UNIT V LLB 6TH SEM. LAW OF EVIDENCE

SECTION 134. Number of witnesses.—No particular number of witnesses shall in any case be required for the proof of any fact.

This section clearly says that no particular number of witnesses shall in any case be required for the proof of any fact. Supreme court has in number of cases sustained convictions on the basis of the testimony of a sole witness. Value is always given on the quality of **evidence** rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of **evidence**. In Bhimappa Chandappa v. State of Karnataka (2006) 11 SCC 323, Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his **evidence** which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the court has no hesitation in recording a conviction solely on his uncorroborated testimony. Indian legal system does not insist

on plurality of witnesses Undoubtedly. In Mahesh vs State Of (G.N.C.T.) Of Delhi on 25 April, 2007 witness was a neighbour of the Appellants as well as the deceased. It is a well settled principle of law that it is quality of the **evidence** which is material for deciding the criminal trial. Emphasis has always been put on the quality of **evidence** under Section 134 of the **Evidence Act**, which makes it clear that no particular number of witnesses shall in any case be required for the proof of any f**act.**

SECTION 135. Order of production and examination of witnesses.—The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Section 135 talks about Order of production and examination of witnesses. Section says that the order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court. The order in which the witnesses are to be presented for examination is to be decided by the party leading the evidence and the court is very slow in interfering with the order. However, the court has the discretion to do so as long as it is fairly exercised. Section 135 deals with the order in which witnesses are to be produced for examination. It is generally done by the law and practice for time being relating to Civil and Criminal Procedure; and in absence of any such law by the direction of the court. In civil proceeding, Orders and Rules prescribed by the Civil Procedure Code, 1908 are to be

followed. Under Order XVIII, Rule 1, it is generally the right of the plaintiff to begin. After examination the defendant under Order XVIII, Rule 2, will examine the witnesses. In criminal proceeding the procedures as laid down by the Code of Criminal Procedure 1973 are to be followed. There are various sections in the Criminal Procedure followed for examination of witnesses

SECTION 136. Judge to decide as to admissibility of evidence.—When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under

section 32. The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property. The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

This section deals with discretions to be exercised by a judge in connection with the admissibility of evidence. When party proposes to give evidence of any fact the judge may ask the

party in what manner the alleged fact, if proved, would be relevant. The question is to be decided by the judge. If he finds that the evidence would not be relevant he would not allow the party from proving it as because, it would only waste the time of the court. In such circumstances the court may disallow such evidence. If the fact proposed to be proved is one of which evidence is admissible only upon prove of another fact, the other fact must be proved before evidence of first fact is given. For example, if a person wants to prove a dying declaration, he must first prove that the declarant is dead. [Illustration (a) and Illustration (b).

The last paragraph is an exception .Where the relevancy of one alleged fact depends upon the prove of another alleged fact, the judge may, in his discretion, allow the first fact to be proved without proof of the second fact. But the party must give undertaking to prove the second fact to the satisfaction of the court in subsequent stage.

SECTION 137.. Examination-in-chief.—The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.—The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.—The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination. the cross-examination by the party who called him, shall be called his re-examination.

SECTION 138: Order of examinations.—Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Under section 137 and 138 the examination of witness takes place in three stages, namely, Examination-in-chief, Cross-examination and Re-examination. If opposite party so desires he may take the advantage of re-examination.

After taking oath the witness has to give answers the questions asked by the party who has called him before the court. The testimony of the witness is recorded in question-answer form. In this process all material facts within the knowledge of the witness are recorded to prove his case. This is called as examination-in-chief.

In conducting examination-in-chief like of a witness specially in serious cases, the public prosecutor should take abundant precaution in examination a witness, all necessary questions for proving the prosecution case should be put to the witness. In examination-in-chief the testimony is strictly confined to the facts relevant to the issues only, and not to the law. No leading question is permitted to be asked unless the court allows it.

