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NAME OF FACULTY: Dr. Ravi Kant Gupta

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Lecture-39

EXAMINATION OF WITNESS……..

Evidence as to matters in writing (Section 144)

Any witness may be asked although under examination whether any contract grant or other temperament of property as to which he is giving evidence was not controlled in a document and if he says that it was or if he is about the opinion of the Court ought to be produced the opposite party may object of such evidence being given until such document is produced or facts have been proved which entitle the party who called the witness give secondary evidence of it.

Cross examination as to previous statements in writing (Section 145)

As per previous statement made by a witness may be cross examined in writing or decreased into writing and relevant to matter in question without such writing being proved or shown to him but if it is calculated to negate him by writing his attention before the writing can be proved to be called to those parts of it which are to be used for the purpose of negate him.

Scope :

Challenge the honesty or truth of the credit of a witness by cross examination comes under Sections 138,140,147,148 and 154 of Indian Evidence Act. The procedure by which a witness may in cross examination be contradicted by his previous statement of writing or decreased into writing provided under Section 145 of Indian Evidence Act. Whether witness made a previous statement in writing or decreased into writing relevant to the matter of issue different from his present statement without such writing being shown to him or proved he may be asked in cross examination. But if it is intentionally to contradict him by writing his attention must be tried to it.

Rarely a person makes a certain statement which is in writing. Afterward he makes a statement different to what he has previously stated in the same case of proceeding. The present statement of the witness may be contradicted by previous statement to show that he is not speaking the truth under Section 145 of Indian Evidence Act.

Use of the previous statement:

Under this Section a previous statement which contradicts a witness is not be used as substantive evidence in the case of the facts contained therein. The purpose of previous statement with contradict is to prove that the statement made in the Court is not reliable. The previous statement is not accepted as true. The one merely waste the other.

Cross examination as to previous statement:

If the previous statement without showing him the writing is relevant to the matter in issue then witness may be cross examined. Witness with reference to his previous statement on the ground that the document which contained the statement is not being produced at the time of cross examination then the Court cannot refuse to allow the cross examination of witness.

Intended to contradict:

As seen above on the basis of previous statement in writing relevant to the matter in issue without the writing being shown him a witness may be cross examined. But if it is intended to contradict a witness by the writing his attention must before the writing can be proved to be tired to those parts of which are to be used for the purpose of contradicting him.

Attention must be called

The Section stated that if the previous contradictory statement of a witness is calculated to be proved his attention must be called to it. The aim of this procedure is to give the

witness a chance of explaining his statement before the contradiction can be used as evidence. If this opportunity is not given the contradictory writing cannot be placed on the record as evidence.

Previous admission to contradict :

If the previous admission are clear can be used without a face and even if the makers are not produced in the Court.

Relevant to the matter in issue:

Chapter II of Indian Evidence Act 1872 must be relevant with the previous statement with which it is intended to contradict a witness.

Of the witness himself:

The witness who is being cross examined the previous statement of the witness must be comes from there. Ram was employed by Shyam to write Ram's accounts books. Shyam supplied Ram with necessary information. In this case Ram cannot be contradicted with the entries in the account books, it is not his statement rather it is the statement to Shyam. Previous statement of a party not to contradict his witnesses and can be used only to contradict him.

Previous statement not substantive evidence

A previous statement used to contradict a witness does not become essential evidence and only serves the purpose of throwing uncertainty on the truth of the witness.

Questions lawful in cross examination (Section 146)

When a witness is cross examined he may in addition to the questions hereinbefore mentioned to be asked any questions which given

1. To test his truth;
2. To find out who he is and what is his position in life; or
3. To shake his credit, by injuring his character, while criminate him, or might expose him to punishment or forfeiture.

Scope:

Section 132,138,146,147 and 148 of Indian Evidence Act cover the full range of questions which can be put in good order to a witness. Cross examination must relate to relevant facts under Section 138 of the Act. “The examination and cross examination of a witness must relate to relevant facts” runs as per second para of Section 138 of Indian Evidence Act. The words in Section 146 “in addition to the question hereinbefore mentioned to” have reference to the para of Section 138 mentioned above.

To test his veracity :

A witness may be cross examined not only as to the relevant facts but also as to all facts which fairly run to affect the believability of his testimony. The statements of a witness being of their nature it is right to subject them to document charging a public official with misconduct in the proper ways. So it is capable to the parties to ask about any question in cross examination which he may see important to test the truth of the witness. A witness may always be subjected to an exact cross examination as a test of his truth his understanding his unity his basis and his means of judging.

To discover who he is and what is his position in life:

It is a common pattern to make research into the relationship of the witness with the party on whose behalf he is called social and family and business also to research as to his feeling towards the party against whom his testimony is being given. This is tolerable in order to place testimony in a proper light with reference to prejudice in prefer of one party or bias against the other.

