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Lecture-40

Section 151 -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 -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 -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- 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 -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 -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 -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 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 -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 -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.