

“Quantum of Witnesses Required as per Evidence Law”

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Abstract

The aim of this paper is to study the effect of importance and requirement of the witnesses in the cases. The objective is to put light on all the relevant case laws where the principle of quality of witness is laid down. The scope of this research paper is the complete analysis of the importance of the sole witness in the case. This paper deals with concept, cases where the sole witness testimony can be sufficient to convict the accused and various cases of sexual offences, food adulteration, divorce where the testimony of the sole witness need not to be corroborated. This paper deals with the requirement of number of witnesses under Indian Evidence Act. In this paper a strong emphasis is made on the importance of witness in the case where quantity of witnesses doesn't matters but quality does in India.

Introduction

Section 134- Number of Witnesses

‘In any case no particular number of witnesses shall be required for proof of any fact in the case’¹.

1. Principle and Scope

This section of Indian Evidence Act clearly laid down that no particular number of witnesses required to proof or disproof the fact of the case. This section is applicable to civil and criminal cases. This section is based on the popular maxim that evidence is to be weighted and not counted. There is no rule in law, that the unsubstantiated testimony cannot be accepted. The rule is of prudence and its adoption or not depends on the circumstances of the cases. For ascertaining the truth by the court the number of witness are not considered but the quality of evidences is taken into note.

In State of M.P. V. Chhagan², the court held that the section 134 of IEA clearly mandates that “in any case no particular number of witnesses is required for the proof of any fact of the case. The same principle was laid down by the Privy Council in the case of Mohammad Sugal ESA.

Our Indian legal system does not emphasis on plurality of witness. Neither the judiciary nor the legislature (S.134, Evidence Act) mandates the compulsion of particular number of the witnesses to find truth. Our legal system always have laid down the emphasis on the weight, quality and value of the evidence rather quantity and plurality of witnesses. Therefore, it is completely on the

¹ Section 134, Indian Evidence Act, 1872

²2003 (1) JLJ 362 (MP)

discretion of the court to convict accuse on the basis of the single testimony also and in many cases the court may acquit accuse when it is not satisfied by the testimony of several witnesses.³

In Amar Singh V. Balwinder Singh⁴, the Supreme Court held that the prosecution examined three injured eye witnesses, and from mere fact that two injured witnesses were not examined, no inference would be drawn that the prosecution was not justified in the relying on the evidence of the injured witnesses who were examined.

Plurality of the evidence is not mandatory under law. Evidence of the witnesses, truthful consistent and inspiring confidence is sufficient for maintaining conviction of accused.⁵ It is not necessary to examine all persons who were present at the scene of the crime committed for proving the guilt of accused. Any rule that particular number of witnesses are required to prove guilt would hamper the justice delivery system as in many cases it is not practicable to bring more than one witness. If any such rule were made than many crimes would go unpunished. In many secret murders even one witness to the crime is not obtainable and in these cases court need to depend upon the circumstantial evidences. The discretion of judge has been left free from strict restrictions.

In Jarnail Singh V. State of Punjab⁶, the court held that the conviction of accused can be based on the testimony of a solitary eye witness but in order to be the basis of conviction his presence at the place of commission of offence has to be natural and his testimony should be reliable and free from any blemish and strong enough to satisfy the court. In VitthalPundalikZendge V. State of Maharastra⁷, the court convicted the accused person under section 302/149 of IPC for murder on the basis of the testimony of sister of deceased person, though she had watched the incident from 12 feet distance and court relied on her witness by not considering the fourteen witnesses of prosecution which were not in support of her testimony. The evidence based on the testimony of one witness, it is not correct that testimony is completely true at all points, it may be partly true and partly false, its duty of judge to identify truth from the testimony. '*Falsus in uno, falsus in omnibus.*' is not adhered to by courts.

Quantity of Evidence Required for Judicial Decisions

Plurality of rule is a rule of prudence and not an inflexible requirement of the evidence has to be weighted not counted.⁸ Acceptability of evidence is material not the number of witnesses. Mere non- examination of some persons at the place of incident does not affect the standing of the prosecution.⁹ If the High court thinks unsafe for convicting the accused person on the testimony of single witness, does not mean that the evidence of witness is castigated. It is not dishonor against the evidence of any witness if court merely wants to cross examine the testimony by

³Namdeo V. State of Maharastra, 2007 CrLJ 1819 (1824)

⁴ 2003 CrLJ 1282 : AIR 2003 SC 1164 : (2003) 2 SCC 518

⁵Pramod Kumar Verma V. State of Bihar, 2004 (4) PLJR 656 (Pat)

⁶ 2009 3 SCC 391 (396) : 2009 CrLJ 1141

⁷ 2008 17 SCC 239 (243, 244)

