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Cross examination of witnesses and value of expert evidence: Two major aspects of the Indian evidence act, 1872

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Abstract
The stages of examination of witnesses, especially the stage of cross-examination holds a very important place in the Indian legal system. The power of cross-examination is the optimum as it can turn the face of any given case. It is very important to follow the nuances of conducting the cross-examination to obtain the potential results. Another important aspect in terms of evidence in the Indian context is the concept of expert evidence or the opinions of the experts. A person having specialised knowledge in any field or subject is construed to be an expert of that particular subject. When a case deals with a special subject/knowledge, the opinion of the expert holds a higher ground and helps the judiciary to reach a proper conclusion which in turn ensure proper justice. But, the opinion of the expert in such case or in any case cannot be considered to be binding upon the court and it is upon the discretion of the court whether it would like to decide the matter on the basis of the opinion of the expert. The court's duty is manifold before applying an expert opinion in a case. This paper deals with the scope and purpose of cross-examination. It gives an idea about the same and then moves on to the major subject matter. It also deals with the evidential value of expert evidence and importance it holds in the Indian legal scenario.

Keywords: Cross-examination, judiciary, evidential value, expert evidence

1. Introduction

1.1 Stages of Examination of Witness

There are three different stages in the procedure of taking evidence both in civil and criminal matters. These stages of examining the witness and procuring evidence is given under section 137 [1] of the Indian Evidence Act, 1872. The first stage is that of examination in chief which is the examination of the witness by the party who calls him. Where a witness is called upon to give oral evidence, his statements shall be considered to be evidence-in-chief unless a different material is provided by any statute or the court has a different opinion. Though in today's legal scenario oral evidence is very much rare in civil suits, so much so, that the same is discarded both in England as well as India, the courts still retain a discretion in this regard. A situation may arise when the court wishes to hear a witness orally. In the case of Mercer v. Chief Constable of Lancashire [2] it was opined that when in any given case there is a conflict of facts and where the witness's credibility is an issue it will be suitable if a part of the evidence-in-chief is given orally.

The next stage is that of cross-examination of the witness by the other party. The purpose of the same is to persuade the witness to give such answers which will either falsify the statements made by him earlier or subsequently put the credibility of the witness at a false position. There is an endeavour to obtain such answers from the witness which will either directly or indirectly support the case of the adverse party. The third stage is that of re-examination which unlike the process of examination-in-chief and cross-examination does not work on the discretion of either parties. To put it in other words, to conduct the process of re-examination it is very important to obtain the permission of the court in this regard. The purpose of this kind of examination is not to nullify the effect of favourable evidence given in the process of cross-examination but to provide further evidence where there has been a *bonafide* omission of evidence or to get an explanation of contradicting matters arising in the stage of cross-examination. In a very important case of that of R v. Fletcher [3], during the process of cross-examination an accomplice admitted to have committed two other robberies on the night in question. The prosecution was disallowed to ask about the company of the accomplice in the process of re-examination on the sole ground that the question was such that it did not arise from any kind of contradicting matters which may have arose from the procedure of cross-examination.

1.2 Expert Evidence

People who possess specialised knowledge, skill or experience in their area of subject or specialisation are known as the experts of the particular subject. In the legal scenario the courts face such matters which deals or a part of which deals with some specialised knowledge in a particular subject which and this is where an expert is called for. Section 45 [4] of the Indian Evidence Act, 1872 deals with the aspect of expert evidence and it provides that such evidence is admissible in the court of law. According to the section when in any given case the court has to come to a conclusion regarding any point of foreign law, science, art, identity of handwriting or finger impressions, the opinions of the persons especially skilled in such fields are absolutely relevant. Such persons are termed as experts and their opinion being relevant are very much admissible in the court of law. Whenever the issue in a particular case is such that cannot be dealt with by a layman or an inexperienced person, forming a correct judgment becomes an impossible

task. In such situations, in order to reach a conclusion and meet the ends of justice it is very much important to take the assistance of the experts in dealing with the case at hand. It is very important to keep in mind that when the subject matter of any particular case does not deal with any kind of specialised knowledge, expert evidence not at all relevant and is excluded as has been given in the case of United States Shipping Board v. St. Alban [5].

2. Scope and purpose of cross examination

The subject of cross-examination plays a very vital role in any proceeding because it is only this process of examination which has the power to differentiate or demarcate the actual truth from falsehood. As already stated, the definition of this procedure of examination is given under section 137 [6] of the Indian Evidence Act, 1872 and it is done by the adverse party. Here adverse party refers to the party other than the one which had called for the witness. Subsequently section 138 [8] of the Indian Evidence Act, 1872 provides for the order in which the three different procedures for examination are to be conducted. At first, the party which calls for the witness examines the witness which is known as the process of examination-in-chief. Thereafter, the adverse party examines the witness which is known as cross-examination and is the subject matter of this paper. Lastly, if the court grants permission to either party then there can be re-examination of the witness by the permitted party. Section 146 [8] of the Indian Evidence Act, 1872 empowers the cross-examiner to put questions in addition to the questions based on the relevant facts of the case.

