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CREDIBILITY OF AN EYEWITNESS

AUTHORED BY - SAHIL GARG & RISHU YOGESH PANDEY

ABSTRACT:

An eye witness testimony is a piece of direct evidence which is so vital that it can shape the whole trial and lead to conviction or acquittal.

An eyewitness is someone who witnesses an offense directly and can establish the link between the offense and the accused through his testimony. His/her testimony is of so much importance that a conviction can also occur on the basis of the sole testimony of that witness.

This paper discusses at length, that there are several factors which makes the testimony of an eyewitness questionable and raises some pertinent doubts on his statement, thereby impeaching his very credibility.

Furthermore, it aims to show that even the most “confident” witnesses can be fallible and can very well possess ulterior motives to make certain statements. Such misleading testimonies not only lead to wrongful acquittals or convictions but throttle the entire justice administration mechanism. The role of an eyewitness is to make the court see what he witnessed from his eyes, thereby assisting in the judicial process. However, owing to certain factors (described in detail through this research), they may very well be responsible for making a direct source of evidence unreliable.

Hence, evidently, the statement of an eye witness plays a crucial role in a trial. However, it’s an unreliable source of evidence in many cases owing to its several drawbacks. It would not be wrong to suggest that inaccurate testimonies by eyewitnesses lead to numerous wrongful convictions, thereby resulting in gross miscarriage of justice.

Keywords: Eyewitness, testimony, unreliable, memory, credibility, confidence.

Aim & Objective:

- To critically analyse the credibility of an eyewitness
- To discover the factors responsible for reducing the accuracy of a testimony
- To analyse the problems faced by witnesses through various articles and judgments

Hypothesis:

Relying solely upon the testimony of eyewitnesses without other corroborating evidences can be fatal to the administration of justice.

Research Methodology: This is a non-doctrinal research and all sources collected and cited are secondary data.

Research question: Is the testimony of an eyewitness credible enough for conviction or acquittal?

Chapterization :

This research paper is classified into Four main chapters. The First chapter essentially deals with the crux of the proposition, i.e. Credibility. It enumerates the various factors responsible for the correctness of the eyewitness testimony.

The Second chapter talks about the criteria of confidence and the role it plays in affecting the testimony. The last chapter deals with the general problems faced by the witnesses in different cases.

INTRODUCTION

As per the Interpretation clause¹, “Evidence” is of two types-: **Oral evidence** and **Documentary evidence**.

It is evident from the very definition that the testimony of an eyewitness, being a direct piece of evidence, holds a very strong validity in a court of law.

Sec. 118 of the Indian Evidence Act, 1872 states that every person is competent to testify unless they are considered by the court of not being capable of giving rational answers or understanding

¹ Section 3 Indian Evidence Act, 1872.

the questions put before them for them due to their tender age, extreme old age or any mental or bodily diseases. Furthermore, as per this section, even a lunatic person is competent to testify if he is able to understand the questions and give rational answers.

The term 'witness' means a person who can provide information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in Court, or otherwise.²

In *State (NCT of Delhi) vs Pankaj Chaudhary*³, the top court held that "as a general rule, if credible, a conviction of an accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises".

As per **S.134 Indian Evidence Act**, no particular number of witnesses shall in any case be required for the proof of any fact.

In *Sunil Kumar v. State (Govt. of NCT of Delhi)*⁴, the court classified oral testimony into three categories, i.e. (i) wholly reliable, (ii) wholly unreliable, (iii) neither wholly reliable nor wholly unreliable.

If the witness is wholly reliable, the court can convict or acquit on the basis of the testimony of that witness beyond doubt.⁵ If the witness is found wholly unreliable, the court can easily discard his testimony. However, if the witness falls within the third category, the court has to analyse the corroborating evidence as well and cannot completely rely on the testimony of the witness alone.

Identifications made by eyewitnesses play a crucial role in the investigation and prosecution of crimes, but it is well-known that eyewitnesses frequently make errors with grave consequences. In light of these concerns, it is necessary for the present judicial system to conduct an exhaustive study of the current practise and application of eyewitness testimony, with the goal of determining why identification errors occur and what can be done to prevent them.

This research focuses on the issues that are present, along with brief discussions of how these

² Madhu @ Madhuranatha & Anr v. State of Karnataka, [2014] AIR (SC)394.

³ (2019) 11 SCC 575.

⁴ (2003) 11 SCC 367.