After the examination-in-chief the opposite party shall be called to examine the witness. This is known as cross-examination. Where in cross-examination of a witness, nothing appears suspicious, the evidence of the witness has to be believed. It is the right of the opposite party to cross-examine the witness to expose all relevant facts which are either left or not disclosed in the examination-in-chief. It is "one of the most useful and efficacious means of discovering the truth." The right of cross-examination can be exercised by the co-respondents when their interest is in direct conflict with each other.

Object of cross-examination:

(a) Tending to test his means of knowledge;

(b) Tending to expose the errors, omissions, contradictions and improbabilities in his testimony; or

(c) Tending to impeach his credit."

Therefore, the basic objective of the cross-examination is to ascertain the truth from the testimony given by the witness. It was held that when it is intended to suggest that the witness is not speaking the truth on particular point, it is necessary to direct his attention to it by questions in cross-examination.In one case the appellant sued two police officers for damages of malicious prosecution. In cross-examination the appellant put questions in that regard to one of them who denied the allegation that he demanded a bribe. He did not put suggestion to the other police officer. It was held that the appellant had not properly substantiated his allegations.

SECTION 139. Cross-examination of person called to produce a document.—A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

A witness summoned to produce a document cannot be a witness for the purpose of cross-examination. He may either produce the document personally or may depute any person to produce the document. Under section 139 such witness can be cross-examined only when he is called as witness. An accused cannot be compelled to produce document in his possession. Where wife of a partner was called upon to produce the deed of dissolution of the firm she was not permitted to be examined as a witness.

SECTION 140: Witnesses to character.—Witnesses to character may be cross-examined and re-examined

Under this section a witness may be or must be allowed to give evidence of character of a party. "The use of character evidence is to assist the court in establishing the value of the evidence brought against the accused." But such examination shall be confined only to cross-examination and re-examination. Where the fact in issue was "whether the accused had kidnapped and murdered her child. The murder in such a case cannot escape by establishing that the mother of the child was of loose character." The right has been given and when an accused calls witness to prove his previous good character they should, in proper cases, be cross-examined.

SECTION 141Leading questions.—Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

SECTION 142: . When they must not be asked.—Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court. The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved

SECTION 143: When they may be asked.—Leading questions may be asked in cross-examination.

Leading questions are questions which are framed in a way which evokes a specific response from the individual being questioned. The purpose of an examination in chief, that is, questioning of the witness by the party who has called him, to enable the witness to tell to the court by his own mouth the elevant facts of the case. Leading questions cannot be asked in examination in chief . They can be asked in cross examination. Leading questions may often be answerable with a yes or no (though not all yes-no questions are leading). The propriety of leading questions generally depends on the relationship of the witness to the party conducting the examination.

SECTION 144: Evidence as to matters in writing.—Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court,

ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration The question is, whether A assaulted B. C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him". This statement is relevant as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Principle Section 144 is to enable the parties to comply with provisions of Sections 91 and 92 of the Evidence Act as to the exclusion of oral evidence by documentary evidence. When the terms of a contract or grant or disposition of property have been reduced to the form of a document no oral evidence is admissible. In absence of documentary evidence the secondary evidence may be applied in particular case.

An exception is laid down in the explanation appended to the section. Accordingly, a witness may give oral evidence of statements made by other person about the contents of a document if such statements are themselves relevant facts.

SECTION 145 : Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being

shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

The first part of this section permits cross-examination of a witness regarding a previous statement made by him in writing or reduced to writing as to any relevant matter and such questions may be put to him without the writing being shown to him or without its being proved. This part therefore deals merely with the factum of the previous statement upon a point having been made by the witness. The second part deals with the question how a witness is to be contradicted by his previous statement and provides that in such a case his attention must be called to those parts of the document which are to be used for the purpose of contradiction before the writing can be proved. In the present case we are concerned with the second part of Section 145. It will be noticed that the section deals with a previous statement in writing or reduced into writing, which has not been proved already. The words, "without such writing being shown to him or being proved" in the first part of the section and "before the writing could be proved" in the second part of the section, go to establish that the section does not contemplate a previous statement which has already been proved in the record under some other provision of law. It will also be noticed that the "section prohibits the use of a previous statement of the witness for the purpose of contradicting his evidence on oath. It does not deal with the question of proving a party's case by the admission of the opposite party. That subject is dealt with in Section 21. . The principles lying behind the admissibility of evidence under these sections appear to be of

too strong and of too compelling a nature to permit of their being swept away so easily by considerations applicable to evidence of such a frail nature as is embraced by Section 145, Evidence Act.

