Zahira Sheikh, the main witness in the Best Bakery case, turning hostile; along with 37 out of 43 other witnesses Zahira the daughter of the Best Bakery owner witnessed the barbaric killing of 14 people, which included employees of the Bakery and members of her family 01 March 2002 in the post Godhra carnage. After a trial that lasted for more than year, the trial court acquitted all the 21 accused because of lack of evidence⁵

In Ruchika Case⁶. It was found that cops are trying to save the former D.G.P., SPS Rathore, who is the accused of Ruchika's Malestation case. In this case the father of Aradhana, the sole eye witness in the Molestation of for teenage dared to accuse the cops for trying to protect Rathore.

EXAMINATION OF WITNESS

Section 309 of the code of criminal procedure requires that, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses attendance have been

examined in support of which section 311 of Cr.P.C. Confers powers that the court at any stage of trial can summon any person as a witness or re-call and re-examine and person already examined, if his evidence appears to be essential for just decision of the case⁷

Evidence of Hostile witness cannot be wiped out in toto and remains admissible. In Podyami Sukada Vs State of MP Criminal (Appeal No. 1243 of 2006 Decided on 23.07.2010) case the Supreme court accepted the appeal, set aside the Judgment of conviction and sentence of the appellant. The court observed in this case as below.

Evidentiary value of extra judicial confession depends upon trust worthiness of the witness before whom confession is made law does not contemplate that the evidence of an extra judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction can be based solely on extra judicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided in the facts and circumstances of each case.

In the case witnesses Madvi Rama and Aaita in the examination chief did not support the case of the prosecution and after being declared hostile and cross examined by the prosecution did say about the extra judicial confession by the appellant but again on cross- examination by the defense they admitted that no such confession was made by the appellant. Thus the evidence of both the prosecution witnesses are slippery and from heir evidence, it difficult to hold with certainty that any extra judicial confession in fact was made by the appellant⁸.

Accused cannot cross examine Hostile witness

An accused has not right to cross examine as witness an accomplice, who turned approver but whose condition pardon was later withdrawn by courts on a certificate from the public prosecutor that he was no longer a prosecution witness. The supreme court rejected the plea of Abu Salem and other accused claiming a right to cross- examine Riyaz Ahmed Siddique, who turned approver and was granted pardon but who later become a hostile witness.⁹

As long as witnesses continue to go hostile and do not make truthful deposition in court, justice will always suffer and people's faith in the credibility of judicial process and justice system will continue to erode and shatter. Sorabjee said "Nothing Shakes public confidence in the criminal justice delivery system more then the collapse of the prosecution owing to witnesses turning hostile and retracting their previous statements, are repeated it would shatter the strength and credibility of our criminal justice system.

In the case of Bholu Nath Kushwaha Vst State of M.P.¹⁰ it was held by the supreme court that an independent witness turning hostile is not ground for acquittal. Enough witnesses have turned hostile, enough people have been murdered and get no solution from the government's side appears to be in the offing.

In Jessica Lal case are involve several prominent people. One of the accused (Manu Sharma) himself was the son of Vinod Sharma, who at the time of shooting was former minister of Central Government and by the time of Subsequent trial was a minister in the Haryana State government. Another accused Vikash Yadav was the son of another State politician D.P. Yadav charge sheet were filed with the court 1999. Sharma was charged murder, destruction of evidence and other offences. Seven years after the case was opened on Feb 21, 2006, Nine of the Twelve were acquitted including Sharma.

According to BBC India a "Snail paced judicial system" and its conviction rate is below 30% in the case the prosecution had been affected by 32 of their witnesses becoming hostile. Subsequently in Feb 2011, it was announced that all 32 would be facing for perjury charge.

Witnesses are turning hostile with predictable regularity in case involving heinous crime or high profile personalities due to external pressures, thereby leading to the failure of the criminal justice system. The whole issue of hostile witness came under sharp public scrutiny after the Judgment in land mark Jessica Lal and Best Bakery case.

In Asif Mama Vs State of M.P.¹¹ in this case the informant, at munne painter who has been examined as PWI and according to the FIR was an eye witness to the alleged occurrence did not support the prosecution case, as such declared hostile. According to the prosecution case other 7 witnesses who were also eye witnesses to the alleged occurrences and could have been independent witness, did not support the prosecution case, as such also declared hostile. The supreme court held that the prosecution has failed to prove its case beyond reasonable doubt and the High court was not justified in reversing the judgment of acquitted as the view taken by the trial court, was reasonable one and the same could not be said to be perverse in of manner. court was further said "we are unhappy to note that such a ghastly crime of brutal murder of 3 person's in broad day light in the temple of Justice, which is campus of District court in Bhopal, capital city of the State of Madhya Pradesh, is going unpunished because of laches on the part of the prosecuting agency in conducting the investigation and trial, apart from uncooperative attitude of the private prosecutors, who 23 appear to have connived with the culprits, leaving us with no other option but to painfully convert convictions of the appellants, some of whom were even condemned prisoners, into acquittal. 36. In the result, all the three appeals are allowed, the impugned common Judgment of conviction rendered by the High court is set aside and the judgments of acquittal passed by the trial court are restored.

It the above discussion it is evident that there are various reasons why a witness may turn hostile. The witnesses are not at all treated properly in our judicial system. The working of judicial system is very slow. Several date's are fixed for cross examination of witnesses, who becomes frustrated over because of

being summoned again & again only to find that the date is adjourned. This frustration takes its toll, and that the witness decides to turn hostile to get rid of the harassment.

CONCLUSION

When a prosecution witness turns hostile by stating something which is destructive of his prosecution case, then prosecution is entitled to get this witness declared hostile. The role of a witness is very important in the criminal justice system of any country. According to Bentham, Witnesses are eyes and ears of justice. Thus the need of a witness protection law has become essential in India to provide justice. So long as witnesses turn hostile and do not make truthful deposition in the court. Witness protection program and witness protection laws are simply need of the hour. The government must learn a lesson from all these past (or above) incidents and should implement a witness programme at the earliest as soon as possible.

NOTES & REFERENCES :-

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- 4.AIR 2000 SC 210
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- 7.Venkatadeswara Enterprises Vs Raja Sekharan Nair 200 CRLJ 1620 Kerala
- 8.Appeal No. 1223 of 2006 decided on 23-07-2010
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- 10.AIR 2011 SC 229
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