

Examination of witnesses/ASR

# Witness -Examination

- Witness=Person supposed to be acquainted with the facts and circumstances of the case.
- Generally “witness” means a person who gives evidence before the court (includes executive magistrate). Generally, the witness is the person, who **testifies about something at an enquiry or trial** conducted by the court.
- The term “examination of witnesses” implies interrogation which generally consists of **putting a number of questions to the witness by the parties or their lawyers with a view to obtaining matters in dispute and placing them before the court.**

# A saying on witnesses

- *Those who speak truth do not come to court*
- *Those who come to court do not speak truth*

## Deaf and Dumb witness

- A witness, who is unable to speak, may give his evidence *in any other manner in which he can make it intelligible, e.g. by writing or by signs or by gestures*, but the writing and signs must be made and recorded in open court. The evidence given by such witnesses is treated as oral evidence (Sec. 119 of I.E. Act).

# Accused person

- An accused person is always competent to give evidence before the court. The accused may volunteer to give evidence, but he cannot be compelled to become a witness (Sec. 315 of CrPC).

# Accomplice

- A person who knowingly co-operates or aids another in commission of offence is known as accomplice.
- Section 133 of I.E. Act provides that an accomplice is a competent witness against an accused and the conviction is not illegal merely because it is based on uncorroborated testimony of an accomplice, whereas illustration (b) of Sec. 114 of I.E. Act points out that the court may require corroboration of the evidence of an accomplice.
- If an advocate helps a criminal before the crime, he is an accomplice

# Approver

An accomplice turns into an approver only on the basis of promise of pardon. (Sec. 306 and 307 of CrPC). An approver is a competent (prosecution) witness, but his evidence may not be credible and trustworthy. **Tender of pardon and expectation of immunity from prosecution affect the credibility of an approver.** To get rid of criminal liability, an approver leaves his friend joins hands with the adversary. Experience and wisdom dictate that such a person should not be believed unless his **evidence is corroborated in material particulars from independent source.** (punishable with 7years or more)

**Confession of Co-accused/ Accomplice/Approver implicating himself and other accused persons**

**Co-accused**—adduces evidence as **accused** inside or outside the court (value=corroborative)

**Accomplice**—examined as a **defence witness only inside the court** (value=substantive)

**Approver** -- examined as a **prosecution witness(corr)**

- **Accused as Witness**= (1)administered oath(2)subject to cross examination(3)liable for giving false evidence
- **Accused as Accused**= (1)Not administered oath(2)Not subject to cross examination(3)Not liable for giving false evidence

# Value of Evidence of Co-accused/Accomplice/Approver

- **Co-accused**= adduces evidence outside the court or inside the court in the capacity of an accused
- **Accomplice**=only inside the court in the capacity of a Defence Witness(No pardon is tendered)
- **Approver**=outside or inside the court and in the capacity of Prosecution Witness (Pardon is tendered)



# Trap witness

- Prosecution Witness
- A trap witness is not on the same footing with approver, because a trap witness is *instrumental in provoking the commission of offence with the object of detecting the offender.* In other words, a trap witness acts with the purpose of protecting public interest and does not share mens rea, but *he may be biased towards the prosecution.* So he may at best *be branded as partisan or interested witness.*

# Trap witness

- While such recovery should be made before witnesses, it is necessary to prove in the court the identify of the money and the fact that it was handled by the corrupt officer. The ***serial numbers of the currency note tendered are to be noted down before the trap and the witnesses should be able to identify these notes.*** Additionally the ***currency notes would be treated with chemical substances like Anthracene or Phenolphthalein.***
- Phenolphthalein (powder) ***turns into pink (caught red-handed)***
- ***In UP Inquest is called Panchnama(PO-Panchnama mandatory/Magistrate-discretionary)***

# Partisan or Interested Witness

- There is no rule of law that the court will not rely on the evidence of interested witnesses. But the rule of prudence dictates that the evidence of interested witnesses must be *properly scrutinized by court before relying on their evidence.*

# Order of examination of witnesses

- A witness is first examined-in-chief by the party calling him. He shall then be cross-examined by adverse party, if the adverse party so desires. He may then be re-examined, if the party calling him so desires. (Sec.138 of I.E. Act).
- In every case (governed by CPC), the **examination in chief of a witness shall be on affidavit** and copies thereof shall be supplied to the opposite party by the party who calls him for evidence
- An affidavit is a **declaration of facts, made in writing and sworn before a person having authority to administer oath**

# Examination-in-chief

- The examination of witness by the party who calls him is called examination-in-chief. (Sec.137 of I.E Act). *The object of examination-in-chief of any witness is to elicit the evidence relevant to the issues and favorable to the party calling him as witness*
- It is through the process of examination-in-chief that a *party, who has called the witness,* elicits from the witness the evidence relevant to the issues and *favorable to him.*

# Examination-in-Chief

- It means examination of a witness by the party calling him. In chief examination, the witness generally *speaks in favour of the party examining him as he is called by the party.* In the same way the party or his advocate conducting chief examination *asks plain questions and avoids tricky questions, because it is through such witness he tries to establish the case in his favour.*
- In this examination *only relevant questions can be asked and leading questions cannot be asked.*

# Ambit of Examination-in-Chief

- a. It must relate to **relevant facts of the case.**
- b. It is not ordinarily permissible to ask **leading questions** during examination-in-chief. However, leading questions may be asked with the **permission of the court** during examination-in-chief if the leading question is **introductory in nature or relates to undisputed facts** or relates to facts, which in the opinion of the court, are sufficiently proved (Sec.142 of I.E. Act).