SECTION 146: Questions lawful in cross-examination.—When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character.

This section prescribes the mode of shaking the veracity of witness during cross examination. Although the range of cross-examination is unlimited, under the section the court has discretionary power to exclude irrelevant questions. The person (complainant or any of his witness who gave evidence on affidavit after being summoned by the accused, can only be subjected to cross-examination as to fact's stated in affidavit. It is not open to the accused to insist that before cross-examination

be must dispose in examination-in-chief. The right to cross-examination must relate to the relevant facts. It cannot be turned "into an engine of torture of the witness."

Courts have extensive powers for protecting the witnesses from the questions not lawful in cross examination as set out in Section 146. When such a question falling under any of the purposes enumerated in Section 146 of the Evidence Act is asked, whether the witness could be compelled to answer the said question, if the question tends to incriminate him is dealt with in Section 147 of the Evidence Act. The said provision reads as follows:- When witness to be compelled to answer. - If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.It is needless to point out that section 147 is connected to Section 146 of the Evidence Act. According to this provision, a witness cannot be compelled during cross examination to answer a question unless the question is relevant to the suit or proceedings, and if such answer, is in the nature of incriminating him in any crime, he is protected under Section 132 of the Evidence Act. Here, the court has no option, but to compel him to answer. if the court finds that the same is relevant to the matter in issue, then, the court has no option but to compel the witness to answer the said question and the said incriminating answer is protected by the proviso to Section 132 of the Evidence Act. With respect to all the other questions referable to Section 146 of the Act, the Court has discretion either to compel or not to compel the witness to answer the said question. While deciding as to whether to compel the witness to answer such question or not, the court should have regard for the four considerations mentioned in Section 148 of the Evidence Act. If

the witness refused to appear for cross-examination it was held that his evidence lost all credibility. On the other hand where an opportunity for cross-examination has not been used at all or used partly, that does not demolish the testimony of the witness. The absence of cross-examination does not mean the evidence is unchallenged. If the party did not suggest any question to be put to witness by Inquiry Officer, it is not open for him or her to say that opportunity for cross-examination was not given.

SECTION 147: When witness to be compelled to answer.—If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

SECTION 148: Court to decide when question shall be asked and when witness compelled to answer.—If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

This section, in a way, gives protection to the witness from being improperly cross-examined and from being harassed. In case the court allows a question and the witness rejects to answer, the court will draw an inference that the answer if given would be unfavorable to him or refuse to draw inference .If questions asked during cross examination is not relavant the court has to decide whether witness has to answer or not. Court has to check which question is proper question and which question is improper. Court has to see which question is remotedly connected with facts and which question is not remotedly connected with facts. This exercise of a

court gives protection to witnesses present in court from unwarranted examinations.

SECTION 149: Question not to be asked without reasonable grounds.—No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

SECTION 150: Procedure of Court in case of question being asked without reasonable grounds.—If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is the subject in the exercise of his profession.

SECTION 151: Indecent and scandalous questions.—The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

SECTION 152: . Questions intended to insult or annoy.—The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Object of section 149,150, casts duty on counsel of all grades in examining witnesses with a view to shake their credit by damaging their character. If questions are asked for ulterior purposes then advocates will be liable for contempt of court.Section 151 and 152 invests a court with discretion to forbid any question which is intended to insult or annoy or any

indecent and scandalous questions which is to be asked to the witness or which is needlessly offensive even if the question is proper on particular point. If assessity arises the court can also hold in-camera trial to ensure deposition of the witnesses without any fear or embarrassment.