To shake his credit by injuring his character:

In deciding the relevancy of character as moving the credit to be given to a witness the first question is what kind of character is relevant? Wheather bad moral character in general or some other general bad quality in particular is acceptable. Sometimes it is argued that bad specific character necessarily involves an impairment of the truth telling capacity.

When witnesses to be compelled to answer (Section 147)

If any such question connected to a matter applicable to the suit or proceeding the provision of Section 132 shall apply to that.

Scope :

The word ‘such’ in this Section mentioned in the last clause of the above Section. Relevancy of character is of double: it may be directly to the point in its bearing on proving or proving to be false the very virtue of the points in issue. If any witness is asked a question in cross examination about his character and that character is directly to the point in proceeding the witness is not secured from answering under Section 147 of the Act. He will have to answer the question all the same that the answer may accused him because Section 132 is made relevant to this case. Where questions are asked to a witness not for the intent of proving or proving to be false a point in issue but entirely and merely to show what is the character of a witness. The Court is to determine whether the question is to be answered or not as per the rules given under Sections 148,149 and 150.

Section 148 of Indian Evidence Act

Court to decide when question shall be asked and when witness compelled to answer

If any such question about to matter not applicable to the suit or proceeding excluded in so far as it impacts the credit of the witness by injuring his character. The Court shall determine whether or not the witness shall be obliged to answer it. In exercising its prudence the Court shall have consider the following considerations:

- Such questions are proper if they are of such a nature that the truth of the statement attributing something dishonest conveyed by them would seriously impact the idea of the Court as to the believability of the witness on the matter to which he certify.

- Such questions are incorrect if the statement attributing something dishonest which they convey about to matters so remote in time or of such a character that the truth of the statement attributing something dishonest would not impact or would impact in slight degree the idea of the Court as to the believability of the witness on the matters to which he certify.

- Such questions are incorrect if there is a great disproportion between the importance of the statement attributing something dishonest made against the witness's character and the importance of his proof.
- The Court may if it sees fit pull from the witness's refusal to answer the illation that the answer if given would be critical.

Putting of indecent questions

Improper and disgraceful questions can be put if they connect directly to the fact in issue and also if it is essential to be known in order to decide whether or not the facts in issue existed, the freedom are critical and if the Court is contented that even a disgraceful question may have bearing the same cannot be prohibited.

Principle

As seen supra when character is about to issue witness has to answer it: but if the character is about to shake the credit of the witness it shall be in the prudence of the Court to allow or not allow the question. It is essential to make sure provision against a rush and unforgiving cross examination. It would be great adversity if every person who came forward to give evidence was likely at the feeling of unscrupulous cross-examiner to have every detail of his private life dragged into the light and to be obliged to answer all the questions which are asked only to defame him.

Section 149 of Indian Evidence Act

Question not to be asked without logical grounds

No such question mentioned in Section 148 should be asked unless the person asking it has logical grounds for thinking that the statement attributing something dishonest which it conveys is well founded.

Illustrations

(a) A barrister is teach by an attorney or vakil that an important witness is a kidnapper. This is a logical ground for asking the witness whether he is a kidnapper.

(b) An Advocate is informed by a person in Court that an important witness is a kidnapper. The informant on being questioned by the Advocate gives a satisfactory reason for his statement. This is a logical ground for asking the witness whether he is a kidnapper.

(c) A witness, of whom nothing whatever is known is asked at random whether he is a kidnapper. There are no logical ground for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives disappointing answer. This may be logical ground for asking him if he is a kidnapper.

No disgraceful question without grounds

No disgraceful question should be asked unless there are logical grounds to believe them to be true.

Section 150 of Indian Evidence Act

Procedure of Court in case of question being asked without valid grounds.

If the Court is thought that any such question was asked without valid grounds, it may, if it was asked by any barrister, attorney, vakil or pleader, describe the circumstances of the case to the High Court or other authority to which such barrister, attorney, vakil or pleader is subject in the exercise of his profession.

Section 150 is penal

Section 150 is the punishment that may secure against reckless cross examination, if the Court thought that the questions were asked without valid grounds.

Section 151 of Indian Evidence Act

Indecent and disgraceful questions

The Court may disallow any questions or inquiries which it considered indecent or disgraceful, although such questions or inquiries may have some interconnection on the question before the Court.

Section 152 of Indian Evidence Act.

Question calculated to insult or irritate

The Court shall not allow any question which look to it to be calculated to insult or irritate, or which, though proper in itself, appears to the Court needlessly offensive in form.