⁵ Amar Singh v. State (NCT of Delhi), 2020 SCC OnLine SC 826.

issues lead to specific recommendations for further research, best practises for law enforcement, and court use of eyewitness evidence.

Owing to several inconsistencies in Eyewitness testimony, despite being a crucial and paramount source of evidence, can prove to be unreliable at times. The testimonies may lead to wrongful convictions and that affects the credibility of the Indian Justice System in a drastic manner which cannot be reversed by giving any sympathetic view to the victim. As there are many factors that can affect the observations of an eyewitness, it leads to unreliability.

Over the course of recorded history, individuals have testified to their sensory experiences. We habitually share first-person accounts of what we have seen or heard, and we do so in nearly every form of discourse, from rumor-filled lift encounter descriptions to precise laboratory observations. In fact, the ability to recount our experiences is an irrepressible and highly prized human characteristic. Numerous ancient texts, such as the Hindu Smriti (Sanskrit: "that which is remembered"), contain allegory based on experience for the advantage of society. Similarly, New Testament books are considered to be first-person accounts, and contemporary memoirs do the same for modern life. As new sciences evolve, reliance on sophisticated tools increases for improving the quality of observations and, thus, the validity of the results.

Most of the time, an onlooker will pay attention to the criminal's weapon. When someone is at the scene of a crime, they tend to focus on the weapon used, such as what the other person is carrying or the size, colour, type, or shape of the weapon that is pointed at them or another victim. But because the mind is focused on the weapon, it does not notice the facts about the people who committed the crime. Most of the time, a witness can remember all the details about the weapon but can't remember exact details about the perpetrator. This kind of weapon focus makes it hard to believe what eyewitnesses say.

Whether a person is a victim or not, he is under a lot of stress at the scene of a crime. When we are under a lot of stress, our minds and bodies go into survival mode, and the person's mind works to help him stay alive instead of focused on the person who hurt him. When someone is in a stressful situation, it makes it harder for them to pay attention and remember what happened. Even when someone is a victim, it can make them feel numb, which makes it hard for them to pay attention. Traumatic events leave both the victim and the people who saw what happened in a state of shock, which makes it harder to make accurate observations. Any traumatic event, like

a murder, a rape, an attack, or a robbery, can cause a person to be mentally traumatised. Mental trauma has a big effect on people's thoughts, and this can make it hard for the victim or a witness to see the real criminal at work. When the words of such eyewitnesses are written down, they might not be very accurate.

Pieces of memories are stored in bits and pieces in the brain. Even when we walk down a street, it is hard for our brains to remember everything about it. When we cannot remember something, our brain fills in the missing pieces on its own. Similarly, when details are asked of a witness during a police investigation, the mind can't remember exact details and fills in the blanks on its own. Often, this means that the wrong person is charged. Another part of this reason is that over time, people's memories start to get worse. As time goes on, memories become less clear and start to break up. When we try to remember something, our brains often fill in the blanks by trying to figure out what we were trying to remember. This can lead to wrong identification and misunderstanding.

One of the main problems with eyewitness evidence is that it can lead to a false identification. Suggestive identity is when a witness is shown photos that might help them figure out who did something wrong. How the investigator shows the suspect to the witness can make a big difference in how the witness identifies the person who did the crime.

The testimony of witnesses is crucial to the trial process. In some cases, they play a crucial role in determining the fate of the accused. However, numerous factors render it unreliable, and it frequently results in wrongful convictions.

Due to the inadmissibility of forensic reports in legal proceedings, the fate of the case rests on the testimony of witnesses and other forms of evidence. The court relies on the testimony of eyewitnesses who have taken an oath, and whenever that testimony is misleading, it results in the conviction of the innocent.

Cases that rely solely on eyewitness testimony are more likely to result in wrongful convictions. In some instances, its failure is attributable to the factors contributing to its deficiency.

DNA or Forensic Science reports are more accurate than eyewitness testimony, as eyewitnesses are frequently unreliable, whereas forensic reports are less likely to be incorrect. Numerous

factors, including memory loss, absence of observation, mental shock, and trauma, all contribute to the unreliability of eyewitness testimony. This makes it a conduit for wrongful convictions, and when someone is wrongfully convicted, it results in a miscarriage of justice.

