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Eyewitness Testimony in India

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ABSTRACT

An Eyewitness plays a very important role under the Indian Law. An Eyewitness is a witness who gives testimony to the act or the transaction that have been seen by himself and to which he testifies in the court. They are considered to be very significant in the court during trial in order to provide fair and just decision. Their role comes into play when the case is being built before the court of law, ie., during the initial procedure. In order to testify as an Eyewitness in the court, the person must be competent as well as qualified. They play a very vital role in the court as their as their identification of the accused may result in charging or conclusively convicting them. But they cannot always considered to be reliable as there have been certain obstacles many a times. It is often said that eyewitness testimony lead to wrongful convictions which will be further explained n the research paper. According to a study , it had been observed that unreliable or inaccurate eyewitnesses lead to more than 60% convictions that have been held wrong. However there is no inhibition on convicting a person based on a single testimony provided by a single person. There is an inveterate principle which is stated as evidence has to be weighed and not counted. The affirmation that eyewitness evidence is dependable and exact is testable and the exploration is certain that the observer's recognizable proof is helpless without the observer's mindfulness.

I. INTRODUCTION

A witness is a person who is in a position to provide information whether in oral or written form in the court or elsewhere.² The legal framework has consistently depended on the declaration of the eyewitnesses. It can be seen mostly in case of criminal proceedings. But in spite of the fact that the information given by the eyewitnesses can be very useful in creating leads , convicting the accused , as well as absolving the innocents , this evidence can not be considered to be most efficacious. Indeed even genuine and good natured witnesses can make mistakes. Errors like distinguishing an inappropriate individual or neglecting to recognize the culprit can be made by any human.

However a witness must be completely independent while providing information which in

¹ Author is a student at Amity Law School, Noida, India.

² Madhu Madhuranatha v.State of Karnataka, 2014 AIR (SC) 394 (India).

other words means that he must not be acting under any type of coercion or fraudulent means. An Eyewitness is a person who has directly witnessed the commission of the crime by the accused with his own eyes. Looking back at the past judicial decisions made in India, it has been observed that eyewitness play a very critical role in the initial trial stage of the case being built up in the court as their identification may lead to arrest or conviction of the suspects. This postulation for the acceptance of the eyewitness testimony as a substantive evidence is based on the fact that the human brain is proficient and consistent at recording and recovering data in regards to events.³ However it is very important to ensure that the witnesses , whether eyewitness or not, are reliable as well as qualified or adequate to provide statements in the court.

II. EYEWITNESS UNDER THE INDIAN LEGAL SYSTEM

In a criminal proceeding the onus of proof is consistently on the prosecution because it is them who need to prove and demonstrate is case beyond any kind of uncertainty and reasonable doubt. The accused cannot be potentially be sentenced with no legitimate considerable proof as proof is a fundamental component of a criminal procedure. Despite the earnestness of the claims affirmed against the denounced, it is the proof on which any decision of a criminal proceeding is decided and is considered to be the utmost necessity of criminal justice.

The Acts and the sections mentioned below deal with the evidence given by witnesses in the court of law.

Under the Indian Evidence Act 1872, section 118 to 134 which falls under the Chapter IX of the act look at the certain features of the witnesses which are very important and are required during the judicial decisions in order to maintain fairness and sanctity. These have been mentioned below:

- a) competency
- b) compellability
- c) privileges and
- d) quantity

In section 135 of the Indian Evidence Act 1872 it has been stated that the order of witness produced and examined with respect to the civil and criminal procedure respectively are to be

³ Manveen Singh, *In Eyes, We Trust: The Changing Landscape of Eyewitness Testimony*, 37 NORTHERN ILLINOIS UNIVERSITY LAW 444 (2017).

regulated by the law and practice.⁴ According section 138 of the Act , the witnesses shall be first examined-in-chief . then cross-examined , then re-examined. However the examination and cross-examination need to be related to the relevant facts of the case whereas the cross-examination does not necessarily need to be confined to facts for which the witness testified on his examination-in-chief. ⁵

