Journal of The Gujarat Research Society

ISSN: 0374-8588
Volume 21 Issue 10, October 2019

Admissibility of a Child Witness in the Court of Law in India

Amit Verma
Department of Law
Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

Abstract: ***In every court case, questioning by a witness is treated as essential information, allowing the court to resolve the final matter. However, there is a fundamental requirement for the witness to testify, i.e., to be of the same mind and knowledgeable enough even to give testimony. This article addresses by use of a child as a witness in even a court that is not impermissible but requires extra consideration by the judiciary as the veracity of a child must be checked by the court that has been addressed underneath the subject 'void dire'. The article ends by explaining a child's potential to be affected but also how the court should verify it and why a children have grown up to provide a testimony that will really help any court get into the appropriate path.***

Keywords: Admissibility, Child witness Constitution, Evidence Act, Testimony, Rules and Guidelines.

INTRODUCTION

Witnesses are called the' eyes and ears of a court' by Bentham, the founder of jurisprudence. The involvement of both a witness when approaching the judgement of even a case is of such a crucial nature. Since the position of the eyewitness is of a unique nature, it is important to examine how well a person is adequately qualified to be willing to perform the function of those that can alter the course of a case. A very heavy burden of duty is placed on the witness when deciding the facts. So the witness given ought to be qualified in that issue to submit evidence."[1]

According to the Evidence Act, a witness is someone who offers evidence in some form, oral, written or circumstantial. The edifice of the administration of justice is based on the presence and deposition of witnesses without fear or hesitation, without coercion or attractiveness in the court of law. When witnesses are deposited under fear or coercion, or for advantage or attraction, so was the basis of justice administration weakened, but may also be eviscerated."[2]

DISCUSSION

The Evidence act describes certain types of witnesses which are as follows:

Sole witness:

As the Supreme Court has found out in numerous cases, the testimony provided by the sole eye witness does not require corroboration. The court will pass judgment on just the report are based provided by the eye witness. In Namdeo v. State of Maharashtra, the Supreme Court also claimed that its judiciary emphasized the significance, weight and accuracy of evidence rather than the quantity, vast array or plurality of facts. When witnesses are deposited under threat or

[1] MP Sharma v. Satish Chandra, AIR 1954 SC 300
[2] *Neelam Katara* v. *Union of India*, ILR (2003) II Del 377 260.

intimidation, or for profit or attraction, the foundation for the rule of law has been weakened, and may also be eviscerated.

As such, a competent court must both rely entirely and solely on a single witness and report guilt. In contrast, the accused can even be acquitted, notwithstanding the involvement of several witnesses, if he is not pleased with the accuracy of the evidence. The Supreme Court highlighted this in its numerous decisions that doing so would comply with the Rule of Caution. The rule of defence is that now, when assessing the statements of the sole eye witness, the judge also does not require independent proof from other facts, it will provide its decision leading to the arrest given by him/her, and should be cautious enough that because of this he couldn't even cause a breach of civil rights.

These have been concluded in different cases of Supreme Court decisions there is really no difficulty in trying to convict every person or organization of the testimony provided by a single witness. The theory and reasoning behind Section 134 of the Evidence Act is that proof must be good in consistency, but not in quantity.

Child Witness:

A child, because of his age, is not exempt from being a witness under the Proof Act. The Act does not have any clear age where even a person is not exempt in the situation of becoming a witness. This relies on the ability and intelligence of the kid, his knowledge of tradition and modernity, and his responsibility to tell the truth. A child of 6 or 7 years is a competent participant if it emerges from his statement that he would still appreciate the questions he was asked and have intelligent responses to them. Such questions will really be posed in analyzing but whether or not the student is capable of presenting evidence and, indeed, the judge will be able and seeing if his ability can be measured by the answers given by him, such as those reported in his science records.

Eye Witness:

In Ram Swaroop v. Rajasthan State, the rules of proof presented by either an anonymous caller were laid down to roughly:[3] as follows:

It is unsafe to rely upon the testimony of an eye witness, particularly when the Trial Court has, after careful consideration and for good reasons, disbelieved the same.

(ii) Where medical evidence on record proves the number of injuries on the body of the Victim and the evidence of eye witnesses is not consistent, pointing out at more injuries than those proved by the medical evidence, the evidence of the eye witnesses cannot be considered as true.

[3] AIR 2004 SC 2943.

(iii) Where there are inconsistencies in the deposition of a witness and his statement recorded U/S. 161 of Cr.PC the approach in appreciation of evidence has to be very careful and the deposition has to be given more weight.

(iv) If two views are reasonably possible on the basis of the evidence on record, the View which favors the accused must be preferred.

(v) High Court ought not to interfere with an order of acquittal merely because it is possible to take a contrary view.

Accomplice as Witness:

The prosecution of the accused is not allowed upon on ground of the prosecution of the accomplice. Whether or not the testimony can be considered true needs to be seen by fair minds. There is really no rule of law, even though a victim is more or less credible and neutral, his involvement makes them an accessory to the crime or a political witness in a pre-arranged raid he was becoming acquainted with." [4]

Testimony of the child:

"The test of a child's competence stems from the fact that he will be able to understand the questions put to him and provide proper answers to them "Tender age does not, ipso facto, make a child unable to testify. Indeed, no precise age is defined by statute at which children are completely exempt from presenting proof that they are not appropriate.[5]

Since the position played by a witness is of a very significant nature, and may lead to a person's prosecution, there are a range of fundamental criteria that the witness must be able to satisfy, such as whether himself is of a sane mind but mostly whether he is adequately qualified to testify. The following three conditions are:

- A witness should be competent enough;
- Must understand the question put before;
- Must comprehend and give pragmatic and rational answers to the same.