Scope

Under Section 149 no question as mentioned in Section 148 of the Evidence Act ought to be asked unless the person asking it has some valid grounds for encouraging the statement attributing something dishonest which it conveys to be true. Question may be asked for which there are only valid grounds for thinking that the statement attributing something dishonest controlled in them are all well founded and it is by no means necessary before the question is asked that the person asking it should be in a place to constitute the truth of the statement attributing something dishonest beyond all uncertainty.

The Court cannot disallow indecent or disgraceful questions if they are about to fact in issue. If they have, however, but some interconnection and may disallow them. Where a question is calculated to insult or irritate or through paper in itself, appears to the Court needlessly offensive in form, the Court must be between for the protection of the witness.

Section 153 of Indian Evidence Act

Exclusion of evidence to contradict answers to question testing truth.

When a witness has been asked and answered any questions about the inquiry only in so far as it be given to shake his credit by injuring his character, no proof shall be given

to contradict him, but if he answers falsely, he may after that be charged with giving false evidence.

Exception 1. If a witness is asked whether he has been at an earlier time acquitted of any crime and not admitted it, evidence may be given of his previous acquittal.

Exception 2. If witness is asked any question attending to challenge the honesty or truth his impartiality, and answer it, by denying the facts advised, he may contradict.

Principle

It is obvious that question asked but to disrepute a witness by injuring his character introduce matters completely foreign to the inquiry and that if arguments about matter so introduced is allowed the Court would be occupied with determining not the merits of the case but merits of the witness and thus case might be indefinitely secure.

Scope

Where a fact inquired after is related to the issue. And for example the character of a witness the advocate must be disputed or made the object of contention or competition with the answer which the witness chooses to give. If he denies the statement attributing something dishonest the answer is conclusive for the purpose for the case.

Evidence to contradict relevant facts

Where a fact which about as having direct interconnection at the issue is denied by a witness, it may surely be proved by irrelevant evidence, and his answer may thus be contradicted by independent evidence. So the statement of a witness for the defence that a witness for the prosecution was at a particular position at a particular time and accordingly then he would not have been at another position, where the latter states he was and saw the accused person properly acceptable in evidence.

Section 154 of Indian Evidence Act

Question by party to his own witness

The Court may in its prudence permit the person who calls a witness to ask any questions to him which might be asked in cross examination by opposite party.

Nothing in this Section shall deprive entitlement to the person so permitted under sub Section to trust on any part of the evidence of such witness.

Principle

A witness is generally force out to state in favour of the person producing him. He will mostly not be given to state anything good to the opponent if he can help it. It is, therefore, allowed that the opponent in order to unravel the truth, may cross-examine the witness, ask leading questions and challenge the truth under Section 145 and 146.

Scope

This Section allows a party the permission of the Court to cross examine his own witness in the same way as the opposite party. Such cross examination means that he can be put.

1. Leading question under Section 143 of the Act.
2. Questions about his previous statement in writing under Section 145 of the Act.
3. Questions to be given to test his truth, to discover who he is and what is his place in life or shake his credit under Section 146 of the Act.

Ask any questions

It is not cross examining his own witness but with the permission of the Court, it is putting him leading questions. This is not like cross-examining. There are two observations which is stated by the CJ Rankin. First, the reason why Section 154 does not say a party may cross-examine his own witness with the permission of the Court is simply that this would in strictness be a contradiction in terms. The second observation is that while asking of questions in leading form is not essentially equivalent to cross examination, there is no uncertainty as to the power of a judge to give leave to ask a leading question to one's own witness.

Adverse or hostile witness

Under this Section the party calling a witness may with the permission of the Court, ask leading questions and cross examine him. It frequently occurs that a witness who has been called in the outlook that he will speak to the existence of a specific state of facts, pretends that he does not remember those facts or force out entirely different to what he was awaited to depose. In such cases questions rises whether by the deal of the witness the party producing him is eligible to cross examine.

Prosecution witness when can be declared hostile

A prosecution witness can be announced when he contract from previous statement made under Sections 161 or 164, Cr.P.C. Besides this when a prosecution witness turns hostile by stating something which is harmful to his prosecution case, this prosecution is eligible to get this witness announced hostile.

Cross examination without pronouncing hostile

Before the party calling the witness can cross-examine him it is not essential that the witness should be pronounced hostile. Questions of cross examination can be permitted by the Court to be asked the party calling him even though the witness does not show to be hostile. When the opposite party has evoked new matter, in cross examination, from a witness the Court may allow the party examining the witness to test his truth.

Permission of court

Witness must obtain the permission of the Court, before the party calling the witness can cross examine him. The allotting of permission is entirely the prudence of the Court. The prudence has to be exerted with caution. Without sufficient reason it should not be exercised. It is not possible to establish a hard and fast rule.

It is to be liberally exercised, whenever the Court from the witness's behaviour, temper, attitude, interconnection or the tenor and disposition of his answers from the studying of his previous inconsistent statement or otherwise thinks that the grant of such permission is advantageous to pull out the truth.