The main motive of the process of cross-examination is to detect the truth and determine the falsehood in human testimony. Cross examination is very important in the examination of witnesses. Due to this process many facts tend to become clear because it is in the process of cross-examination that the other party analyses all the statements of the witnesses and then asks cross questions related to the statement which was given by the witnesses in the examination in chief. The party can also ask the questions which are not related to the statements made by the witness in the process of examination-in-chief but related to the facts of evidence. The objects of cross-examination are to indict the accuracy, credibility and the general value of the statement given by a witness in the process of examination-in-chief in order to detect and reveal discrepancies or to find out supressed facts which is going to support the case of the adverse party. This process can be used by the adverse party either to weaken/destroy the case of the opponent or to establish its own case.

The concept of cross-examination also finds its roots under the principles of natural justice. An evidence may not be considered to be against any party until and unless the same has been subjected to the process of cross-examination. Thus, it may be put in this way that it is not only a technical requirement under section 138 of the Indian Evidence Act, 1872 to conduct cross-examination but the requirement also lies in the fulfilment of the essentials of proper justice. The statutory right of cross-examination by the adverse party also lies in the situation whereby the witness has already spoken against the party which had called him in examination-in-chief. During the process of cross-examination, it is very much important for the adverse party to keep in mind certain minds regarding how he shall conduct the entire examination process.

There are many articles whereby certain pointers have been stated for the adverse party to keep in mind while conducting cross-examination on the witness. Firstly, the questions asked shall be brief and shall be done in plain words. It is always appropriate not to use any legal terminology or any kind of complex words during cross-examination because it shall be kept in mind that the witness might be an illiterate too or may be a person who does not possess a good vocabulary. Secondly, only leading questions shall be asked. Thirdly, it is very important to listen to the answer given by the witness carefully and not to quarrel with him. Fourthly, it is advisable not to ask the victim such things which he has already stated in examination-in-chief. Lastly, instead of allowing the witness to explain after each and every point, it is advisable to allow the witness to provide an explanation when he sums up.

3. Admissibility of expert evidence

In criminal proceedings under various provisions the prosecution tends to produce expert evidence. In certain cases, the defence also examines the expert, mostly to counterattack the opinion of the expert on which the prosecution has relied upon. The issue of admissibility of expert opinion is a very important aspect which the courts deal with in criminal proceedings. In the case of State of H.P. v. Mehboon Khan [9], the Himachal Pradesh High Court laid down the legal position of expert evidence after going through various judgments: -

an expert is not under an obligation to give each and every detail with regard to the analysis conducted by him nor is there any requirement prescribed under the law that the report must contain all details about the tests conducted in the lab and how he arrived at a particular conclusion. The report under the hand of a scientific expert upon any matter duly submitted to him for examination or analysis may be used as evidence at an inquiry or trial as it is. The report submitted by a scientific expert is admissible in evidence even if no details of various tests that are carried out by him are given therein. The same cannot be said to be without any probative value because the statute does not provide that the report must contain entire procedure adopted by the expert while coming to the conclusion, which he has reached. The report of an expert is merely a piece of evidence and not conclusive proof of a fact. The opinion that the expert expresses through his report, is advisory in nature enabling the Court to form its independent opinion with the help of the report by applying the same to the facts proved on the record of that case. The report, therefore, becomes an important factor for consideration along with other evidence led in the case."

In the above case the court very expressly stated that the opinion of the expert is admissible in the court of law. It also says that this expert evidence is not conclusive of any fact but merely acts as an advice to the court. An expert is not bound by law to provide all the details of the tests done by him to reach the opinion he has and in the absence of the complete details his opinion cannot be construed to be inadmissible. The aspect of expert evidence holds its importance in the fact that it enables the court to form an independent opinion by applying the same in the given case at hand. Utilising the opinion to meet the ends of justice is solely the work of the judiciary and the expert has no role to play here. The court shall not be bound to accept the opinion

of the expert if on examining the materials it finds out that the conclusion reached upon by the expert is not at all satisfactory. This means that the court has the discretion to act or not to act upon the opinion of the expert and it is not mandated to follow it blindly. It is very important that this opinion of the expert is backed by reasons and if not then the court can very well choose not to follow the same blindly.

4. Value of expert opinion

The aid of experts is very much required by the court in many cases. In criminal proceedings it is very much necessary for the prosecution to get substantiation of the prosecution version from the experts like medical men, ballistic experts, handwriting or fingerprint experts, etc. Each expert possesses or is construed to possess optimum knowledge in his field or subject. As a general rule, the opinions of experts are not only admissible when it is based on the personal study of the expert and/or facts within the knowledge of the expert but also when the opinions are merely found on the facts as proved by the statements of other witnesses and/or matters of common knowledge. The expert opinion is not admissible when the same is based on material facts which are not Infront of the court and/or they are formed on the basis of hearsay facts.