⁸ State of Maharastra V. Raju DadabaBage, 2001 CrLJ 3638 (Bom)

⁹KedarBehera V. State, 1993 CrLJ 378, 383 (Ori)

getting assurance from other sources.¹⁰

In riots cases, it would be unjust to convict accuse on basis of testimony of single witness. In these cases, rule of prudence requires that, court should emphasis on plurality of eye witnesses for fair judgment.¹¹ In the cases where sole eye witness is changing is stand about the identity of the accused, manner of incident and place, in that case his testimony should not be relied upon.¹²

In Ganpat Ram case, the court observed that the prosecution story cannot be rejected merely on the grounds of the testimony of the sole eye witness, whereas in the case the other three witnesses were declared as hostile, it was corroborated by the medical evidence.¹³ When the testimony of the sole eye witness is reliable, trustworthy and cogent, than it cannot be rejected on the grounds of the some minor omissions considering the fact the examination of the evidence took place years after the occurrence of the incident. The court needs to look in the substantiality of the evidence presented before the court; it should match with the investigation reports. In the cases, where it is not practically possible to present more than one witness before the court, in these cases the court should rely on the testimony of the sole witness, if it satisfy the court.

Sole Witness Corroboration

In Mohammad Sugal¹⁴ case, the accused was convicted for murder under section 300 of IPC on the basis of the uncorroborated testimony of a child witness, at the scene of the crime only sole eye-witness was a girl of 10-11 years present. It was appealed before the Privy Council that conviction for the offence could not be based on uncorroborated testimony of child, the then Highest Court of Appeal (Privy Council) observed that there was no provision for inadmissibility of such testimony in India, unlike England. The court held that once the evidence is admissible before Court than, court could act upon it; the value and quality of evidence matters, for corroboration, unless required by statute. It is a rule of prudence not to act upon the testimony of child but it is not a law.¹⁵ Justification to the testimony of the single witness should be emphasized upon where nature of the testimony itself requires. However, no general rule of number of witnesses require could not be laid down.¹⁶

Sole Witness Corroboated

In case of Shanker v. State,¹⁷ the Rajasthan High Court laid down the observation regarding corroboration of evidence of single witness held as under:

(1) As per a general rule, there is no fixed number of witnesses required for any particular case; a court can act on the testimony of a number of other witnesses of indifferent character.

¹⁰Balo Yadav V. State of Bihar, A 1997 SC 2678, 2679 : 1997 CrLJ 3395,3396

¹¹Babu Hamid Khan V. State of Maharastra, 1995 CrLJ 2355, 2356 (Bom)

¹² Hari Narayan Singh V. Stae of West Bengal, 2009 CrLJ 4001 (4009) (Cal-DB)

¹³Ganpat Ram v. State of Rajasthan, 1995 CrLJ 1466, 1469

¹⁴ Mohamed SugalEsa v. King, AIR 1946 PC 3

¹⁵ Ibid

¹⁶VithalPundalikZendge v. State of Maharashtra, AIR 2009 SC 1110, 1112-13

¹⁷ 2004 CrLJ 1608, 1613 (Raj)

(2) Unless corroboration is insisted upon by Statute, in the exceptional cases where the nature of testimony of single witness itself requires corroboration which courts should insist upon, for example in the case of testimony of child whose evidence is that of related character or an accomplice.

(3) The requirement of the corroboration of the testimony of single witness is dependent on facts and circumstances of each case and there is no general rule which can be laid down this matter like this and it also depends on the discretion of the Judge who deals with the case.

Sole Witness Supported by Medical Evidence

In VahulaBhushan¹⁸ case, the Supreme Court held that the evidence of single eye-witness corroborated by medical testimony sufficient to be grounds for conviction.

Non – Examination of a Witness

The law is well settled on the point of examination of all witness, the prosecution needs not to examine all on the same point. In Babu Khan¹⁹ Case, the prosecution has examined two independent eye-witnesses and two injured witnesses and it was observed that there was record to show that the witnesses who were not examined were material in the case, the prosecution was withheld and not examined other witnesses with ulterior motive, and it would not be fatal to the prosecution case. In Raj Kishore Jha²⁰ case, the Supreme Court held that mere non-examination of investigation officer does not cause injustice to the accused or affects the standing of the prosecution side in all cases. In the above case, the Investigation officer had expired after the partial cross-examination and examination in chief. The SC held that no prejudice could be caused to the accused because of non examination of the investigation officer and no ulterior motive, in such these circumstances, could be attributed to the prosecution. In State of MP v. Dharkole²¹, the Supreme Court held that the non-examination of a witness who is not likely to support the prosecution case per se does not weakens the prosecution side, particularly in the cases when the witnesses examined have withstood insightful cross-examination and pointed to the accused as perpetrators of the crime. Similarly, non-examination of a witness who informed other two witnesses that the accused had assembled at a certain place and were planning to murder the deceased persons, would not affect the manner of occurrence at the relevant place.²²

