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FACULTY OF JURIDICAL SCIENCES

NAME OF FACULTY: Dr. Ravi Kant Gupta

COURSE: B.B.A.LL.B. VI Semester

SUBJECT: Law of Evidence

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Lecture-35

WITNESS:

A witness is a person who has personally seen an event happen. The event could be a crime or an accident or anything. Sections 118 – 134 of the Indian Evidence Act, 1872 talks about who can testify as a witness, how can one testify, what statements will be considered as testimony, and so on.

Capacity of witness:

A witness who needs to testify before the Court must at least have the capacity to understand the questions that are posed to him and answer such questions with rationality. Sections 118, 121 and 133 of the Act talks about the capacity of a witness.

Who may testify?

Section 118 provided that

All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.— A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Any person who has witnessed the event is competent to testify, unless – the Court considers that they are unable to understand the questions posed to them, or unable to give rational answers as prescribed in Section 118.

Rational answers should not be expected from those of tender age, extreme old age, or a person with a mental disability.

The section says that generally, a lunatic does not have the capacity to testify unless his lunacy does not prevent him from understanding the question and give a rational answer.

Can a child testify?

A small child of even 6 or 7 years of age can testify if the Court is satisfied that they are capable of giving a rational testimony.

In the case of ***Raju Devendra Choubey v. State of Chhatisgarh***, **21 August, 2014** the sole eyewitness of murder was a child of 13 years old, who worked as a house servant where the incident took place.

He identified the accused persons in the Court. However, the accused persons had no prior animosity with the deceased and were acquitted as the case could not be proved against them beyond reasonable doubts.

The Supreme Court on this matter held that – the child had no reason to falsely implicate the accused, as the accused raised him and provided him with food, shelter, clothing, and education.

Therefore, the testimony of a child cannot be discarded as untrue.

In ***Dhanraj & ors v. the State of Maharashtra,2002*** a child of class VIII was a witness to the event. The Apex Court observed that a student of 8th standard these days is smarter, and has enough intelligence to perceive a fact and narrate the same.

The Court held that the statement of a child who is not very small is a good testimony for the same reason.

Therefore, a child can testify provided that he is not a toddler

Witness unable to communicate verbally:

Section 119 provided that

"A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence;

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed."

In this way Section 119 of the Act says that a person who is not able to communicate verbally can testify by way of writing or signs.

A person who has taken a vow of silence and is unable to speak as a result of that vow will fall under this category for the purpose of this Section.

In the case of Chander Singh v. State, the High Court of Delhi observed that the vocabulary of a deaf and dumb witness may be very limited and due care must be taken when such witness is under cross-examination.

Such witnesses may not be able to explain every little detail and answer every question in detail using the sign language, but this limitation of vocabulary does not in any way mean that the person is any less competent to be a witness. A lack of vocabulary does not affect her competence or credibility in any way.

If a dumb person can read and write, the statements of such persons must be taken in writing. The same was held by the Supreme Court in State of Rajasthan v. Darshan Singh.

Can judges testify?

Section 121 provided that

"No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any question as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting"

A judge or a magistrate is not compelled to answer any question regarding his own conduct in the Court, or anything that came to his knowledge in the Court – except when asked via special order by a Superior Court .

He may, however, be subject to examination regarding other matters that happened in his presence while he was acting as a judge or a magistrate.

For a better understanding of this provision, let's look into the illustrations provided.

- "A' is being tried before the Court of Session. He says that deposition was improperly taken by Magistrate "M". "M" is not obligated to answer unless there is special order by a Superior Court.

- "A" is accused of having given false evidence before the Court of Magistrate "M". He cannot be asked what "A' said unless there is a special order by a Superior Court.

Ron is accused of attempting to murder a witness during his trial in the Court of Magistrate "M". "M" may be examined regarding the incident.

This section gives a judge or a magistrate the privilege of a witness and if he wishes to give it away, no one can raise any objection.

So, if a magistrate has been summoned to testify regarding his conduct in the Court, no one can raise any objection if he is willing to do so.

A magistrate or a judge is a competent witness and they can testify if they want to but they are not compelled to answer any question regarding their conduct in the Court.

Can a Judge testify in a case being tried by him?

We have already seen that a judge can be a competent witness if he wants, but what if the case is being tried by himself?

In the case of ***Empress v Donnelly,*** the High Court of Calcutta stated that a Judge before whom a case is being tried must conceal any fact that he knows regarding the case unless he is the sole judge and cannot depose as a witness.

It was held that such a judge cannot be impartial on deciding the admissibility of his own testimony. He will not be capable of comparing his own testimony against that of others.

If he has to testify, then he must leave the bench and give away his privileges in order to act as a witness in the case.

Can accomplice be a witness?

Section 133 of the Act says that an accomplice to a crime is competent to be a witness against the accused. The conviction made on the basis of such testimony is not illegal.

An accomplice is a person who is guilty of helping the accused to commit a crime. He can be appropriately described as a partner in the crime of the accused.

In the case of ***C.M. Sharma v. The State of A.P,*** it was held that if a person has no other option than to bribe a public officer for getting his work done, such a person will not be considered as an accomplice.

Cases of bribery are difficult to corroborate as bribes are usually taken where no one else can see, but, in this case, there was a shadow witness who accompanied the bribe giver (a contractor in this case) and the case could be corroborated with his help.

The public officer pleaded to treat the contractor to be treated as an accomplice, but his plea was rejected on the ground that the money was extracted from the contractor against his will.

Therefore, an accomplice is someone who has either wilfully participated in committing a crime with an accused or helped him in some manner. If he has been forced to break any law against his will, then he may not be regarded as an accomplice.

It is also clear from this case that an injured person or a victim will be a competent witness in a case. This type of witness is called ‘injured witness’.

In the case of ***Khokan Giri v. The State of West Bengal,*** it was held by the Apex Court that even though an accomplice can be a competent witness, it would not be very safe to make a decision solely relying on his testimony.

The Court suggested that the testimony of an accomplice should not be accepted by any court without corroboration of material facts. Such corroboration must be able to connect the accused with the crime and it must be done by an independent, credible source. This means that one accomplice cannot corroborate with another.

With respect to corroboration of statements given by an accomplice, in another case of ***Sitaram Sao v. State of Jharkhand,*** the Supreme Court held that Section 133 must not be read by itself, but, should be read with Section 114(b) which says that an accomplice is not worthy of credit unless corroborated with material particulars.

This Apex Court further says that the Court should always presume that an accomplice is unworthy of credit, and no decision must be made solely based on his testimony unless the facts have been corroborated.