Section 164 of the Criminal Procedure Code 1973 states that all the statements of the witnesses given for evidence which hold high evidentiary value must be recorded. ⁶

III. EVIDENCE GIVEN BY AN EYEWITNESS

If the statements provided by the eyewitness are natural, consistent as well as in consonance with statements given by the other witnesses , then the statement of the eyewitness are considered reliable and therefore is taken into consideration. However it is very important that while providing the statements the witness shall not be acting under any kind of coercion, motive or fraudulent means. A witness shall be completely independent and free from any kind of pressure while providing information.

The Supreme Court has held that the evidence provided by an eyewitness shall not be omitted on the plausibility of it being false without scrutinizing it properly in the required manner. Thus any evidence must not be considered unreliable or denied in the court of law due to few adornments as there may always exist minor differences in evidences given by separate witnesses. The reaction of different people cannot be similar or follow a set of pattern as slight variations will always occur in the reaction or statements of various people. Every person has a different way of reacting to a similar situation , therefore there does not exist any uniform rule for an individual's reaction. ⁷

IV. OBSTACLES FACED IN EYEWITNESS TESTIMONY

Eyewitness testimony has a very important role during the delivery of justice but meanwhile it also contains several drawbacks which makes it a deceptive evidence and thus leads to it becoming an unreliable source of information in the court. The factors that affect the certainty of the eyewitness testimony can be listed as following:

1) STRESS

A person whether the victim or not can get a lot of stress during the commitment of a crime.

⁴ Indian Evidence Act 1872, No. 135, Acts of the Parliament 1872.

⁵ Indian Evidence Act 1872, No. 138, Acts of the Parliament 1872.

⁶ The Criminal Procedure Code 1973, No. 164, Acts of the Parliament 1973.

⁷ Pratap Chauhan v. Ram Naik, AIR 2001 SC 164 (India).

Therefore due to high level of stress , the person may not be able to observe the situation as well as he would have normally. Such stress can lead to the person being unable to recall the situation later and reduce his ability to observe the situation properly. Therefore stress is one of the factor that affects the accuracy of the information provided by the eyewitness.

2) FEAR OF HARRASMENT

Many a times the witnesses have to travel from far of places in order to testify in the court. They have to leave their families at home and take leave from their jobs in order to be able to come and testify in the court. Another issue that they faced by them is the cost of travelling which they have to spend from their own pockets. This causes them a lot of hardship and discomfort. Therefore the witnesses feel harassed and in order to prevent such distress many a times the witnesses tend to give false statements which directly affects the delivery of justice.

3) STATEMENTS MADE UNDER FEAR, THREAT OR UNDUE INFLUENCE

Witnesses may be under threat , inducement or promise of some future benefit while making statements or providing information. This is one of the major factors that directly affect the accuracy of the evidence and lead to wrongful convection. Therefore it is very important for a witness to be free from any kind of threat or inducement and must not have any motive while testifying.

4) WRONG IDENTIFICATION

It is known that human brain is proficient as well as skilled at storing and retrieving information of past occurred events. But after years of research it has also been consummated that the human memory need to be taken care of as it is very delicate. The human brain records information in parts and then tends to fill the missing particulars by itself when it is not able to recall all the details.⁸

5) DELAY IN THE LEGAL PROCEDURE

Eyewitness testimony is mainly based to the ability of the person to recall events, especially in cases where only a little information is available.⁹ However the human memory is considered to be very fragile and tends to fade away with time. Longer the time, lesser will be the chance of the memory being accurate. In one of the leading cases, the accused was arrested and a week later when the Test Identification Parade was supposed to be held , the accused refused to take

⁸ Subodh Asana, *Eyewitness Testimonies: A Gateway to Wrongful Convection*, (June 15, 2020, 11:30 AM), <https://blog.ipleaders.in/eyewitness-wrongfu-convictions/>.