Value of the evidence of a hostile witness

Hostile witness's statement can also be examined to the extent it supports the prosecution case. In case of evidence of a hostile witness, the Court has to act with a greater degree of care and caution to secure that justice alone is done. The proof so advised should unequivocally point towards the guilt of the accused. The fact that a witness is treated under Section 154, Evidence Act, even when under that Section he is cross examined to disrepute, in no way warrants a direction to the jury that they are bound in law to place no reliance on his proof or that the party who called and cross examined him can take no benefit from any part of his evidence.

Failure of prosecution to seek declaration related to hostile witness

When the prosecution failed to look for permission of the Court to declare his witness "hostile" his evidence alternatively of supporting the prosecution supported the defence, there was nothing in law to prevent the defence to trust on the evidence of such witness and his evidence was binding on the prosecution.

Section 155 of Indian Evidence Act

Impeaching credit of witness

The credit of a witness may be challenged for the honesty or truth in the following ways by the opposite party or with the permission of the Court by the party who calls him.

1. By the evidence of persons who take the stand that they from their knowledge of the witness believe him to be undeserving of the credit.
2. By the evidence that the witness has been corrupt or has accepted the offer of a bribe or accept any other corrupt incentive to give this evidence.
3. By evidence of previous statements variable with any part of his evidence which is liable to be contradicted.

Scope

Section 155 of the Act orders for challenging the honesty or truth for credit of the witness. Sections 138,140,145 and 154 provide for challenging the honesty or truth for credit of a witness by cross examination. Section 146 permits questions injuring the character of a witness to be asked to him in cross examination. Section 155 make a different method of discrediting a witness by allowing independent evidence to be led. This Section make four different ways in which the credit of a witness may be challenged the honesty or truth.

Clause 1

Independent proof may be given that a witness examined by the opponent bears such a general reputation for untruthfulness that he is undeserving of credit. The witness must be able to state what is normally said of the person by those among whom he lives.

Clause 2

Independent proof may be given to prove that the witness has been corrupted or has accepted the offer of a bribe. But it should be call back that where the witness in question has been but offered a bribe. No illation of any sort as to the testimony of the witness can be drawn. But demand of bribe by the witness should be proved.

Clause 3

Under clause (3) the credit of a witness may be challenged the honesty or truth by evidence of his previous statement with any part of his statement before the Court.

Is the witness to be cross examined

If a witness intentionally to be contradicted with his previous statement in writing, the attention of the witness must be drawn to it. Though under the terms of the present Section it is not essential to cross examine and face the witness by the previous oral statement, before it can be proved, yet it is both common and better and just to be the witness to first interrogate him just give him a chance to explain if he can.

Section 145 and clause(3) of Section 155

Under Section 145 of Indian Evidence Act a witness can be cross examined and opposed only with that previous statement which was made in writing or was decreased to writing. That Section is not relevant to oral previous statements. The clause(3) of the Section is so give voice that statements, written or verbal, may be used to challenge the honesty or truth the credit under it but where the previous statement is in writing the provisions of Section 145 should be followed.

Section 52 and 155

Sections 155 and 52 deal with different matters. Section 52 disallow character evidence in consider to subject matter of the suit. Whereas Section 155 dictate the manner of

impeaching the credit of witness. Section 155 cannot therefore be interpreted as an exception to Section 52.

Tape recording

Tape recording is admissible under Section 155 sub clause(3) to challenge the honesty or truth the credit of the witness. Before taped statement can be trusted upon the time and place and accuracy has to proved.

Section 156 of Indian Evidence Act

Questions tending to substantiate evidence of applicable fact, admissible

When a witness whom it is calculated to confirm gives evidence of any relevant facts, he may be questioned as to any other circumstances which he discovered at or near the time or place at which such applicable fact happened, if the Court is of the opinion that such circumstances if proved would confirm the testimony of the witness as to the applicable fact which he testifies.

Section 157 of Indian Evidence Act

Previous statements of witness may be proved to confirm latter testimony as to same fact

In order to confirm the testimony of a witness, any previous statement made by such witness connecting to the same fact, at or relate the time when the fact took place, or before any authority legally able to investigate the fact, may be proved.

Scope

This Section allows a witness to confirmation by evidence that he said the same thing on the previous occasion, the only condition being that his previous statement shall

have been either about the time of the happening or before effective authority. The force of any confirmation by means of previous pursuant statement obviously depends upon the truth of proposition that he who is pursuant deserves to be believed.

Conditions for admitting statements

The previous statements made under either of the two following conditions may acknowledged for confirmation under this Section.

1. The statement must have been made at or around the time when the fact took place.
2. It must have been made before any authority legally effective to investigate the fact.

