

The Role of Eyewitness Testimony in Criminal Trails

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ABSTRACT

The role of eyewitness in the justice delivery system is important, but many times it leads to wrongful convictions of innocent persons who knows nothing or were not present at the crime scene, or maybe a passerby, or is in no way related to the offense committed. As an eyewitness, he or she is supposed to foresee the applicability of the testimony to be delivered if it will be useful for the conviction of the right person or that of the accused. An eyewitness can also be misleading and mistake something for another, especially when the probability of foreseeing the offender is not clear and precise.

According to a famous Jurist and philosopher, Bentham, he quoted “Witnesses are the eyes and ears of justice”.

The fundamentality of Justice is seeking the truth and being free from impartiality, and that comes with the role of an eyewitness who was present at the time of the Commission or omission of the crime. Whatever statement of eyewitness is recorded, they are considered to be correct as they are recorded on oath. Where a testimony is given by an eyewitness, and the court thinks such testimony is misleading, the court on the other decides, on the admissibility of the testimony, will do away with the testimony because at last, the court is there to deliver justice with fairness and without any form of biasness.

KEYWORDS: EYEWITNESS, TESTIMONY, CHILD, TEST IDENTIFICATION PARADE.

INTRODUCTION

DEFINITION CLAUSE

WHO IS A WITNESS? According to the wordings of ¹, All persons shall be competent to testify unless the court considers that they are prevented from understanding questions put to them, or for given reaction answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Generally, a witness is an individual who testifies under oath in a trial. This is also the person who has first-hand knowledge about the crime committed or the people involved in it.

On the other hand, according to the black’s law dictionary, A witness sees, knows, or vouches for something, or one who gives testimony under oath or attestation.

The term witness in a strict legal scene means one who gives evidence of a case before the court, and in its general sense, it includes all persons from whose lip’s testimony is extracted to be used in carrying judicial proceedings, and so includes deponent and affiant as well as people delivering oral testimony before a court or jury.

¹ Section 118 of the Evidence Act, 1872

WHAT IS A TESTIMONY?

Black law dictionary defines testimony as evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition. Section 118 of the Act 1872 stipulates who may give testimony and states that everyone is competent to testify unless and until the court sees reasons as to why a person may not be eligible to give a testimony. The Court did not deem it safe to base the conviction only on the testimony of a child witness which did not inspire confidence. The Court thereby set aside the judgment of the High Court as well as the Trial Court and acquitted the appellant of the offenses alleged against him².

MEANING OF EYEWITNESS TESTIMONY

Eyewitness testimony is an account given by an individual or people of an event they have witnessed. Eyewitness testimony is the account a bystander or victim gives in the courtroom, describing what that person observed that occurred during the specific incident under investigation.

RESEARCH OBJECTIVES

The main objective of this project is as follows;

1. To identify the different kinds of witnesses.
2. To identify who can be called a witness.
3. To identify why eyewitness testimony is important in deriving justice.
4. To identify the procedure in which eyewitness testimony is admissible in court.
5. To identify whether an eyewitness testimony can stand on its own or corroborative.

METHODOLOGY

The methodology used in conducting this research paper is doctrinal.

TYPES OF WITNESSES

A witness may be classified into different categories, and the mode of determining the competency of a witness differs. For example, a person may see or hear a thing and explain it in a different format. For this research, we will be looking into eight different kinds of witnesses, and they include an eyewitness, Expert witness, child witness, Accomplice witness, interested witness, official witness, Relative witness, and chance witness.

EYEWITNESS: This is said to be a person who from his or her eyes sees an act being committed. An eyewitness may be anyone, be it a stranger relative, or another person. From the perspective of evidence, an eyewitness is an important piece of evidence because It is generally said that anything can betray but not the eyes. For example, when A, a bus driver saw B and C fighting inside his bus which resulted in the death of C on the spot. Here, A, the bus driver is the eyewitness because he is the only one present at the crime scene.