Expert evidence is treated by the court with a greater sense of acceptability but it is also true that the court is not completely guided by the same, especially when the same is unsatisfactory. It is an agreeable fact that the opinion of an expert helps the court to reach a conclusion but the report of the expert cannot be treated as being conclusive. It is the duty of the court to analyse the report of the expert, compare it with other evidences and then reach a conclusion whether the expert opinion can be treated to be reliant and can be used to pronounce the judgement [11]. This implies that the main work of using the expert evidence lies with the court and the court has to apply its reasonable and judicious mind to see whether the opinion of the expert can be used or not. The role of the expert is limited only to the examination of the specialised knowledge involved in a case and make an opinion or report on the basis of that. The further analysation of the report is the work of the court.

With regard to the position of expert evidence it has to be borne in mind that an expert evidence is merely an evidence and does not decide an issue its own. Therefore, it is on the same footing as that of the evidence given by other witnesses. Position of both the evidence are same because both are given on oath, both are cross-examined and both are exposed to being prosecuted on expressing an opinion which is not genuine at all. It was quoted in the case of **Ranjit Singh v. State** [12] that *"Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stage is difficult to define. Somewhere in the twilight zone the evidential force must be recognised, and while the court will go a long way in admitting the expert testimony deduced from a well-recognised scientific principle of discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs."*

The judges are to be provided with necessary scientific criteria for testing the accuracy of the expert opinions so as to form an independent judgment by the application of this criteria to the facts and it is the duty of the experts to supply the above-mentioned necessary scientific criteria. As said by Phipson there is no difference between an expert who with the help of a microscope identifies a bacteria and live spectator of a robbery committed under his nose. The difference lies only in the fact that the expert has vast knowledge of microbes and knows the technicalities of a microscope fully. In cases where the witness seems to be more dependable, the opinion of the expert cannot be construed to be more important than the statement of the witness. An opinion contradictory to the above sentence was expressed in the Halsbury's laws of England:

"Expert witnesses present certain difficulties, their evidence being a partisan character, usually evidence of opinion, and sometimes presented as fact although based on hearsay. More weight should be given to facts which are proved than to conclusions drawn from scientific investigations [14].

Basically, the expert opinion or the expert evidence arising out of any hearsay material or news or information shall not be depended upon and shall not be given much weightage. It is not that important on any terms. It is the opinion derived out of scientific investigations which shall be given a much higher value and shall be depended upon to meet the ends of justice. Moreover, nine out of ten times, scientific experiments and investigations by high profile experts give accurate results and information which aids in speedy disposal of justice. It is always mandatory that an expert evidence shall be backed by reason in order to rely upon it. The result of the same shall be based on proper and logical reasoning. This is not possible where the same has been derived out of hearsay material. The logical and proper reasoning is possible where the evidence is a result of scientific investigation/analysis. At this stage it is also very important for the judiciary to have an insight on how the result has been obtained for the expert opinion to be applied and interpreted properly.

5. Conclusion

The aspects of cross-examination and expert evidence hold a very important place in the legal scenario. Their value is of utmost importance especially in any criminal proceeding. The stages of examination make sure that the ends of justice are met in any given case. Out of the three stages of examination as given under section 137 of the Indian Evidence Act, 1872, the power and importance of the process of cross-examination is optimum. The reason behind this is that this stage holds the power to bring out the actual truth if the nuances are followed properly and can eliminate the tendency of deviation of the case to falsehood due to the statements made by the witness in the process of examination-in-chief. The fact which comes out during the process of examination-in-chief becomes crystal clear if the know-hows of the process of cross-examination is followed properly. It is also important that the order of examination is followed as per what is provided under the statutory provision, i.e. section 138 of the Indian Evidence Act, 1872. It is also very important to keep in mind that which party is designated to perform the examination-in-chief, cross-examination and re-examination. While the examination-in-chief of a witness is done by the party which calls for it, the process of cross-examination is carries out by the adverse party. The process of re-examination can be performed by any party but the prior permission or the leave of the court in this respect is mandatory. It is so important to conduct the procedure of cross-examination in a proper manner

following all the nuances that a failure in following the nuances can be the difference in the final opinion of the court.

It is also important to understand the evidential value of expert evidence. After going through various cases and reports one may conclude that an expert evidence is no different from the evidence provided by a normal witness. The only difference lies in the fact that expert evidence is on the basis of some specialised knowledge and in-depth study of a matter dealing with a special knowledge in any subject. It is important to understand the difference when expert evidence is admissible and when it is not. Another importance aspect which should be known is that expert opinion is not binding upon the court. It is the work of the court to obtain the report of an expert, analyse the same, check the reasoning of the result obtained by the expert and then come to a conclusion whether the same can be used as a guiding source and applied in the case at hand. In cases of expert evidence specially in case of DNA evidence it is mandatory to give it the status of primary evidence. There also lies a requirement to make the judges conversant to the long list of advantages connected to the spectrum of DNA evidence. Until and unless the knowledge of the judiciary in this respect is checked upon their application cannot reap the full potential benefits. This is very much important specially in cases pertaining to rape, murder and many other crimes where the human body is the victim. As per the present status that the judges are not bound by expert opinions and they have to apply it using their judicious and reasonable mind, it is very important that their knowledge in this aspect is also increased so that they can apply the same in a much better and efficient way.

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