At or about the time

This Section provides an exception to the general rule of excluding indirect evidence and so in order to bring a statement within the exception the duty is cast on the prosecution to abolish by clear evidence to nearness of time between taking position of the fact and the making of the statement. There can be no fast and hard rule. The main test is whether the statement was made as early as can fairly be awaited in the circumstances of the case, and before there was an opportunity to be a tutor to someone or intermixture. The word “at about the time” must mean that the statement must be made at once or at least presently after when a fair opportunity for making it presents itself.

Before any authority competent to investigate the fact

If the previous statement was not made at or about the time when the fact took place, it must be shown to have been made before any authority legally capable to investigate the fact. If the statement was not made at or about the time the event took place nor before an authority legally capable to investigate the fact would not be acceptable.

A statement made by a witness can be used to contradict him or impeach his credit before Commission.

A statement about a fact made on previous juncture before a Collector who had no authority to investigate the fact cannot be used under Section 157 of Indian Evidence Act.

Persons liable to investigate

The words ‘authority to investigate’ are quite and general and should not bound to police officers and investigations in technical way in which the word has been used in CPC. The Section takes competency of authority to investigate the fact not the case. The words ‘legally efficient to investigate’ does not mean only efficient under some provision of law.

The statement made to the legally efficient authority investigate the case.

Where in a case of shocking the modesty of women, DGP was legally approved by the state government of Haryana to investigate this case, the statement made by a witness to him were held to be admissible disregardless of fact that the statement was made long after the incident. The statements made by witnesses are of two categories. First is when witness made a statement to any person at or about the time when the incident happened. The second when witness made a statement to any authority legally capable to investigate the matter. These statements are acceptable no matter it is made long after the incident. The statement made to non authority loses its important value due to lapse of time.

The statement communicated to others.

Something that is stated and the element of communication to another person is not essential becomes a statement under Section 157 of the Evidence Act. Hence the notes of attendance processed by a witness about the conversation that took place between

him and other prosecution witnesses in connection with misappropriation made by the accused would be statement within the meaning of Section 157 of Evidence Act.

Witnesses to be confirmed need not to say in Court that he made the previous statement

There is nothing in the Section 157 which demands that before the confirming witnesses depose to the previous statement, the witness to be confirmed must also say in his testimony in Court that he had made that previous statement to the witness who is confirming him. Of course if the witness to be confirmed also says in his testimony that he had made the previous statement to someone, that would add to the weight of the evidence of the person who gives the evidence in confirmation, just as if the witness to be confirmed says in his evidence that he had made no previous statement to any body that makes the statement of any witness coming into Court as a conforming witness as to the previous statement of little value. Merely in order to make the previous statement admissible under Section 157 of Indian Evidence Act it is not essential that the witness to be confirmed must also, besides making the previous statement at or related to the time the fact took place says in his testimony that he had made the previous statement.

Time for giving confirming evidence

Ordinarily before confirming evidence is admissible the evidence sought to be confirmed must have been given. It is questionable whether Section 136 gives the Court any discretion to allow evidence to confirm a witness to be given under Section 157, before the witness, himself is examined. The Court has, no question, a discretion to allow evidence to be given under Section 157 out of the regular order, merely these discretion should not be often used and only for very special reasons.

Section 158 of Indian Evidence Act

What matters may be proved in connection with proved statement relevant under Section 32 and 33.

Whenever any statement, relevant under Section 32 and 33 is proved all matters may be proved, either in order to contradict or to confirm it, or in order to challenge the honesty or truth or confirm the credit of the person by whom it was made, which might have been proved if that person have been called as a witness and had not admitted upon cross-examination the truth of the matter suggested.

Scope

The statement admissible under Section 32 and 33 are exceptional cases and the evidence is only acknowledged from the impossibility, improbable ness or great inconvenience of producing the authors of the statement. It is just therefore, that all the same safeguards for truth should be provided as if the authors of the statements themselves before the Court and subjected to oath and cross-examination. So with consider to the impeachment of witnesses, the general rule applies where the witness whose testimony is attacked is dead or absent. This Section places a person whose statement has been used as proof under Section 32 in the same category as a witness actually produced in Court for the purpose of contradicting his statement by a former statement made by him.

Section 159 of Indian Evidence Act

Refreshing memory

A witness may, while under examination, refresh his memory to any writing made by himself at the time of the transaction regarding which he is questioned, or so soon afterwards that the Court regards it likely that the transaction was at the time strong in his memory.

The witness may also mention any such writing made by any other person, and read by the witness within the time aforementioned, if when he read it knew it to be correct.

When witness may use copy of document to review his memory

Whenever a witness may review his memory by reference to any document, he may, with the permission of the Court to mention a copy of such documents. Provided the Court be satisfied that there is enough ground for the non-production of the original.An expert may review his memory by reference to professional treatises.