I) THE CREDIBILITY

Multiple factors⁶ are at play which can severely affect and reduce the accuracy of an eyewitness's testimony, thereby questioning the very credibility of that witness:

1. **Fear, stress, mental trauma:** During or moments after the commission of a crime, an eyewitness may be in a state of distress, having witnessed the crime. During such an event, the survival instincts kick in and a person's emphasis is on his/her own safety rather than identifying the perpetrator.
 - (a) **Mental trauma:** Sometimes the nature of the crime, i.e. murder, rape, etc is so gruesome that it can render the witness completely traumatic and even cause PTSD. Due to this reason, this trauma takes a huge mental toll on the mind, and proper identification of the accused or other details of the crime may be severely compromised.
 - (b) **Presence of weapon:** Due to this highly stressful environment of fear, a person may usually first focus on the weapon being held by the perpetrator. Due to the eyewitness's attention towards the weapon first, he might be able to recall all the distinguishing features of the weapon during trial; however, the details regarding the perpetrator might not be completely accurate as witnessed by him.
2. **Misidentification:** Due to the above-mentioned factors, the probability of misidentification of an accused during the Test Identification Parade may become quite high. It could be due to a variety of reasons like any kind of obstruction between the eyewitness and the perpetrator, be it the distance between them, darkness, weak eyesight of the eyewitness, etc.
 - (a) **Memory:** It is a general fact that whenever we perceive a certain event, it does not get stored in the brain in whole. Our brain forms connections with various details by associating them with different segments, thereby resulting in a complete memory. Hence, it is humanly impossible for a person to remember a complete event as it actually happened.
So naturally, there's a high risk of misidentification whenever a witness is called for examination

⁶ Subodh Asthana, "Eyewitness Testimonies: A Gateway To Wrongful Convictions".

or during identification because the brain of the witness cannot recall the entire event. The missing details of a particular memory are filled by an illusion of the mind itself.

- (b) Distinguishing features: There is a possibility that while committing a crime, the accused might be in disguise. Hence, this could increase the chances of misidentification.
- (c) Lack of proper viewing time or stress or fear during the TIP or during the commission of crime may also result in misidentification.

- 3. **Time**: Often, memories do not remain intact for long. The memory of the eyewitness containing certain details pertaining to the offence or the accused may fade with the passage of time. This may result into wrongful conviction or acquittal.

In this regard, the accuracy of the testimony may be reduced due to delay in the legal proceedings.

- 4. **Influence**: Witnesses turning hostile or retracting from their initial statements is not a rare occurrence. A witness may turn hostile if he is paid off by a rich or powerful accused, or he could be influenced due to threat or coercion. In many cases, there could be societal pressure too. For instance, the prosecutrix could find herself in a position where she has to turn hostile due to her family's pressure, a wife might be forced to retract her statements against her husband in a domestic violence case, etc. Witnesses are often harassed by the counsels, manipulating them and twisting their testimonies.

In *Himanshu Singh Sabharwal v. State of MP & Ors.*⁷, it was stated “*The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens, it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed.*”

All these factors are somewhat interlinked and can significantly lower the accuracy of the eyewitness's testimony, thus making him quite unreliable.

As per State v. Murli, “*four ways were stated by which a trial court can hold a witness unworthy of belief* :

- a) *The witness's statement is inherently improbable or contrary to the course of nature, e.g. he says*

⁷ AIR 2008 SC 1943.

that he identified the accused by face in pitch darkness, or that he recognized his voice from a mile away or that he saw the accused killing the deceased with a lathi whereas medical evidence proves he died of a bullet wound

- b) The witness's deposition contains mutually contradictory or inconsistent passage, e.g. at one place he says 'A' was the murderer but at another that it was 'B'.*
- c) The witness is found to be a bitter enemy of the opposite party and therefore, possessesample motive for wishing him harm*
- d) The witness's demeanour whilst under examination is found abnormal or unsatisfactory.”⁸*

Daya Singh v. State of Haryana⁹

The accused got arrested on May 28th, 1988. However, he refused to participate in the TIP on June 2nd, 1988.

The actual identification was done about 8 years later by the witnesses in court.

In response to the contention that the testimonies could be inaccurate, the court stated “Courts ought not to increase the difficulties by magnifying the theoretical possibilities. It is their province to deal with matters actual and material to promote order and not surrender it by excessive theorizing or magnifying what in practice is really unimportant.”

Furthermore, the Court had no reason to doubt the reliability of the witnesses because the specific physiognomy of the accused was already given by the witness.

As per the eyewitness, he could identify the appellant / accused even after removing his spectacles.