EXPERT WITNESS: As stated under³of the Evidence Act 1872, any person who has the professional, educational, or judicial expertise on the matter beyond an average individual, and which the court can rely on the testimony.

² Pradeep v. State of Haryana 2023 SCC 777.

³ section 46.

CHILD WITNESS: Under⁴, a child who can understand the questions put before the court or has a rational answer to the questions can testify before the court.

ACCOMPLICE WITNESS: An Accomplice witness under⁵ of the Act is a person or individual who was connected to the crime in its illegal commission or omission. In other words, anyone who helps others in the commission of an offense. For example: A is part of a murder case in which B and C are partners in the crime, by helping them to poison D's food. Here, A is an Accomplice witness and the testimony given is of great importance.

INTERESTED WITNESS: An Interested witness is anyone or person who is not connected to the crime but has an interest in it. In other words, the interested witness wants the accused to be put behind bars. An interested person can be anyone, be it a friend from the prosecution side or any other person who wants the accused to be punished. For example: A is a family doctor of B. B is a person who has committed many crimes but has never been caught in the hands of the law. And A for the reason of being a doctor always treated B for illness and injuries. Now for a crime, B is tried in court. Here A can be an interested witness as to previous acts of B, which shall prove that he is a habitual offender. A is an interested witness here. He has no link or ties with the case but wants the culprit to be punished.

OFFICIAL WITNESS: An official witness is the kind of witness in which a police officer gives his testimony in a court of law. It is termed an official witness because when a person on duty gives evidence in favor of the prosecutor, such testimony cannot be disregarded merely because a person belongs to the police force, and therefore can be biased towards the prosecution in making his case stronger. For example: A, a respectable police officer on night duty, saw a drunk man running towards a lane. A follows that man. The moment A reached there, he saw that a drunk man had attacked his wife with a knife and the wife was lying down on the ground. Here A can be an official witness, and his testimony can be relied on if corroborated with other pieces of evidence after strict scrutiny.

RELATIVE WITNESS: this is a type of witness where if a person is called by his or her relative to give testimony in court, such is termed a relative witness. Where a person is related to the accused his or her testimony cannot be disregarded or rejected merely because there is every possibility of biasness. For example: Any person like a husband, wife, sister, brother, mother, father, or any relative of a person can be a related witness. If a person is related to the party, then general prudence says that the testimony of such a person must be construed strictly, and every attempt must be made to bring out the truth.

CHANCE WITNESS: Where a person by coincidence or by chance happens to be present at the crime scene, he or she is called a witness by chance. If such a person gives testimony in court, he or she will be treated as a chance witness. For example: When A and B are students, and they have gone to an uncompleted building closer to the campus for some illegal activities, C who is their principal has been told of such an act, was passing and he had some argument and went in, reaching there he saw A with a gun and B was lying dead. Here, C is a chance witness. C was not supposed to be there, but by chance, he reached there and witnessed the crime scene.

PROVISIONS UNDER THE ACT/ CASE LAWS

In understanding the legal provisions as regards eyewitness Testimony, section 118 of the India Evidence Act 1872, clearly states that every person is capable of being called a witness in court, in as much as they understand the questions put before the court. However, certain kinds of persons are examples under the

⁴ section 118 of the Evidence Act.

⁵ section 133

provisions. A tender age, an extreme old age, by cause of disease, whether of body or mind or any other cause of the same kind.

WHETHER TESTIMONY OF A CHILD WILL BE ADMISSIBLE

The Court perused Section 118 of the Evidence Act, 1872 which holds a child witness competent to depose unless the Court considers that he is prevented from understanding the questions put to him, or from giving rational answers by the reason of his tender age.⁶ where the apex court held that the testimony of a child witness must be examined to make sure that it was not provided under any possibility of coercion and undue influence, and must verify other provided evidence as well. This section did not provide any specific age to determine what a tender age means, but for the court to be satisfied with the evidence given by the child. The court in its power will conduct a test called the⁷, this test is put by the court with specific kinds of preliminary questions, which are not connected to the case, just to know whether the child can understand the questions and give proper answers to these questions. In⁸. the appeal was allowed, the Supreme Court set aside the impugned judgment of conviction and sentence made by the high court dated 13/03/2002, and the judgment of acquittal dated 06/ 09/ 1985 made by the trial court was maintained due to the shaky testimony of the child witness who could have been tutored in the period during the date of the incident and the date of his deposition.⁹, the court laid down that every individual is capable of being a witness in the court of law, unless incompetent of comprehending the questions put before him/ her, considering the provisions of section 118 of the Evidence Act 1872.