Refreshing memory by witness

A witness allowed to review his memory, about anything upon which he is questioned, may review by means of writing. It is not essential that the document, used for refreshing memory should be relevant. It should be kept in mind that for refreshing memory the document or writing may not be admissible but facts tested to be proved must be admissible under this Section.

Writing includes printing, lithography and photography, etc

The word ‘writing’ has been defined in the General Clauses Act as ‘Aspect referring to ‘writing’ shall be made as including references to printing, lithography, photography and other modes of representing or multiplying words in a visible form’ from this, it is clear that if the status of Section 159 are satisfied a witness can refresh his memory by writing, photography, lithography, printing or other modes of representing or multiplying words in a visible from.

A newspaper

As seen above a witness can review his memory by a printed matter. A witness attended a meeting, learned the speech of one Ram Chandra. The next day, the witness read the report of the speech in the newspaper. He found it be right. It was held

that the witness could review his memory, at the time of his examination, by profounding into the newspaper.

Tape-recorded statement

As seen above writing includes photography, printing, lithography and other modes of representing or multiplying words in visible from (Section 3(65), General Clauses Act). The word ‘in visible from’ not include the possibility of tape-recording being a “writing”. The tape-recording, not being a writing cannot be used for reviewing memory by witness.

Documents not produced at the proper time

In the case of **Jivan Lal Dage v. Nitmani**, the brothers of the plaintiff were not produced at the proper time. The Court declined the plaintiff to produce his account books but permitted him to review his memory by looking in the entries of them. It was held by the privy council that the evidence was acceptable under Section 159. A document which is not in the list of documents as needed by Order VII, Rule 13 of the CPC may be used for reviewing memory. Papers filed late may be used to review the memory.

Refreshing memory by any witness

The Section does not look at thoughtfully any particular or special sort of document fulfilling the situations of Section 159 may be used for the purpose. Memorandum kept by the witness of some transactions through the accounts were not on a regular basis kept, were permitted to be used for refreshing memory.

At the time of transaction or soon after it

Before a witness is permitted to review his memory from any writing made by him, the demands of Section 159, Evidence Act should be followed with. It must be shown that the writing was made by the testifier at the time of the transaction or so soon after that

the Court regards it likely that the transaction was at the time good in his memory. A doctor, when he comes into the witness-box was given a slide of paper by a pleader. After looking at the slide the doctor deposed that he examined the complainant and found injuries on his person. He did not depose as to what the slide of paper was when it was made. It was held that the proof was not admissible.

A witness can review memory about the facts stated by him if the writing was made either at the time of the transaction or presently after the transaction.

Writing made by some other person

A writing made by another person may be used for reviewing his memory by a witness if he read it soon after the preparation of writing and when he read it he knew it to be correct. From this, it cannot be deduced that the witness can review his memory by any writing made by a third person. In order that the writing of a third person may be used for reviewing his memory, the witness must have the first hand knowledge of the facts decreased in writing. The transaction occurs before the witness but alternatively of the writing being made by himself it is made by some other person and the witness reads it within the time when the transaction is fresh in his memory and while reading it he knew it to be correct. Is this were not so, an indirect evidence will creep in adopting the method laid down in Section 159.

It is essential that the document should be prepared in the presence of the witness. The document should be prepared by another person and in the absence of the witness. It is necessary that the witness should have read it soon after the transaction and knew it to be correct. In the case of **Ram Chandra v. Emperor**, the witness stated that he perceived the appellant's speech and that the next morning he read a report on account of that speech in the Bande Mataram Newspaper of that date. The witness tried to review his memory by looking at the newspaper of that date. It was held that the witness was eligible to review his memory by looking at the newspaper.

Obligation of witness to refresh his memory

If there are any questions which upon any witness suffers from a bonafide oversight of memory, and that failure of memory can be repaired by reference to any memorandum or other writing made by the witness at the time and the Courts invites the witness to refresh his memory with reference to the writing, under obligation witness to do so.

A medical man

A medical man may refresh his memory while giving evidence by referring to the report which he made but the report itself cannot be processed as evidence and no fact can be taken thereform.

The document may not be relevant, the fact must be admissible

The writing which is used to review the memory of a witness should itself be admissible in evidence the Section does not require that. While a Panchnama was written by a police officer during an investigation, it was directly read to the Panches and admitted by them to be correct, it was held that Panches witness could review his memory by reading it. A statement recorded in writing by a police officer in the course of an investigation cannot be used in proof yet the police officer might use to review his memory. But it should be delivered in mind that for refreshing memory, the document needs to be permissible but the facts tried to be proved must be allowable in evidence. A fact which are not deserving to be admitted in evidence cannot be brought on record by means of Section 159 of the Act.

