

# Hostile Witness

*Sachin Kumar\**

The role of a witness is paramount in the criminal justice system of any country. According to Bentham, witnesses are the “eyes and ears of justice”.

Given the importance of witnesses in the trial process, any law, aiming to redress the problem of “hostile witness” should be comprehensive, with a view to eradicate the menace.

In systems of proof in English common law tradition, almost all evidence must be sponsored by a witness, who has sworn or solemnly affirmed to tell the truth.

The bulk of law of evidence regulates the type of evidence that may be sought from witnesses and the manner in which the interrogation of witnesses is conducted during direct examination and cross examination of witnesses.

## **Who Is a hostile witness?**

Hostility is one of the form of perjury. A hostile witness is one who is a witness of a criminal event or other information to help the prosecution built a case but has later turned in court, giving a different version of the event to contradict information. A witness is said to be turned hostile when he gives a certain statement in his knowledge about commission of a crime before the police but refuses it when called as a witness before the court during trial.

## **Why do witnesses turn hostile?**

Today, the main cause for the high acquittal rate in our criminal justice system is the witnesses turning hostile. But why do the witnesses turn hostile? Generally, the reason is an unholy combination of money and muscle power, intimidation and monetary inducement. There are number of reasons for a witness turning hostile, the major one being:-

- The absence of police protection during and after the trial. The witnesses are afraid of facing the wrath of convicts who may be influential in the system
- Another reason is inordinate delay in disposal of cases. It protracts the witnesses’ ordeal.

---

*\*Judicial Magistrate- 2<sup>nd</sup>, Rudrapur, Udham Singh Nagar*

- Intimidation is also one of the causes of witnesses turning hostile.

But it is difficult to accept that what they perceive as harassment from the long trial and the way they are treated in court can make them hostile. Inducement in cash and kind appear to play an important role in witnesses turning hostile. It was observed by WADHWA J. *“here are witnesses who are harassed a lot. A witness is not treated with respect in the court, he is pushed out from the crowded court room by the peon. He waits for the whole day and then finds the matter adjourned. He has no place to sit and no place even to have a glass of water; and when he does appear in the court, he is subjected to prolonged and in-checked examination and cross examination and find himself in a helpless situation. For all these reasons, a person abhors becoming a witness.*

The witnesses in a large number of cases are under constant threat from criminals. Psychological studies carried out on witnesses seems to suggest that grueling cross examination, frequent adjournments, court room intimidation are some of the major reasons that force a witness to turn hostile.

### **Judicial Remedy**

The malady afflicting our criminal justice system is much more deep-rooted. Cosmetic changes just won't do much to deliver justice. The system requires a comprehensive revamp. The V.S. MALI MATH Committee on reforms of criminal justice system prepared outline for such a wide ranging correction in 2003. For a situation like the “Jessica Lal case” where witnesses refused to support the prosecution case, the committee has suggested the following measures:-

1. Holding in camera proceedings;
2. Taking measures to keep identity of witness secret;
3. Insuring anonymity, and
4. Making arrangements to ensure their protection;
5. Witnesses in courts should be treated as guests of honors;
6. They should be adequately compensated for spending money on travel and accommodation;
7. Comfort, convenience and dignity of witnesses while deposing in the court of law should be ensured and

8. A law for protection of witnesses should be enacted as there is no such law in India;
9. Constitution of a national security commission at national level and state security commission at state level.

### **Conclusion**

We need to enact strict laws on witness protection keeping in mind the needs of the witnesses in our system. The plain fact is that the level of professionalism demanded by the witness protection is considered to be beyond the capability of our police in the existing system, making it susceptible to extraneous influences. Today, stringent laws against person giving false evidence and against witnesses that turn hostile are very much the need of the hour.

The Jessica Lal murder case provoked a public outcry against miscarriage of justice that compelled the authorities to reopen the case. The distortion in the case was so brazen that even middle class empathy with the murdered victim finally aroused public opinion. But it would be facile to conclude that India is on the way to reform its criminal justice system. This is just the first half step, the media too has a tremendous responsibility. Instead of sensationalizing issues they must endeavor to present a constructive and analytical account of such situation. Besides, there may be similar situation in future and in order to ensure justice is delivered, the courts and the law should make provision for guaranteeing the safety of witnesses.

\*\*\*\*\*