# Cross Examination

- **The examination of a witness by the adverse party is known as cross-examination. (Sec. 137 of I.E. Act).**



# Objects of cross examination

- I) to **destroy the general value of the evidence** given by the witness in chief examination
- II) to **bring to light facts suppressed** by the witness, and
- III) to **establish evidence in his favour by means of his opponent's witness**. (to obtain from such witness statements and admissions favourable to the party)
- IV) to **destroy or weaken the case of the opponent by discrediting the witness.**

# Ambit of Cross-examination

– following questions may be asked during cross examination:

- a. Any question to test the veracity of the witness (i.e. to test the truthfulness of the testimony);
- b. Any question to know the status of the witness (i.e. to discover who the witness is and what is his position in life);
- c. Any question to check the credibility of the witness **even by injuring his character or exposing him to criminal liability** (i.e. to destroy or weaken the case of the opponent by discrediting the witness (Sec.146 of I.E. Act).
- d. Leading questions

# Disallowing certain questions in cross-examination

- The court can use its discretion judiciously to control the cross examination by disallowing the questions on the following issues:
  - a. Indecent and scandalous questions may be disallowed unless those relate to facts-in-issue (Sec.151 of I.E. Act).
  - b. Questions intended to insult or annoy shall be disallowed (Sec.152 of I.E. Act).

# Re-examination

- The party who calls the witness may re-examine him after cross-examination in order to **reconcile the discrepancies that have arisen during cross-examination.** The object of re-examination is to seek **explanation or clarification from the witnesses on matters,** which arose during cross-examination and may be **unfavourably construed against the party calling the witness.**
- I may make the statement in one sense but the advocate cross-examining me may show that the statement was made in another sense.
- Witness = novice and a stranger (may be nervous)
- Advocate = veteran & seasoned

# Ambit of Re-examination

- a) The re-examination must be **limited to explanation of the matters appearing in the cross-examination**, but lacuna in the evidence brought out during cross examination cannot be filled up by re-examination.
- b) **New facts cannot be introduced** ordinarily during re-examination. However, with the permission of the court, new facts can also be introduced during re-examination. When new facts are introduced during re-examination, the adverse party shall have the right to cross-examine the witnesses only on those new facts.
- c) **Leading question cannot be asked** during re-examination without the permission of the court.

# LEADING QUESTIONS

- A leading question is a question which suggests an answer. It is a question which itself contains the answer. In other words a leading question is one which leads the witness to the answer to be given by him.
- Section 143 permits leading questions to be put in cross-examination. However, section 142 prohibits a leading question being asked in chief examination or in a re-examination except with the permission of the court.

# LEADING QUESTIONS

- There are two main reasons for prohibiting leading questions in Chief -examination and Re-examination. Firstly, chief examination and re-examination are examinations of the witness by the party calling such witness and therefore such witness is presumed to be biased in favour of the party who brings him. Secondly, the party calling the witness is likely to know before hand what the witness will tell in the court, and if the party could ask the leading questions to his own witness, he would extract from the witness only such evidence that is favourable to him.

# Refreshing of Memory

- A witness ordinarily deposes to the facts from his recollection, but sometimes memory fades and it becomes necessary to help him in *reviving his memory* with the aid of document, if any, containing an account of such facts which he has to depose. To ensure that *truth is not suppressed due to failure of memory of the witness*, such a concession is given by law. [Sec.159 of I.E. Act].
- Diary or some document



# Indecent and scandalous questions

- Section 151 authorises the Court to forbid indecent or scandalous questions being asked even though such questions or inquiries may have some kind of bearing on the questions before the Court. But the Court however **may permit such questions being asked if they relate to the facts in issue or to matters** necessary to be known for the purpose of determining whether or not the **facts in issue existed**. More particularly in cases of **rape, adultery, desertion, marriage and legitimacy**, it may be necessary to put questions although they may be indecent and of scandalous form.

# Questions intended to insult or annoy

- The Court is also authorised to forbid questions being put to the witness which appear to the Court to be intended to insult or annoy the witness although such questions may be proper but they are needlessly offensive in form. The reason behind forbidding such questions is that *no respectable witness would be inclined to appear as a witness if questions are allowed to be put to him which are intended to insult or annoy him.*

# Hostile Witness

- The term “Hostile Witness” does not appear in the Indian Evidence Act. *When any witness is permitted by the court to be cross examined by the party who called him*, the witness is popularly called hostile witness.
- If the court thinks from the evidence, *demeanour, temper, attitude, tenor and tendency of answering the questions, from perusal of previous inconsistent statements* of the witness that grant of permission is expedient to extract the truth and to do justice, the court can do so u/s. 154 of I.E. Act.

# Hostile Witness-Credibility

- Simply because a witness has been declared hostile, his testimony **does not become totally unreliable on that count.** The evidence given by such witness remains admissible and there is no legal bar to pass a conviction upon his testimony, if corroborated by other reliable evidence. It is held by the Supreme Court that the evidence of hostile witness should not be totally rejected if spoken in favour of the prosecution or accused, but it **can be subjected to close scrutiny and that portion of the evidence which is consistent** with the case of the prosecution or defence may be accepted.

# Sheena Bora

- Indrani Mukherjee
- 1<sup>st</sup> hb=Siddhartha Das
- 2<sup>nd</sup> hb Sanjeev Khanna
- 3rdhb= Peter Mukherjee
- Peters son=Rahul Mukherjee
- Indranni's father=Upendra kumar Bora
- Driver=Shyamvar Lal
- Indranis son=Mikeal
- Approver= Prosecution witness