In the case of¹⁰ the Hon'ble Supreme Court has laid down rules of prejudice and desirability of corroboration in the matter of child witness as `` A child witness if found competent to dispose to the facts said and reliable on the evidence it could be the basis of conviction.

¹¹. The Supreme Court held that corroboration of the testimony of a child is not a rule but a measure of caution and prudence. Some discretion in the statement of a child witness cannot be made the basis of discharging the testimony. In¹², where the daughter of the deceased aged about eight years ago, was a witness to a crime. Based on the testimony of the child witness, the two accused were convicted under section 302 IPC. Accused No. 2 was convinced with the aid of section 120B IPC. The high court however reversed the said judgment and acquittal accused on the premise that the eyewitness PW 1 was a child and was therefore disbelieved. The Supreme Court reversed the decision of the high court and restored the conviction of the accused on the aspect of admissibility of the child witness, the Supreme Court referred to several earlier decisions.

In¹³. The testimony of the main prosecution witness who was a child was challenged and argued that the child was present in the time of the course of the Incident, but did not witness the actual incident. Here the testimony was not corroborated and it was further contended.

In a recent judgment of the Supreme Court in¹⁴, The statement Ajay an 11years boy at the relevant time was that while he was sleeping with his mother in their home the door was locked inside, and at 1 am,

⁶ Nivrutti Pandurang Kokate & Ors. v. The State of Maharashtra AIR 2008 SC 1460.

⁷ VOIR DIRE TEST.

⁸ Bhagwan Singh & ors v. State of M.P 2002 3 MP LJ 67.

⁹ In Ramshwar v. The State of Rajasthan RLW 2005 (2) Raj 1059.

¹⁰ Datonu Ramroa v State of Maharashtra, 1997 (3) Mah. LJ 4562. 454.

¹¹ In Suryanarayan v State of Karnataka AIR, 2001 SC 482.

¹² State of Madhya Pradesh v. Ramesh & Anr, 2011 3 Scale 619.

¹³ Digamber Vaishnav and Anr v. State of Chhattisgarh 2019 4 SCC 522.

¹⁴ Predeep v State of Haryana 2023 SCC 777.

Ajay heard his mother's voice and when he woke up, he saw the accused grappling with his mother with a knife in his hand and inflicted 6-7 blows on her stomach and chest while accused no 2 was holding the hands of the mother, and when Ajay tried to rescue his mother, accused no 1 inflicted Injury on him with the same knife.

The court observed that the possibility of the child witness being tutored could not be ruled out, since there was no support of corroboration to his testimony apart from other deficiencies in the prosecution case. The court did not deem it safe to base the conviction only on the testimony of the child witness which did not inspire confidence. The Supreme Court therefore set aside the judgment of the trial court and high court and acquitted the appellant of the offences alleged against him.

TEST IDENTIFICATION PARADE

The confirmative or substantive value of the test identification parade is unquestionable. Test identification parade in short is used to identify an accusation. that is, it is used to assess the witness honestly and the ability to recognize an unknown accused. Ordinarily, the court does not give much weight to the identification made in the court for the first time, but the identification of the accused for the first time in court is permissible in law and cannot be applied to the facts and circumstances of each case. The Supreme Court in its judgment, **Mukesh Singh v. State of NCT in Delhi**¹⁵ has delved into whether the Test identification parade is violative of fundamental rights bestowed upon an accused under *Article 20(3) of the constitution of India*. Article 20(3) provides "No person accused of any offense shall be compelled to be a witness against himself". This article is an umbrella that covers an accused person to speak against himself.¹⁶

Test identification parade is provided under *section 54A* of the code of criminal procedures. this section states that for the identification of an arrested person, it is necessary to investigate. If the accused is known to the witness, the witness needs to give the name only which will establish the identity, but where the witness doesn't know the accused, the identity will be known only after the witness has seen and identified the accused. In **Rajesh v. State of Haryana**¹⁷. The court observed "that in any event as we have noticed, the identification in the course of test identification parade is intended to lend assurance to the identity of the accused. The finding of guilt cannot be based purely on the refusal of the accused to undergo an identification parade.