⁹ UK Essays, *Factors that Affect the Accuracy of Eyewitness Testimonies*, (Dec 05, 2020, 6:30 PM) <https://www.ukessays.com/essays/psychology/factors-that-affect-the-accuracy-of-eyewitness-testimonies-psychology-essay.php>.

part in it. And ultimately the process was completed almost 8 years later.¹⁰ After such a long period of time, it is very natural for the human memory to decay and thus making the eyewitness evidence unreliable. Thus the identification procedure shall be led in a way that advances unwavering quality, reasonableness as well as fairness.

6) HOSTILE WITNESS

There exists possibilities where the witness may turn hostile due to various reasons. The witness may change or disagree with his past statements which again affects the delivery of justice and gives the accused the opportunity to take advantage of the situation. The evidence of the hostile witness would not be completely dismissed, yet they shall be exposed to investigation, and the part of the proof that may be held reliable with the case of either of the parties can be acknowledged or accepted.

7) HUMAN MEMORY IS MALLEABLE

The human brain does not record all the encounters that it comes across. What is stored inside are only descriptions dependent on those encounters. In some cases they might uncannily exact but at the same time they can be fictional too whereas most of the times they are a blend of the two. Eyewitness evidence is considered to be an intense type of a proof for sentencing the person charged. At the end of the day individuals store the data such a way that sounds pleasing and good to their mind. However, it is dependent upon oblivious memory contortions and predispositions even among the most confident and sanguine witnesses. And if there exists no objective evidence then the both are considered undefined.

8) LEADING QUESTIONS

Leading questions can be explicitly perilous, because of the fact that they can be defined in a manner which could lead to inclination of results. Such questions can make false connections in the mind of the witness. There are various studies which prove that leading questions can bring about implantation of deceitful information. These sort of inquiries are considered to extremely despised in the court and should be avoided at all times. At the time of a cross-examination, only the questions related to what had been raised during the direct examination can be asked by the attorney. But if there is a chance to stray into another topical zone then the permission of the adjudicator may be given in the light of legitimate concern time as well as effectiveness. However under provocation or harassment the witnesses may agree to the wrong questions as well as provide false information.

¹⁰ Daya Singh v. State of Haryana, 2001 AIR SC 1188 (India).

V. EYE WITNESS TESTIMONY UNDER PSYCHOLOGY

Eyewitness testimony is essential in every criminal proceedings in order to recreate realities from the past occasions eyewitnesses are generally imperative to this exertion. The psychologists have however confronted a significant number of theory and assumptions of the legal system regarding the certainty of the eyewitness evidence. Especially prevailing in the psychology classics are the perspectives that memory reports are most of the times plain, i.e., changes by every intriguing addressing, that witnesses can be made to feel very positive about defective and false recollections. The social researchers have through various examinations shown since the 1960s that there exists a huge motivation to be worried about the accuracy of eyewitness testimony. In spite of the fact that the witness can frequently be sure of their memory being precise while distinguishing a suspect, the flexible idea that the human memory and the visual discernment makes the eyewitness testimony one of the most untrustworthy types of proof. The primary techniques utilized by psychologists for analyzing certainty of the witnesses include creating occasions for clueless individuals and then gathering their report about what they saw. Since the occasions were made by the scientists, these reports can be stored for their precision and certainty. Along this way. The scientists can efficiently manipulate various components such as stress, the utilization of deluding questions etc in order to figure out what factors impact the accuracy and precision. More than 75% of these exemptions are cases that included mixed up identification by the witnesses. The disclosure of these mixed up identifications as well as the coming about wrongful convictions has been a shaking occasion for the legal system and undermines the open confidence in the criminal justice framework. In likewise manner, the eyewitnesses today are largely affecting the legal framework as the legal system perceives that the eyewitness errors are leading to faulty trial outcomes. The scientific literature on eyewitness evidence that has risen is a significant development in showing the importance of social science for assisting and tackling with issues in the legal framework. An expanded utilization of the specialists of eyewitnesses at the preliminary stage, modifications on how the eyewitnesses are to be interviewed and various other factors that have to be looked over during a legal proceeding involving eyewitnesses represent a concrete legitimate framework upgrade coming about due to this research line.¹¹

VI. EVIDENTIARY VALUE OF AN EYEWITNESS

Eyewitness testimony has always been of principle significance under the Indian Legal System.

