International Journal of Pure and Applied Mathematics
Volume 120 No. 5 2018, 1195-1205
ISSN: 1314-3395 (on-line version)
url: http://www.acadpubl.eu/hub/
Special Issue

http://www.acadpubl.eu/hub/

A Study on Competence of Witness

[1]MOHAMED MUSTAFA HARIS, [2]K.ROJA

[1]Student, B.A,LLB(HOns) Saveetha School Of Law, Saveetha University, Saveetha institute of medical and technical sciences, Chennai, Tamilnadu, India

[2]Assistant Professor, Saveetha School Of Law, Saveetha University , Saveetha institute of medical and technical sciences, Chennai, Tamilnadu, India

[2]rojak.ssl@saveetha.com

ABSTRACT

Witness, through ages, has been a key player in the pursuit of justice delivery. The fundamentals of justice necessitate that the truth and impartiality must be quintessence of justice. This brings the role of an onlooker or third party as witness to confirm or report to criminal justice agencies the ingredients of the incident. The sanctity of the statements made by the witness is considered to be correct and factual as they are made under oath. Hence the role of witness has been paramount importance in assisting the course of justice. All people are equipped to testify, unless the Court considers that, by reason of young age, extraordinary seniority, sickness, or illness, they are unequipped for understanding the inquiries put to them and of giving sane answers. Indeed, even a crazy person is able to testify, if he isn't kept by his lunacy from understanding the inquiries put to him and giving objective responses to them.

Keywords: competence, witness, testify, rational, quintessence.

INTRODUCTION

The expression "competency" alludes to the negligible capabilities somebody must be a witness. Keeping in mind the end goal to be a witness, a person other than a specialist (specialists are an extraordinary case examined later in the course)

must meet seven fundamental necessities. Take some sort of pledge to come clean. Have a working memory and capacity to convey. Not as of now be engaged with the trial as a judge or member of the jury, Not be one of the lawyers for the situation, Not be precluded by the Dead Man's Rule., Be mature enough to have the capacity to affirm in any event as brilliantly as Glen Beck., Have really witnessed something.

Not every one of these prerequisites are of equivalent significance. The initial three never come up. No judge will give a witness a chance to stand firm without controlling the vow. Witness, through ages, has been a key player in the pursuit of justice delivery. [3]No lawyer in his or her right personality is going to deliberately call a witness who has no memory or can't convey, what's more, on the off chance that they do, you're not going to object to it. No advocate will call the directing judge or a jury as a witness.

AIM OF THE PAPER

- To outline the relevant legal provisions pertaining to witness
- To critically review the idea of witness protection in the light relevant legal provisions.
- To study the competence of witness

METHODOLOGY

The research methodology adopted by the researcher is the doctrinal form and the author has referred the secondary sources in doing the research analysis.

SOURCES

Secondary Sources

- Book Sources
- Journals
- E Sources

REVIEW OF LITERATURE

1. Article : Basic Principles And Types Of Evidence

Author: P. Kalyana Rao

Evidence incorporates everything that is utilized to decide or exhibit reality of an affirmation. Giving or acquiring evidence is the way toward utilizing those things that are either (a) presumed to be valid, or (b) which were demonstrated by evidence, to exhibit an affirmation's fact. Evidence is the cash by which one satisfies the burden of proof. In law, the creation and introduction of evidence depends to start with on setting up on whom the burden of proof lays.

2. Article: Evidence: Its Role And Kinds

Author: Rishee Rhudra And Shubham Aparajita

Evidence plays a crucial role in the investigation. A case is as strong as its evidence. It is of foremost importance. Without proof there can be no case in a court of law and without evidence there can be no proof. Evidence relies on research and proven facts, and not on conjecture or common belief. The following article analyses the different kinds of evidence in detail and the role they play during investigation

3. Article: Witness In The Criminal Justice Process

Author: G. S. Bajpai

Criminal justice studies are invariably challenging as they involve a crucial probe into the issues having a bearing on the policies and system. The witnesses who are quite reluctant to depose themselves for statements were somehow made to share their experiences with researchers. Persuading witness to do so that too in the premises of courts was a daunting task. “Whenever man commits a crime heaven finds a witness,” says Edward G. Bulwer. Witness is therefore inevitable. Witness can have a pivotal role in bringing the offender to justice.