A Magistrate, during the investigation of a case, followed the accused who showed him in different places. The Magistrate made only memorandum. It was held that the Magistrate may review his memory by looking into the memorandum through the memorandum was not permissible in evidence.

Documents does not become evidence but its details may be given by refreshing memory

A document does not become an essential evidence under Section 159 of Indian Evidence Act. The witness has to review his memory by reading the memorandum and then he should force out the facts mentioned therein. The documents is not an offer in evidence. But a witness by refreshing his memory may give the details.

Contents of the record of the statement of the accused under Section 27 of Evidence Act

Basically, a police officer should reproduce the contents of the statement made by the accused under Section 27 of Indian Evidence Act in Court by review his memory under Section 159 of Evidence Act from the memo earlier made thereof by him at the time the statement had been made to him or in his current existence and which was recorded at the same time or soon after the making of it. That would be an absolutely unexceptionable way of proving such a statement. Where the police officer blind that he does not remember the accurate words used by the accused from lapse of time or a like cause or even where he does not positively say so but it is pretty established from the surrounding portion that it could hardly be awaited in the natural course of human conduct that he could or would have accurate or dependable recollection of the same, it would be open under Section 160 of Indian Evidence Act, to the witness to trust on the document itself and swear that the contents thereof are correct.

Witness of a search list

Search list or a Panchnama is not evidence. A witness in whose current position search was made by review his memory by the Panchnama. Only his statement is evidence.

Recovery list on the statement of accused under Section 27 of Evidence Act

Such a list or Panchnama or memoranda can only be used by people who signed them or who made them to review their memory within the meaning of Section 159 of Indian

Evidence Act. Wherever statement is ascribed to an accused person in police custody giving information leading to discovery must be proved by the witness like any other facts. The evidence about the preparation of Panchnamas of a list of discovery of a memorandum should not be permitted to depend on the cleverness of the police officer who may or may not like to write the statement in the accurate words of the accused.

No need to establish lack of recollection

For review his memory under Section 159 of Indian Evidence Act the witness need not establish a case of lack of recollection.

Section 160 of Indian Evidence Act

Testimony to facts stated in document mentioned in Section 159 of Evidence Act

A witness may also testify to facts present in such document as is present in Section 159 of Evidence Act, while he has no specific recollection of the facts themselves, if he is confirmed that the facts were correctly recorded in the document.

Principle and scope

It has been seen that the Section 159 of Evidence Act deals with cases where the writing revives mentioned in the mind of the witness a recollection of the facts about the transaction, i.e as soon as he looks at the writing he remembers the facts. But it may be that even a studying of document does not refresh his memory, i.e it does not change his mind a recollection of facts. It is not essential that the witness looking at the written instruments should have an independent or specific recollection of the matters stated therein under Section 160 of Indian Evidence Act. Even then he may testify to the facts mentioned in it, if he recognises the writing or signature and feels sure that the contents of the documents were correctly recorded.

Difference between Section 159 and 160 of Evidence Act

The witness review his memory by looking at the document and gives his evidence in the normal way under Section 159 of Evidence Act. The document is not evidence in itself nor is it tendered. But memory is not review and while he has no specific recollections he guarantees that the paper contains a true record of facts under Section 160 of Evidence Act. Hence the evidence itself is tendered and it is evidence.

Section 161 of Indian Evidence Act

Right of opposite party as to writing used to refresh memory

Any writing mentioned under the provision of Section 159 and Section 160 of the Act must be produced and shown to the opposite party if he requires it, such party may if he delight cross-examine the witness thereupon.

Principle and scope

This Section awards to the opposite party a right to the production and inception of, and cross-examination upon all that is made use of, for the purpose of review the memory of the witness.

Section 162 of Indian Evidence Act

Production of documents

A witness summoned to produce a document shall, if it is in his power or possession, bring it to Court, however any objection which there may be to its production or to its permissibility. Court will decide the validity of any such objection.

The Court, if it sees fit, may look over carefully the documents unless it transfer to the state or take other evidence to enable it to find out on its permissibility.

Translation of documents

If for such a purpose it is essential to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents hidden, unless the documents are to be given in evidence and if the translator not follow such direction he shall be held to have committed an offence under Section 166 of the Indian Penal Code.

Scope

The Section deals with the production of documents in answer to summons and it seems that the Section makes it irremissible on the witness to produce the document summoned by the Court and he has no right to decide whether the document shall be produced.

Validity of objection to be decided by Court

The Court will decide the validity of any objection made by the person producing the document. This Section makes it necessary upon a witness to produce a document, if it is in his power or possession to bring it into Court however any objection which there may be to its admissibility or to its production. The Court will decide the objection.