Mere failure to examine all the witnesses who may have witnessed the occurrence, will not result in the outright rejection of the prosecution case, if the witnesses examined by the prosecution are found to be truthful and reliable. The Supreme Court observed that it could be ignored that many

¹⁸VahulaBhushanv. State of TN, AIR 1989 SC 236

¹⁹Babukhan v. State of M.P., 2004 CrLJ 3299, 3302 (MP)

²⁰ AIR 2003 SC 4664

²¹ AIR 2004 SC 44 (para 14)

²²Komal v. State of UP, AIR 2002 SC 3057

witnesses shy away from giving evidence for obvious reasons.²³ Where the prosecution case was supported by the eye-witnesses who appeared to be natural witnesses and their evidence was supported by medical evidence and an independent witness and there was no contradiction in evidence of the prosecution witnesses in regard to the manner and the place of occurrence, it was held that mere non-examination of the witnesses living near the place of occurrence itself does not create any doubt in the prosecution case.²⁴

Police Officer

In *LopchandNaruji*²⁵ Case, the court observed that the evidence of Investigation officer, the single witness was found truthful and relied upon for the conviction of the accused, in spite of several other cross examinations were held immaterial for the case.²⁶ In *Gurudev* Case, the magistrate himself was present at the scene of crime, he found the accused possessing opium in public stand, and the testimony of the Investigating Officer cannot be doubted as he himself was present.²⁷

Divorce Cases

The uncorroborated testimony of the husband or the wife would not accepted under Section 7 of the Indian Divorce Act.²⁸ In the *SaptmiSarakar* case, the court observed that the test of the reliability on the evidence is qualitative not quantitative and justification of the number of witnesses is not matter of the law but a matter of prudence, a case should be decided on its merits and facts whether it require corroboration or not.²⁹ In *Suvarnabhahen* Case, the court observed that, women testimony need not to be corroborated if it reliable in case of petition for nullity of marriage on the grounds of incapacity of husband.³⁰

Food Adulteration Cases

In the case of food adulteration, the fact of adulteration can be proved by single testimony of Food Inspector himself.³¹ In *State v. Appuswami*³², it was observed by the court that the evidence of the Food inspector is sufficient to be relied upon for the conviction of the accused; it is not material whether food inspector has sealed receipt of the sample food or not, though the attesting witness may turn hostile.

Unlawful Assembly and Riot

The testimony of sole witness at the incident would be sufficient to establish the identification of

²³ *Birendra Rai v. State of Bihar*, AIR 2005 SC 1284

²⁴ *AwadhMahto v. State of Bihar*, 2007 CrLJ 342 (Pat)

²⁵ 2004 CrLJ 4241

²⁶ *LopchundNaruji Alt v. State of Gujarat*, (2004) 7 SCC 566, 569 (para 8)

²⁷ *Gurdev v. State of Haryana*, 2002 CrLJ 3016, 3025 (para 23) (P&H)

²⁸ *Premchand v. Hira*, AIR 1927 Born 594

²⁹ *Saptami Sarkar v. Jagadish Sarkar*, 1LR (1970) 1 Cal 272

³⁰ *Suvarnabahen v. Rashmikannt*, AIR 1970 Guj 43

³¹ *Public Prosecutor v. SubbanChettiar*, (1970) 1 MU 402

³² 1980 Mad LJ (Cri) 734: 1980 Cr Li (Noc) 168 (Mad)

the accused person as member of an unlawful assembly, if it is completely reliable. In Binay Singh case, the Supreme Court observed that in cases where assembly is so large where many were witness at the incident, it is prudent to have at least two reliable witnesses for the identification of accused.³³ In Masalti Case, the Supreme Court observed that in case of rioting and similar offence it more prudent not to convict the accused on the basis of the testimony of the single eye witness, as it would be unfair and grave injustice for accused who is convicted.³⁴ It is the quality of the evidence and not the number of witnesses that matters in such case.³⁵