WITNESS IN HISTORICAL CONTEXT

Witness, through ages, has been a key player in the quest for justice conveyance. The fundamentals of justice require that reality and impartiality must be pith of justice. This brings the part of an passerby or outsider as witness to affirm or answer to criminal justice offices the elements of the occurrence. The holiness of articulations made by the witness is thought to be right and verifiable as they are made under pledge.

Subsequently, the part of witness has been of fundamental significance in helping the course of justice. Much the same as in show days in which documentary evidence is being favored over oral evidence, the Ancient Hindu Law of Evidence likewise favored the documentary evidence over oral evidence. The Hindu law suppliers, notwithstanding, were likely mindful of the shortcoming of the documentary evidence as against conceivable forgery. Competency of witnesses depends upon the accuracy of their memory and their credibility. [4]They have given expound guidelines to guarantee the validity of the report. In Ancient Hindu Law a record composed by kids, wards, insane people, ladies or person under dread was considered as vitiated. There were additionally leads for testing the validity of report by examination of penmanship being referred to, especially in situations where executants are dead.

CLASSIFICATION OF WITNESSES AND THEIR RELIABILITY

By and large oral testimony of a witness might be characterized into three classes: namely

i) Wholly reliable

ii)Completelyunreliable

iii) Neither completely reliable nor entirely unreliable

In the main class of proof, the court ought to have no trouble in going to its conclusion in any case; it might convict or may clear on the testimony of a solitary witness, on the off chance that it is observed to be unquestionably sound or doubt. The knowledge of how an event happened is arrived at by the court through witnesses.[5] In the second class, the court similarly has no trouble in arriving at its decision. It is in the third classification of cases, that

HOSTILE WITNESS

The term hostile witness' does not locate any express or verifiable specify in any Indian laws, be it Indian Evidence Act or the Code of Criminal System or some other law. Truly, the term Hostile Witness appears to have its source in Common Law. The Common Law sorts witnesses as "hostile" or "unfriendly" witnesses. In any case, till now no any such qualification has been made in any of the laws implemented in India. The Wikipedia Encyclopedia characterizes hostile witness as a witness in a trial

who affirms for the contradicting party or a witness who offers unfriendly declaration to the calling party amid coordinate examination. The Law.Com Dictionary characterizes hostile witness implies an unfriendly witness in a trial who is observed by the judge to be hostile or unfavorable to the position of the party whose lawyer is scrutinizing the witness, despite the fact that lawyer called the witness to affirm in the interest of his or her customer or the witness turns out to be straightforwardly adversarial, the lawyer may ask for the judge to proclaim the witness to be hostile or unfriendly. On the off chance that the judge proclaims to be hostile or unfriendly the lawyer may ask "driving inquiries", which recommends replies, or are trying to the declaration similarly as in round of questioning of a witness who has affirmed for the restriction. The witness who makes statements adverse to the party calling and examining him and who may with the permission of the court, be cross examined by that party.

Consequently, a hostile witness, is additionally called as unfriendly witness, who debilitates the instance of the side he or she should bolster i.e. rather than supporting the indictment who has introduced him as a witness in the court of law, the witness either with his evidence or explanation moved toward becoming hostile to the lawyer and in this way "demolish the case" of the party calling such witness. In such a case, besides, the lawyer asks the judge to proclaim the witness a hostile witness. In this way, it is the court and no other than the court that has expert to announce a witness a hostile witness. It must be recollected here that the court cannot without anyone else announce a witness a hostile witness yet it can do as such just on the demand made by the arraignment lawyer.