The Section gives power to the Court to look over carefully the document or to take other evidence to enable it to find out on the issue of permissibility. But Section 162 prevent the Court for inspecting any document which transfer to the matter of state. In cases of such documents the Court must decide the point of privilege on some other material. Such documents can be inspected in proper cases.

Section 163 of Indian Evidence Act

Giving as evidence of document called for and produced on notice

When a party calls for a documents which he has given the other party notice to produce and such document is produced and reviewed by party calling for its production, he is chained to give it as evidence if the party producing it requires him to do so.

Scope

Section 163 of Evidence Act gives provision for the production of documents by one party to the case or proceedings on example of others.

It establishes that if a party to the proceeding summons a document from the other party and inspects it he cannot decline to produce it in the case if the party producing the paper so desires. This Section is applicable for the civil and criminal trials.

Value of such evidence

There is no authority for the proposition that the proof which is acknowledged under Section 163 of Evidence Act must be viewed to be decisive against the party who has inspected the document. The language of the Section does not advise this. All that comes out is that the documents which the other party produced become proof in the case for what they are worth.

Section 164 of Indian Evidence Act

Document production of which was refused on notice using as evidence

When a party refuses to produce a document which he has notice to produce after that he cannot use the document as evidence without the permission of the other party or the order of the Court.

Principle

Where an opponent in possession of a document refuses to produce it on demand afterwards he is prohibited to produce the document to contradict the other party's secondary proof. This is a proper punishment for unfair tactics.

Scope of the Section

If the opponent having a document in his possession and refuses to produce it when called upon at the hearing to do so afterwards he is not at liberty to give the document in evidence for any purpose.

Section 165 of Indian Evidence Act

Power of judge to put questions production or order

The judge may in order to find out or obtain proper evidence of relevant facts and ask any question in any form at any time of any witness or of the parties related to any fact relevant or irrelevant and may order the production of any thing or document and neither the party nor their agent eligible to make any objection to such question or order without the leave of the Court to cross-examine any witness upon any answer given in reply to any such question.

The judgement must be based upon facts declared by this Act to be relevant and duly proved under this Section and shall not authorize any judge to compel any witness to answer any question or to produce any document which such witness would be eligible to refuse to answer or produce under Section 121 to 131, if the questions were asked or the documents were called for by the opposite party nor shall the judge ask any question which it would be not in proper way for any other person to ask under Section 148 and 149 nor shall he dispense with primary evidence of any document except in the cases hereinbefore excepted.

Power of judge to put questions

A judge has a right under Section 165 of Indian Evidence Act to put questions to witnesses expressly recognised. He is awaited and indeed it is his duty to search all avenues open to him in order to find out the truth. If the judge finds that the examination of witness is not being treated in such a way as to unfold the truth it is not only his right but his duty to intervene his own questions.

Power of Court to ask questions

Judge’s part in hearing of a case is to hearken to the proof only himself asking questions to witnesses when it is essential to clearing any point that has been overlooked or left absence to see to that the advocates behave themselves properly and keep to the rules laid down by law. It is the duty of a judge to find out the truth and for that purpose he may ask any question and in any form at any time of any witnesses or of the parties about any fact relevant or irrelevant. But this he must do without unduly trespassing upon the function of the counsel of the parties without any tips of partisanship and without coming into frighten and rowdy witnesses.

The time

However the law permit the judge to put any question to any time normally considered proper for an extended examination is when lawyers for the parties have finished their

question or at least when the lawyers examining the witness at the time is passing on to a new subject. The judge may always intervene in the course of examination by an advocate to put a question in a clear form or to have a becloud answer prevent or to clarify a witness being not fairly misled but if does more and stops advocate again and again to put a long series of his own questions, he makes an efficient examination or cross-examination impossible and disadvantage the trial from its material course.

Cross examination on answers given to the Court

The parties have no right to cross-examine any witness or answers given to the question of the Court except with the permission of the Court under Section 165 of Evidence Act. The prudence will have to be exercised judicially and commonly the judge would give the essential permission if the answer given are opposite to the party who seeks the said permission.

Section 166 of Indian Evidence Act

Power of assessors or jury to put questions during examination of witness

Cases tried by assessors or jury then jury and assessors may put any questions to the witnesses however or by leave of the judge which the judge himself might asked and which considers proper.

Conclusion

Examination of witnesses is very important for any case whether it belongs to the civil or criminal nature and both the procedural law explain the examination of witnesses. Section 135 to 166 of Indian Evidence Act explain the examination of witnesses in which act cover all the things, like who can first examine the witnesses during the examination of witnesses and what are the relevant facts that are accepted during the examination of witnesses and what are the questions asked by an advocate during the

cross-examination of witnesses and what questions are not asked during the cross-examination and also tells the power of judges during the examination of witnesses and at last give the provision related to the power of the jury and assessors to asked the question during the examination of witnesses.