The court, while referring to the testimony of the second eyewitness, “*her evidence is so natural that it is impossible to believe that she is falsely involving the accused-appellant.*” Based on this testimony, the Court found no reason to doubt the accuracy of the witness considering **he was quite confident** about his statement and had no motive to falsely implicate the accused.

Analysis:

⁸ AIR 1957 All 53.

⁹ (2001) AIR SC 1188.

- 1) The time delay of 8 years cannot be considered as “magnifying the theoretical possibilities”. The memories of the eyewitnesses regarding the details are bound to have somewhat faded in the span of 8 years. This reason simply should not have been considered as “unimportant”. Considering their testimonies to be completely reliable is, in fact, quite ridiculous.

Henry L. Roediger III¹⁰ is of the opinion that false memories can be created quite easily. This usually happens when one attempts to remember or recall something that never actually occurred or to have associated a rather different memory with those events, thereby having them stored in the brain differently than the way they happened. The manner in which a particular event or information is stored in the brain and the duration for which a person could retain it could vastly vary from person to person. Hence, naturally, the degree of correctness of the testimony of a witness is doubtful.

As per a 1977 study¹¹, the subjects were instructed to watch a video of an armed robbery and shooting. They were later asked to recall certain events from the video. It was found that the *recall value* for those who were examined a week later was much lower in comparison to the group that was examined straight away after the video.

Hence, it can be stated quite evidently that the court made an error by not considering that a serious doubts should have been raised pertaining to the accuracy of the witnesses considering the gap interval of 8 years.

- 2) As far as the point of correctly identifying and providing the physiognomy of the accused is concerned, the eyewitness had identified the accused by stating that *the accused was having “catty eyes”*. And by catty eyes, the eyewitness simply stated, *“eyes like a cat”*. This very description speaks for itself and certainly raises doubts upon the credibility of the witness.

As mentioned earlier that the accuracy of an eyewitness’s statement depends upon the duration for which the witness actually sees the perpetrator. In this regard, in the case, both the eyewitnesses were initially involved in a scuffle with the terrorist. During such a state, naturally the primary focus of the witnesses would have been to defend themselves, rather than closely analysing his

¹⁰ Henry L. Roediger, "Misinformation Effects in Recall: Creating False Memories through Repeated Retrieval".

¹¹ Vladimir J. Koenen and Ebbe B. Ebbesen, "Courtroom testimony by psychologists on eyewitness identification issues: Critical notes and reflections." (1986) 10 Law and Human Behavior 11118-121.

features. Besides, soon after this scuffle, one eyewitness “*rushed to his room to make a telephone call and inform at police station that he was attacked and shots were being fired.*”

It is obvious that there would have been an atmosphere of high stress, fear and anxiety. Even after knowing about all these circumstances, the court didn’t have an iota of doubt upon the very credibility and the accuracy of the eyewitnesses’ statement.

- 3) The court didn’t doubt the authenticity and the accuracy of the eyewitness’ statements, considering that they could recall the events quite clearly with confidence.

In this regard, an experiment conducted by Elizabeth Loftus¹² needs to be analysed in which some college students were shown a car accident and afterwards, they were subjected to a complex series of questions with the aim to provide misleading information. So, a question was asked to them, “*How fast was the white sports car going when it passed the barn while traveling along the country road?*” The subjects gave answers while recalling to have seen the “barn” in the film. However, no barn actually existed in the film. This experiment shows that memory is an active reconstructive process in which humans interpret and transform information that they encounter¹³. It involves people picking up information, whether it is true or false, and integrating it into their memory, thereby supplementing and altering their recollection.

Therefore, in light of all these flaws observed and analysed, it can be strongly suggested that the court should not have relied upon the testimonies of the eyewitnesses as heavily as they did while arriving at conclusion regarding the guilt of the accused. Certain doubts should have been raised concerning with the accuracy of the statements and the court has quite evidently failed to consider the points derived from all the research and data on the testimony and credibility of an eyewitness. Elizabeth Loftus has very well written that the testimonies of even the most honest and best intentioned witnesses are fallible.

II) CONFIDENCE:

If a person is really confident about his belief or his recollection of a particular memory, it would certainly seem that it is more likely to be an accurate memory. But on the contrary, confidence

¹² Elizabeth F. Loftus, "Eyewitness Testimony: Psychological Research and Legal Thought" (1981) 3 Crime and Justice 109.

