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LECTURE-33

False Evidence and Offences Against Public Justice

False Evidence

Section 191 of the Indian Penal Code explains that giving false evidence means a person bound by oath or express provision of law, to tell the truth, makes a false statement or a statement that he doesn't believe to be true or believes to be false. False statement or evidence given by a person can be in written form or otherwise (oral or indicative). Section 191 is also known as Perjury under English Perjury Act 1911. For example, a matter concerning the handwriting of Z for which Z's son is called to test the handwriting that whether it is of his father or not. Even after knowing it is not the handwriting of Z he states the opposite in court stating that it is the handwriting of Z. It is a typical offence called perjury. Taking up the same scenario of Z's handwriting, where his son is called to testify his handwriting but this time his son is not confident and states that although I am not confident that it was not the handwriting of Z; in this situation, his son cannot be held liable under Section 193 of Indian Penal Code because his intention is not to lie. A copy of the sales deed shown in the court which is edited or fabricated is known as false evidence. Perjury is all about giving false evidence. Lets us take a classic example in which X is bound under oath that he will speak only the truth in respect to a case in which Y is suspect for the charge of murder that took place in Delhi. Now X says that Y was with me in Shimla on 20th May 2019(the date when the murder was committed). But X lies and gives false evidence. It is a clear example of perjury.

Essential Ingredients of False Evidence

False evidence made by a person who is:

1. Bound by oath, or
2. By an express provision of law, or
3. A declaration which a person is bound by law to make on any subject, and
4. Which statement or declaration is false and which he either knows or believes to be false or does not believe to be true.

Three essential prerequisite condition for the application of Section 191:

1. A legal obligation to state the truth,
2. Making of a false statement or declaration, and
3. Belief in its falsity.

Differences vis-a-vis the English Law of Perjury

Perjury has been kept at the position of criminal form under English Law of Perjury because a person is at the guilt by the statutory obligation of crime if lawfully sworn as a witness or as an interpreter in a judicial proceeding where he lawfully makes a statement material in that proceeding which is known to be false or does not believe it to be true.

The violation of oath is a condition prerequisite. Under Indian law, a statement contrary to oath /declaration requires an express provision to state the truth.

Under the English Law, the false statement is a statement or a declaration falsely made only in a judicial proceeding whereas, under Indian law false evidence is a statement when given to a public servant would also be classified as Perjury.

Legally Bound by Oath or Law to Say the truth

1. A Person is legally bound by oath if;
 - a) A Person should be bound by oath- Section 8 of the Oath act defines it that it is a duty to state the truth.
 - b) By an express provision of law to state the truth.
 - c) Or bound by law to make a declaration.
- 2) Legal obligation to speak the truth in view of the oath administered.
- 3) Express Provision of law which binds him to speak the truth.
- 4) Irregularity in the administration of the oath- There is some irregularity in administration on oath by officers i.e oath is not signed properly or there is some procedural irregularity. Now if there is any irregularity will Section 191 be applicable or not? It is immaterial. The person who takes the oath knows that he is lying will be punished under section 191 of the Indian Penal Code.
- 5) No application to advocates.

Fabricating False Evidence

Section 192 of the Indian Penal Code defines fabricating false evidence. Whoever causes any circumstances to exist or makes any false entry in any book or record or electronic record or makes any document or electronic record containing a false statement, intending that such circumstances, false entry

or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such or before an arbitrator and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding to form an opinion upon an evidence, to entertain an erroneous proceeding touching any point material to the result of such proceeding is said to fabricate false evidence.

Essentials of fabricating false evidence

1. Cause any circumstances to exist; or
2. Makes any false entry in any book or record etc containing a false statement ;
3. Intending that such circumstances, false entry or false statement may appear in evidence in a:
 - a) Judicial proceeding, or
 - b) In a proceeding taken by law before a public servant,
 - c) Before an arbitrator; and
- 4) Helps form an opinion upon the evidence, to entertain an erroneous opinion;
- 5) Touching any point material to the result of such proceeding.

These essentials can be easily understood by a given example. There is a shopkeeper 'X' whose shop is in Lucknow and he pretends that his shop was open on 20th May 2019 although his shop was closed. He shows in his book entry that his shop was open. However, on that day 'X' went to Delhi and committed the crime of extortion. When Police investigates about it he shows his book entry as evidence. This would qualify as fabricating false evidence.