¹¹ Adele Quigley-McBride, *Eyewitness Testimony*, (Feb 22, 2018, 4:05 PM), IOWA STATE UNIVERSITY, <https://www.oxfordbibliographies.com/view/document/obo-9780199828340/obo-9780199828340-0026.xml>.

In Indian courts the eyewitness testimony is preferred in majority of the criminal cases. But it is known that being persuading is not equivalent to being accurate. Eyewitness testimony is more frail compared to what numerous individuals expect.

A witness who gives distinctive statements at different places as well as times cannot be considered to have respect for the truth. His evidence must be perused and considered overall with a view to see if any weight ought to be joined to the same. The court needs to be slow to follow up on such a testimony and should search for confirmation of his evidence.¹²

However, the importance of the Forensic and Medical science was acknowledged only after looking into the various downfalls of the eyewitness testimony. After the Criminal Procedure Code (Amendment) Act 2005, two new sections were brought in by which the Investigating Officer is enabled to gather DNA test from both the parties with the assistance and help of the medical practitioner. Yet these sections are related to examination in case of sexual offences.¹³ The appearance of DNA investigation in the 1980s provided an extra ordinary degree of accuracy about the identity of the real culprits and the individuals who were honest and erroneously blamed for the wrongdoing.

Testimony of eyewitnesses ought not to be dismissed only in the light of the fact that he or she was related to the deceased. The court has also held that the testimony of such eyewitnesses cannot be rejected on the mere fact that the witness is in some manner related to the deceased. It is also held that their testimonies must be deliberately investigated due to the existence of their relationship and if the same results to be pertinent and there exists no inconsistency, then the testimony is considered to be adequate and the same is then acceptable.¹⁴

VII. CONCLUSION

Eyewitness testimonies play a vital role in the trial procedure. They have a significant role in deciding the destiny of the accused in many cases. But there exists various elements that make it inconsistent and leads to unjust and unfair decisions. The precision and Forensic Science reports are more dependable than the eyewitness testimony as the observer can frequently be deluding however the forensic reports have lesser chances of being off base. The variables such as memory rot, absence of recognition, mental stun and injury and numerous other different elements play a crucial role in making eyewitness testimony an unreliable source. This therefore makes a passage for convictions being wrong and when an individual is unjustly

¹² State of Rajasthan v. Bhawani AIR 2003 SC 875 (India).

¹³ Subodh Asana, *Eyewitness Testimonies: A Gateway to Wrongful Convection*, (June 15, 2020, 11:30 AM), <https://blog.iplayers.in/eyewitness-wrongfu-convictions/>.

¹⁴ State of Rajasthan v. Arjun Singh & others, AIR 2011 RCR 270 (India).

indicted, it leads to perversion of justice. Also witnesses often fear harassment and hardship due to which they provide false statement or turn hostile. Along with this, witnesses may also be needed for future examinations which involves a lot of time as well as traveling expenses for those who live far away, therefore in order to get rid of this they often give false information. Not only this, there are many other factors that affect the accuracy as well as reliability of the eyewitness evidence for example, undue influence, threat, motive etc. All the more explicitly, the presumption that that the memory gives a precise account of understanding , much like a camcorder , is often tended to be mistaken. The human memory has advanced to give us an individual feeling of character and also to directs our activities. We are often tendentious while seeing our encounters or experiences and to limit as well as ignore others. Human memory is pliant.