Sexual Offences

In rape cases, there is no principle of law which forbids a conviction based on the victim's uncorroborated testimony, though victim is wanting in chastity, if the jury is satisfied with the truth. However, the jury and the court should carefully guard themselves from the excessive sympathy for the victim.³⁶ In RameshwarKalayan Singh case, the Supreme Court held that in sexual offence like rape, corroboration is not essential before conviction, as the victim of the rape cannot be considered as partner in offence, as it was without her consent therefore no need to corroborate her testimony. In cases where circumstance requires for the corroboration than the testimony of victim needs to be corroborated for the satisfaction of court. In VadiveluThevar case, the Supreme Court observed that in the cases of sexual offences, the testimony of victim itself need not be sufficient if the victim is suspected of the partner in crime.³⁷ In SannailaSubba Rao case, she was kidnapped and kept in room for month and was raped by two accused repeatedly, the court convicted the accused based on the testimony of minor girl with a reasoning that as she didn't had any enmity against the accused and there were no reasons found for giving false evidence against accused at the risk of the her future.³⁸ In PremNarian case, there was corroboration of the testimony of the minor girl by her parents and others but medical report showed that she was raped, in this case court convicted the accused on the basis of the testimony of minor with the reasoning that she had sufficient maturity and understanding and her evidence s free from any defect.³⁹ In sexual offences like rape and others, the conviction can be based on the uncorroborated testimony of the prosecution, if testimony of victim is found to be convincing, reliable and beyond reasonable doubt. In these cases, the court need to be satisfied that the victim is telling truth and accused was not falsely accused of the offence.

Illustrative Cases where Evidence of Sole Witness was not relied on

The case where court is not satisfied by the testimony of the witness, have reasonable doubt than in that case the question of corroboration of the evidence arises. In the cases where there are inconsistencies in the evidence of the wife of deceased, the court cannot convict the accused

³³Binay Kumar Singh v. State of Bihar, AIR 1997 SC 322

³⁴Masalti V. State of U.P., 1965 (1) Cr LJ 226: AIR 1965 SC 202

³⁵Appukuttan v. State of Kerala, 1989 Cr LJ 2362 (Ker) (DB)

³⁶Boddie v. S., (1875) 52 Ala 395

³⁷VudiveluThevar v. State of Madras, AIR 1957 SC 614

³⁸Public Prosecutor, High Court of A.P. v. SannailaSubba Rao, 2004 CrLJ NOC 45 (AP)

³⁹Premlal alias PremNarain v. State of MP., 2005 CrLJ 1145, 1147

based on sole testimony of witness.⁴⁰ In Satish Chandra Case, the Supreme Court observed that the accused cannot be convicted on the basis of the sole testimony of the witness because the sole witness in the case was found to be closely related to accused, though he give statement that he don't know accused. So, court acquitted accused of murder as it would be injustice to him.⁴¹ In case of Mahadeo, the Supreme Court observed that if the sole witness remains quiet for period of 6 months without giving any information about the crime due to threatening of accused, it would be unsafe for the accused to be convicted on the basis of the silence of the sole witness.⁴² In the case where sole witness fails to indentify the accused in earlier identifications process but subsequently if he indentifies would be considered as unreliable and accused can't be convicted based on testimony of that witness.⁴³ In Mudhan Case, the court observed that the evidence provided by the sole witness were contrary to the post mortem report, witness said that didn't saw any sharp object with the accused but according to postmortem report the death was caused with sharp object, therefore in the case court didn't relied on the sole testimony.⁴⁴ In the cases, where a Criminal Court has to deal with evidence relating to the commission of an offence which involves a large number of offenders and a numbers of victims, it is standard to adopt the test that the conviction could be sustained only if it is supported by two or more witnesses who give a consistent description of the incident.⁴⁵ In Balraj Singh case, the court observed that the witness was the brother of the deceased and his evidence shows that his presence in the village was doubtful, therefore court didn't relied the testimony to convict the accused.⁴⁶

CONCLUSION

It is clear from the above discussion of the requirement of number of the witness before the court to prove the accused guilty of the offence, that the quantity of the witness does not matters quality of witness matters. As there is no general rule for the number of witness required in any particular case, even the testimony of the sole witness can also be relied upon to convict the accused, if it is reliable and cogent. In the many precedents and judgments by the Supreme Court of India, it was observed that the testimony of sole witness can be relied upon even without corroboration in cases like sexually offence, food adulteration cases etc. It is well settled law that it is discretion of the court, whether it is satisfied by the testimony of the sole witness or not while deciding the case on its merits. This law provides fair justice to both the parties, as both the parties gets the equal opportunity to prove the case on its merits. The court has discretion to provide the judgment on basis of single witness on the accounts of the evidences of the other witnesses.

⁴⁰ Ramji Surjya v. State of Maharashtra, AIR 1983 SC 810

⁴¹ State of U.P. v: Satish Chandra, AIR 1986 SC 313

⁴² Mahadeo v. State of Maharashtra, AIR 1980 SC 102

⁴³ GofurShiekh v. State, 1984 Cr LJ 559 (Cal) (DB)

⁴⁴ Mudhan Paying v. State of Assam, 1982 Cr LJ 241

⁴⁵ Masalti v. State of Uttar Pradesh, AIR 1965 SC 202

⁴⁶ Balraj Singh v. State of Punjab, 1976 Cr LJ 1471