INTOXICATED WITNESSES

A witness who is so intoxicated at the time he or she is called to affirm that the witness will experience issues giving lucid evidence might be discovered bumbling by the trial judge. Be that as it may, inebriation does not as such render a witness awkward. A witness who is so intoxicated at the time he or she is called to testify that the witness will have difficulty giving coherent evidence may be found incompetent by the trial judge.[7] A hindrance of the witness' capacity to see,review,describe, or comprehend the nature and commitment of the vow must be.

CHILD WITNESSES

In SURESH versus state OF UTTAR PRADESH[8], it was chosen that a child as youthful as 5 years can remove evidence in the event that he comprehends the inquiries and replies in an applicable and reasonable way. The age is of no outcome, it is the intellectual capacities and understanding that issue in such cases. Their evidence, be that as it may, must be examined and alert must be practiced according to every individual case. The court needs to fulfill itself that the evidence of a child is dependable and untainted. Any indication of coaching will render the evidence faulty as chose in CHANGAN DAM versus state OF GUJARAT[9] In the event that the court is fulfilled, it might convict a person without searching for joint effort of the child's witness. It has been expressed numerous a times that help of a child's evidence ought to be a lead of judiciousness and is exceptionally attractive. A child witness is a favored witness and he might not need to take a promise. In M SUGAL versus THE KING 1945 48 BLR 138, it was chosen that a young lady of around ten years old could give evidence of a murder in which she was an onlooker as she could comprehend the inquiries and answer them honestly despite the fact that she was not ready to comprehend the idea ofpromise. No witness shall be automatically adjudged incompetent to testify because of age and any child who is a victim of assault, sexual assault or abuse shall be competent to testify without prior qualification. A similar rule has been connected in India too through QUEEN versus SEWA BHOGTA 1874 14 BENG and PRAKASH SINGH versus Terroitory of MP.

A VOIRE DIRE TEST

Under this test the court puts certain preparatory inquiries previously the child which have no association with the case, keeping in mind the end goal to know the competency of the child witness. A few cases of the inquiries asked under this test can be that with respect to their name, father's name or their place of living arrangement. At the point when the court is completely fulfilled in the wake of hearing the responses to these preparatory inquiries, with regards to the capacity of the child to comprehend these inquiries and to give balanced answers thereto.(Here, the Court puts certain preparatory inquiries that

are detached to the case just so as to know the competency of the child witness) of a child witness isn't fundamental yet alluring. A judge may ask a couple of inquiries and get them on record to exhibit and check the competency of the child witness. It can be assumed this is an obligation forced on every one of the judges by the Section 118 of the IEA, 1872. The judge can make inquiries likewise to see if the child has a harsh thought of the contrast amongst truth and lie. In SURESH versus Territory OF UP case, it was held that a child who isn't controlled vow because of his young years and isn't required to give cognizant or straight answers as a favored witness can give evidence yet this evidence ought not be depended upon absolutely and totally. In the 90's a pattern rose where the Courts began recording their suppositions that child witnesses had comprehended their obligation of coming clean to loan validity to any evidence gathered thereof. The Supreme Court has likewise recognized this training.

LUNATIC AS A WITNESS

A LUNATIC can oust amid the time of lunacy. Amid the clear interim, the person can comprehend and give judicious answers. The Court needs to check whether the witness has the required ability and insight to comprehend the inquiries being put to him and answer them in reasonable way. In R versus slope, a patient at a lunatic shelter gave evidence at a trial for murder as it was demonstrated that exclusive regarding his fancies, he was a lunatic and else, he was a person equipped for giving normal answers.