The question of whether the test identification parade is a violation of Article 20(3) of the constitution was answered by the Bench of Justice MM Sundresh and JB Pardiwala, stating that: the test identification parade is not violative of Article 20(3) of the constitution of India, and that an accused cannot resist subjecting himself to TIP on the ground that he cannot be forced or coerced for the same. The court observation came in response to an appeal involving a murder conviction.

EYEWITNESS TESTIMONY WHETHER SUBSTANTIVE OR CORROBORATIVE

General understanding of the two words substantive and corroborative evidence: substantive evidence is the kind of evidence that does need to be corroborated and serves to prove or disprove a fact in issue. Substantive evidence can be both circumstantial and direct. The term corroborative evidence is those kinds of evidence that confirms the accuracy of other evidence in a fact issue. In short, corroborative evidence

¹⁵ (Criminal Appeal NO.1554 of 2015).

¹⁶ Immunity from self - opening under Article 20(3) of the constitution of India published by Justice U.C Srivastava.

¹⁷ 2021 1 SCC 118.

exists where there is no substantive evidence and helps make the investigation process smooth and faster. Eyewitness testimony is corroborative because it is a supportive piece of evidence that is used to make substantive evidence more concrete. Corroboration is under the discretion.

The court may ask for corroborative evidence if there is any doubt about the testimony of other witnesses.¹⁸ does not solely convict an accused based on the testimony of a single eyewitness, but where doubt arises, the court can demand any number of witnesses to deliver fair justice.

However, conviction can also be done based on the testimony of a sole eyewitness if it is found to be wholly reliable and not shaking. In **Ganesan v State**,¹⁹ the law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be whole of credence and reliable, requires no corroboration, and the accused will be convicted based on the testimony of a single eyewitness. Also, in **State (NCT of Delhi) v. Pankaj Chaudhary**,²⁰ the Hon'ble Supreme Court held that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence.

CONCLUSION AND SUGGESTIONS

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Criminal cases require testimonies of individuals who have first-hand knowledge or information to facilitate the investigation process and assist the judiciary in dispensing justice. The Indian Evidence Act provides provisions regarding who can be a witness, stating that any person who is competent to testify can serve as a witness. The Act also specifies when the testimony of a witness is admissible in court, based on whether the court deems it suitable to accept the witness's testimony. Section 118 of the Act states that if a person is capable of understanding the questions asked to them, their testimony will be admissible. However, there is no specific number of witnesses required for the conviction of an accused as stated under the Act section 134, even if it is a single witness and its testimony is found to be wholly reliable the court on this basis can convict an accused.

SUGGESTIONS

As a law student, I would love to see the judicial system displaying its true color by not only following what is on paper but also considering the practicality of the law in society and taking eyewitness testimony into account as both corroborative and substantive evidence. It is obvious that in the society we are in today, everyone seems to mind their so-called businesses, and no one is ready to speak as an eyewitness to an offense in which they have first-hand knowledge. However, when an individual summons the courage to do so, the courts should not neglect them solely because the individual is not confident enough to express their feelings or speak about what they have seen. The court should not only look at the credibility of the testimony given by the eyewitness but should also focus on the mindset of the witness, their intentions, and whether they are mala-fide or reasonable to be considered. We can never tell, as at times a witness can act out of grudge towards an innocent person.

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¹⁸ Section 134 of the Evidence Act 1872.

¹⁹ 2020 10 SCC 573.

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