An intention that Fabricated Evidence May Appear as evidence in a judicial proceeding

Intention plays a very vital role in Section 192. False document so made should appear in evidence in a judicial proceeding or before a public servant or arbitrator.

Punishment for False Evidence

The person who gives false evidence in the court can get imprisonment up to 7 years and also fine, whereas outside the court where the person has given false evidence can get imprisonment up to 3 years and fine. Giving false evidence is a non-cognizable offence i.e police cannot arrest the person who gives false evidence without an arrest warrant. It is a type of bailable offence i.e a person can get bail from the court. He can claim bail as a matter of right. It is non-compoundable means the person who has given false evidence against a person cannot compromise with him and the case can't be closed and Section

194 to 195A of Indian Penal Code deals with the aggravated form of offences. Aggravate form means serious form. For example, Under Section 302 of Indian Penal Code someone is charged for murder and the person is giving false evidence due to which accused is convicted to a death sentence so this is a form of aggravated form of offence. There are different forms of punishment under Section 194 as:

- 1) When someone is convicted.
- 2) When someone is convicted and executed.

Section 195: giving or fabricating false evidence with an intention/knowledge for an offence punishable with imprisonment for seven years or more or life imprisonment. He will be punished as a person convicted of that offence would be liable to be punished. For example, Person X who is accused of dacoity and a person A gives false evidence due to which X is convicted of dacoity. The punishment of dacoity is life imprisonment or rigorous imprisonment of ten years and now if it has been proved that A has given false evidence or fabricated false evidence so he (accused of Section 195) would also get the same punishment that a person who is convicted of dacoity.

Section 195A of Indian Penal Code is added by Amendment Act, 2006. The act must amount to threatening another with an injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested (eg. family, friends). The intention of the accused person should be to give false evidence. Punishment is imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

In the case of Santokh Singh vs Izhar Hussain, it was held that test identification of parade is mainly used in rape cases to identify the accused by the victim and if the victim had lied and given a false statement that he was the accused then it is an offence under Section 192 and Section 195.

Offences Punishable in the Same Way as Giving or Fabricating False Evidence

Using False Evidence

A person when uses evidence which he knows it to be false comes under Section 196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be fabricated or false evidence.

Meaning of 'Corruptly'

The intention which does not fall in dishonestly or fraudulently but against the spirit of criminal law then it comes under the category of corruptly.

Dr S Dutt Vs State of UP

There was a doctor S Dutta who specialized in the field of medicine and he was called for an expert witness where he was asked to furnish the certificate as he was an expert. Now he had furnished certificate but after some time in enquiry, it was found that it was false. Now the court enquires under which section the accused must be charged. Section 465 talks about dishonesty and Section 471 talks about fraudulently but the conduct of Dr Dutta did not come under dishonestly or fraudulently. Supreme Court held that the conduct of Dr Dutta should be covered under Section 196 under a phrase corruptly. Corruptly is a term (long) which is different from fraudulently and intention.

MCQs-

i. Right of private defence is not available:

- A. to the aggressor
- B. to the person who is attacked
- C. to the aggressor against an act done in private defence by the person attacked
- D. only (a) & (c) are correct.

ii. In a case of free fight between two parties:

- A. right of private defence is available to both the parties
- B. right of private defence is available to individuals against individual
- C. no right of private defence is available to either party
- D. right to private defence is available only to one party.

iii. Under section 99, the right of private defence is:

- A. not available at all against public servants engaged in the discharge of their lawful duties
- B. available under all circumstances against public servants engaged in the discharge of their lawful duties
- C. available against public servants only when their acts cause reasonable apprehension of death or grievous hurt
- D. available against public servants only when their acts cause reasonable apprehension of damage to property.

iv. Right of private defence of the body extends to causing death has been dealt with under:

- A. section 100 of IPC
- B. section 101 of IPC
- C. section 102 of IPC
- D. section 103 of IPC.

v. **Right of private defence of property extending to causing death has been dealt with under:**

- A. section 103 of IPC
- B. section 102 of IPC
- C. section 101 of IPC
- D. section 100 of IPC.