DUMB WITNESS

Section 119 of the IEA states that a witness who can't talk may give his evidence in some other way in which he can make it comprehensible, as by composing or by signs; however such composition must be composed and the signs made in open Court. Evidence so given should be considered to be oral evidence. It is said open court on the grounds that an official may characterize the developments or motions as he comprehended them and most likely not as the witness proposed it. In addition, no portrayal can be 100 % precise. In the event that the witness is proficient, he may record the appropriate responses as well. A person able to give normal answers isn't banned to affirm by virtue of pressures with

spouse or being rationally disturbed according to the Section. Indeed, even an accessory or a charged can be skilled witnesses as talked about toward the finish of this part in Section 133. In UGAR AHIR versus Province OF BIHAR, it was held that the adage 'falsus in uno, falsus in omnibus' isn't a control of law or practice however puts an obligation on the courts to deliberately isolate the smile from the refuse. A person who has a personal enthusiasm for conviction of a blamed or is identified with one for the gatherings isn't ineligible to be a witness however his declaration/evidence ought to be examined painstakingly to keep any unnatural birth cycle of justice. The Supreme Court has even held that a lady not meeting the models of morality of the general public is no motivation to dispose of her as a witness or not think of her as evidence. The significance of objective and close assessment of evidence in each of such situations is focused on over and over by the Supreme Court.

CONCLUSION

Section 118 of the IEA non exclusively sets down who may affirm: All persons should be skillful to affirm unless the Court considers that they are kept from understanding the inquiry put to them, or from giving objective responses to those inquiries, by delicate years, extraordinary seniority, ailment, regardless of whether of body or mind, or some other reason for a similar kind. Clarification to Section 118 states that a lunatic isn't bumbling to affirm, unless he is kept by his lunacy from understanding the inquiries put to him and giving objective responses to them. Prima facie, the segment says that each one is capable to be a witness as long as they can comprehend and react to the inquiries postured and the Court is relied upon to give careful consideration to the ability of the witnesses. This segment isn't worried about the acceptability of the declaration of the witnesses or their validity; it manages competency of gatherings to be witnesses. The plain and basic trial of competency is whether a witness can comprehend the inquiries being postured to him and answer as needs be in a discerning way. Competency of witness to affirm is really an essential to him being controlled an oath.

BILIOGRAPHY

BOOKS REFFERED

1. Ratanlal & Dhirajlal's the Law of Evidence Paperback by Ratanlal
2. Outline on Evidence by Bhargava
3. Court Procedure in Ancient India by Sharan M. K. Vishnu
4. The Law of Evidence by Krishnamachari V
5. Criminal Law'by Pillai P.SA

WEBSITES REFERRED

1. www.ndaa.org/pdf/Competency%20of%20Child%20Witnesses(2011)
2. hanumant.com/LOE-Unit10-CompetencyOfAWitness.html
3. http://shodhganga.inflibnet.ac.in/bitstream/10603/8788/12/12_chapter%203.pdf
4. www.academia.edu/4364159/Different_Kinds_of_Witnesses
5. www.srdlawnotes.com › Law of Evidence
6. law.indiana.edu/instruction/tanford/b723/09pk/T09.pdf
7. mja.gov.in/Site/Upload/GR/Summary-Buldhanaworkshop.pdf
8. https://kanwarn.wordpress.com/.../indian-evidence-act-1872-witness-1-competency/
9. https://www.legalindia.com/different-kinds-of-evidences-witnesses-under-the-indian-e
10. kamkus.org/.../MCQ%20THE%20INDIAN%20EVIDENCE%20ACT,%201872.pdf

JOURNALS REFERRED

1.R. Venkataraman. 'The Whole Truth about Perjury', The Indian Express, February 25, 2006.

2. Das, Durga Pada. 'Witness Protection - A Legal Crisis in India', Cri. L. J. 2002

3. Jha, Himanshu Shekhar. 'Veracity of a Child Witness' ,Cri. L. J. 2002

4. Sudarsan, G. 'Criminal Justice System and the Need for Witness Protection', Cri. L. J. 2005

5. Jha, Himanshu Shekhar. 'Veracity of a Child Witness' ,Cri. L. J. 2002

6. Armey, A. (1984). Accuracy and Credibility of the Elderly Witness.

7. Dr.Lakshmi T and Rajeshkumar S "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.

8.Trishala A , Lakshmi T and Rajeshkumar S," Physicochemical profile of Acacia catechu bark extract –An In vitro study", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.