The tribunal has the sole power to determine is not whether the evidence is sufficient to investigate the circumstances and the facts. It is important to judge a child's integrity in the same way to see if he is prepared to say. With children, development depends on different factors, such as the socioeconomic conditions of their age. Under one of the case laws, it was held that if he meets the general requirements of becoming a witness, even a 5-year-old is incapable of becoming a witness.

Thus, before it comes to providing testimony as a lawyer, it seems to be that the statute does not require a minimum age. The only thing that needs to be seen is that only the child would not be unable to understand the issue placed before him also by court because of his respect to

[4] Malta Singh v. State (Delhi Administration)
[5] *Inder Singh* v. *State of Pepsu*, AIR 1953 Pepsu 193.

a number of growth. Tender age, ipso facto, does not make children unfit to testify. In fact, hardly any precise age is defined by law in which children are specifically exempt from presenting proof that they become not appropriate.

The principle of voir dire

According to this theory, by basic questions which are entirely irrelevant to the situation, the child is brought to a test. The questions could be between the path of the name including its father of a child, the place where another child's bedroom is positioned, etcetera. If, after speaking with either the child, the court is convinced that he will be able to provide adequate proof, nothing can deter the court from using the child as a witness and can depend on anything without any questioning.

The term derived from the Anglo-Norman expression 'Oath to say the truth' is Voir Dire. The test was created to detect out whether a child is capable of saying the truth. It's really the judge who asks the child these questions in order to understand his truthfulness to see is not whether the child can be trusted.

In Rameshwar S/o Kalyan Singh v. The State of Rajasthan[6] The court claimed that it is only if a person is unable to comprehend the direct question to him that he is not permitted to give proof. "It is desirable that judges and magistrates should always record their judgment that the child acknowledges the duty to speak the truth and explain why they believe it," the court said that. If not, the integrity of the witness may be badly compromised, so much in that it will be appropriate, sometimes in cases, to deny the testimony entirely. But I think it can be collected again from situations where there would be no formal certificate, out whether Magistrate or Judge always was of the same thought."

Regarding the possibility of a child to have been manipulated and told what to speak and not to speak in the court, the court in Mangoo & Anr. v.State of Madhya Pradesh[7] There was still space for the child to be tutored, but it should not be a basis for assuming that the young witness must really be mentored alone. The Court must decide upon whether or not child has been home schooled. Through analysing the proof and the descriptions thereof, it can even be determined over whether this are any signs of schooling."

In Panchhi & Ors. v. State of U.P.[8] The court declared that a child witness are always provided with ample substantiation. The proof of a child witness is still irrevocably stigmatised. It is not the rule that if a witness is a child, even if it is found to be credible, his testimony would be dismissed. The rule is that proof of a child witness must always be examined more carefully and with greater intellectual rigor because what someone else tell him is vulnerable to manipulating a child and therefore a young person is an easy victim to teaching."

[6] AIR 1952 SC 54.
[7] AIR 1995 SC 959.
[8] AIR 1998 SC 2726.

The Supreme Court in Nivrutti Pandurang Kokate & Ors. v. The State of Maharashtra[9] He said that before a child is subpoenaed to testify, some sort of scrutiny must take place to ensure that the task has not been manipulated by someone not to say the facts.

"A child's evidence would prove that he has been able to distinguish between right and wrong and the court could finding out from the cross-examination if the defence counsel could show anything to show that the child was unable to agree to disagree. By raising questions to him, the court will assess his feasibility as a witness and even if no such questions have been posed, it can be gathered from his testimony over whether he deliver goods and services the ramifications of what he was saying and if he would be disqualified in facing a strict cross-examination. A criminal defendant must be able to comprehend the holiness of providing testimony under an oath and the significance of the problems that were applied to him."[10]

In Gagan Kanojia & Anr. v. State of Punjab[11] Regarding the likelihood of the child being tutored, it was said that even if teaching portion can be segregated from the unenlightened portion, faith is inspired by the remaining inexpert portion. In such an eventuality, as in the case of a hostile witness, the untutored section may be believed or at least taken into organisation for the purpose of substantiation.

CONCLUSION

A child was once considered to be the criterion of his competence, and it was a general rule that none, very few under ten, could be accepted under the age of nine years. In fact, however, no minimum age is needed to make the proof of a child prosecutable at a late stage. A more rational rule has been introduced and children's competence is now governed not by their age, but by the degree of comprehension they seem to possess. If it shows that she can understand the questions presented to her and provide reasonable responses to them, a child might be a capable witness to provide evidence in court. No set rule can be aid down as to the support that should be given to a childhood witness's testimony.[12]

No precise age is defined by statute, one where children are expressly prohibited from presenting proof on the basis that they do not have adequate understanding. Any particular rule describing the degree of intelligence and expertise that will make a child a reliable complainant can not be defined. A great deal depending also on Judge's common sense and judgement in certain matters of this kind. In fact, when they seem to have ample understanding, it is not uncommon to obtain the deposition of children of eight or nine yrs old; and also in the case of Brasier, a girl, who was definitely under seven years of age, and maybe only five, so all Judges ruled that she'll be tested on oath unless she had believed that she understood the risk and the danger after strict review by the Court. No set rule can be aid down as to the support that should be given to a childhood witness's testimony.

[9] AIR 2008 SC 1460.
[10] *Himmat Sukhadeo Wahurwagh & Ors*. v. *State of Maharashtra*, AIR 2009 SC 2292.
[11] (2006) 13 SCC 516
[12] *Jalwanti Lodhin* v. *State*, AIR 1953 Pat 246.