Witness under the Indian Evidence Act, 1872

Introduction

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?

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*, 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*, 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 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?

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 as stated in Section 121.

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.

- Harry is being tried before the Court of Session. He says that deposition was improperly taken by Magistrate Draco. Draco is not obligated to answer unless there is special order by a Superior Court.
- Hermoine is accused of having given false evidence before the Court of Magistrate Draco. He cannot be asked what Hermoine 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 Draco. Draco 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.

Types of accomplices

For the purposes of this section, accomplices can be divided into three categories.

- **The principal in the first degree:** Also called 'principal offender', this is a person who has actually committed the crime. There can be multiple persons who committed the crime together, each one of them will be principal offenders.

For example – Harry and Ron plan to murder Tom.
– Both drive to Tom's house and shoot him.

In this case, Harry and Ron both are the principal offenders.

- **The principal in the second degree:** This refers to someone who is present at the crime scene and helps the principal offender in any way.

For example – Ron and Harry plan to murder Tom.
– Ron provides Harry with weapons.
– Harry drives to Tom's house and shoots him.

In this case, Harry is the principal offender and Ron is the principal of the second degree.

How many witnesses can there be?

There is no prescribed number for minimum or maximum witnesses to be in a case in any provision. Section 134 lays down the same. It says that there is no requirement of a particular number of witnesses to prove any fact.

In the case where there are multiple witnesses that have seen the same event, not all of them are required to be examined for proving a fact, examining two or three of them would be enough to establish the case.

The same was held in the case of *Amar Singh v. Balwinder Singh*, wherein the Supreme Court said that if out of all the witnesses, only two or three have been examined, it will not mean that the prosecution was incorrect.

The credibility of a single witness

It is a general rule that goes unsaid that the Court must act on the testimony of a witness even if he is the only one and his statements are uncorroborated.

In the case of *Ramesh Krishna v. the State of Maharashtra*, there were multiple witnesses who could not stand with their statements given during the investigation. On the other hand, one of them stood firmly with his statement who was deemed to be a credible witness.

The Court, in this case, held that – the testimony of one credible witness will outweigh the same given by other questionable witnesses.

A witness is considered to be credible if he stands by his statements and the same can be proved later on.

Witnesses may also need to identify the accused person, and there is no minimum number of witnesses required to identify an accused in order to get him sentenced.

In *Binay Kumar v. the State of Bihar*, the Supreme Court said the same; it held that there is no rule of evidence that conviction can not happen unless there is a particular number of witnesses to identify the accused.

Any conviction is not influenced by the quantity of the witnesses but by the quality and credibility of witness testimonies.

Conclusion

The laws in India regarding competence and protection of witnesses are up to par and are legislated keeping everyone in mind. Judiciary has further strengthened this act by way of interpretations, broadening its scope and applicability.

It is irrelevant whether a person can speak or not, if he is capable of understanding questions and answering them, he is capable of being a witness.