¹³ Emory Smith, "The Fallibility of Eyewitness Testimony" (2003) 1 The American Journal of Police Science 492-495.

cannot be a benchmark for assessing the accuracy of a memory because even a lie can be expressed with as much detail, confidence, and emotion. Hence, it would give the illusion that someone is stating the truth based on their memory, and relying on such a person's testimony could prove to be detrimental.

Therefore, the accuracy of an eyewitness's statement cannot be judged by their "ability to recall a memory confidently". In fact, an eyewitness's confidence, during a trial, is susceptible to change and manipulation. For instance, if a counsel during a trial wants to raise the accuracy of the testimony of the witness, he has to make him more confident and for that, he needs to provide some encouraging feedback or respond in a positive manner. But if the eyewitness were to be made less confident, the counsel would influence the witness in a way by implying that he might have made an error. Certain statements like "From such a considerable distance, can you speak with absolute certainty that you saw the accused clearly?" or "Considering the dark and your poor eyesight, would you be certain as to the identification of this person?"

In such cases, the accuracy of an eyewitness's memory can totally be proved to be unreliable.

Hence, considering confidence to be a strong factor to determine the accuracy of the testimony by an eyewitness could definitely prove to be fatal to justice.

III) EVIDENCE BY AN EYEWITNESS VS. EVIDENCE BY FORENSIC REPORTS:

In *Edward v. Inspector of Police*¹⁴, the court did not find any doubt on the reliability of the evidence produced by the prosecution witness, despite there being a difference between the ocular and medical evidence.

Surprisingly, the testimonies of witnesses are given precedence over DNA, medical or forensic reports. The medical evidence is considered corroborative and cannot outweigh the eyewitness's testimony. Even the Gauhati High Court is of the view that the evidentiary value of a medical report is only substantial and "*the testimony of eye witness would be preferable to medical evidence, unless the medical evidence completely rules out the eye witness version.*"¹⁵

¹⁴ AIR 2015 SC 2374.

¹⁵ *Anan Nayak v. the State of Assam* [CRL.A(J)/36/2018].

Hence, the chances of wrongful acquittals or convictions can surely be reduced if medical / forensic reports are considered on par with the ocular evidence.

IV) PROBLEMS FACED BY WITNESSES

"Witnesses" are considered to be the eyes and ears of justice and rightly so. If the witness himself is incapacitated from acting as the eyes and ears of justice, the trial becomes putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence, ignorance or some corrupt collusion. A witness needs to be protected from the usual corrupt practices employed by powerful people that influence him to turn hostile.¹⁶

CONCLUSION

The admissibility of an eyewitness statement hinges upon the foundational presumption that the individual, speaking under the solemnity of oath, is recounting events truthfully. This presumption serves as the bedrock, except when a compelling demonstration, surpassing reasonable doubt, establishes the unreliability and falsehood of their testimony. The admission of a witness's statement into evidence mandates a meticulous and comprehensive evaluation, delving into various facets.

Within this framework, the burden rests upon the court to ascertain whether any extraneous factors may have influenced the eyewitness while offering their account. Scrutiny extends to uncovering whether the witness encountered any undue duress, coercion, or intimidation that could have tainted their recollection. This obligation to ensure untainted testimony underscores the critical role witnesses play in the administration of justice. An impartial and veracious statement from them assumes paramount significance, as it guides the path toward a just verdict.

Nonetheless, the dynamics of evidence sometimes lead to a divergence between oral and documentary sources. Documented evidence gains prominence due to its inherent stability compared to oral recollections, which can be susceptible to inconsistencies and lapses. This divergence arises from the inherent fallibility of human memory, making eyewitnesses potentially unreliable sources. This contrast is amplified by the tangibility and permanence of documentary evidence, rendering it less prone to inaccuracies that might arise from the vagaries of human

¹⁶ Himanshu Singh Sabharwal v. State of MP & Ors, AIR 2008 SC 1943.

recall.

In conclusion, the admissibility of an eyewitness statement rests on the presumption of truthfulness, tempered by the rigors of rigorous examination. The court's vigilance in assessing potential biases or external influences is pivotal in upholding the integrity of the legal process. The juxtaposition between oral and documentary evidence underscores the nuanced challenges of reconciling human testimonies with more concrete forms of proof. Balancing these aspects ensures the pursuit of a fair trial, where both the frailties of human memory and the stability of documentary evidence find their place in the pursuit of justice.