In the case of Bharti Yadav vs State Of Up on 14 November, 2006 Sections 151 and 152 of the Evidence Act specifically provides the area of prohibition for putting the question to the prosecution witnesses and the court below except those exception specifically mentioned was not justified in prohibiting to ask this question to the Investigating Officer about the recording of statement of the witnesses mentioned therein. Section 151 of the Evidence Act states that the Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed. Section 152 of the Evidence Act also provides that the Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form. On the one hand, keeping in view their importance in the trial process their attendance is ensured and for this purpose even coercive steps can be taken which are legally permissible, on the other hand,

there is also a necessity to ensure that these witnesses are given due protection. Thus, it also becomes bounden duty of the State to protect the witnesses. It is also the duty of the court to ensure that when these witnesses come for deposition, they are not unnecessarily harassed and humiliated. Under Sections 151 and 152 of the Indian Evidence Act, 1872, victims and witnesses are protected from being asked indecent, scandalous, offensive questions and questions intended to annoy or insult them. In a given case, if necessity arises, court can also hold In-Camera trials to ensure deposition of the witnesses without any fear or embarrassment. My aforesaid decisions are based on the dicta laid down by the Supreme Court in number of cases.

SECTION 153: Exclusion of evidence to contradict answers to questions testing veracity.—When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence. Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction. Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted. Illustrations

(a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it. Evidence is offered to show that he did make such a claim. The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it. Evidence is offered to show that he was dismissed for dishonesty. The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore. A is asked whether he himself was not on that day at Calcutta. He denies it. Evidence is offered to show that A was on that day at Calcutta. The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore. In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence. He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Section 153 gives protection against character assassination of witnesses. Where there is merit of the case and the relevant fact having direct connection with issue which is denied by the

witness in cross-examination, the defence has right to establish contradiction by producing extraneous evidence so that the witness may not take any advantage.Under section 155(3) “the credit of a witness may be impeached by his former contradicting statement. But the contradicting statement should not be a mere minor discrepancy. The contradiction, discrepancy or inconsistency must be such as to afford the credibility of the witness. According to the Illustration (c) the evidence of independent witness is admissible. For the purpose of contradicting a witness the defence may request the witness to be recalled.” When the object of producing evidence is not merely to discredit a witness by injuring his character but is to shake the credit of the witness by showing that the version was untrue and improbable, such evidence is covered by Illustration (c) of Section 153 of the Evidence Act and is relevant.” The accused can offer evidence showing that person produced as eye-witness was at different place at the material time than at the place of occurrence. It is of no consequence that the inquest report showed his presence at the site of occurrence.

Exception 1:

Under this exception if the witness denies his previous conviction of any crime, it can be proved by evidence. He may afterwards be prosecuted for giving false evidence under section 193 of the Indian Penal Code.

Exception 2:

Under exception 2 if a witness is asked a question showing that he is not impartial and he denied it, the evidence is allowed to be given to prove his impartiality. Whereas “Section 153 generally

deals with the exclusion of evidence to contradict answers to the questions testing veracity, Exception 2 states that if a witness is asked any question tending to impeach his impartiality and answer by denying the facts suggested, he may be contradicted."

SECTION 154: Question by party to his own witness.—

(1)] The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.—1[(1)] The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party." 2[(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.]

The fact that Section 154 states that a Court may permit a person, who calls a witness, to put any question to the witness, which might be put, in cross-examination, by the adverse party is of great significance. There may be instances, where a witness does not intelligently exhibit any hostile feelings during his examination-in-chief, but reveals the tendency to support the case of the adverse party during the progress of his examination. In such a situation, cross-examination of such a witness by the party, who might have called the witness, may become necessary to extract the truth, even when his cross-examination by the adverse party is over.*In RI RAMA REDDY V V V GIRI 1970 2 SCC 340*, it was decided that evidence of a prior

statement can be allowed provided it is relevant to the matter in issue. It was further clarified that such evidence could be used to support of contradict the evidence given in court. Section 154 clearly shows that this Section does not specify the stage at which a person, who calls a witness, shall be allowed to put to such a witness such question(s), which might be put to the witness, in cross-examination, by the adverse party. Section 154, strictly speaking, enables the Court to reach the truth or otherwise of an issue, which may arise during the progress of a trial. What Section 154 says is that a Court may, in its discretion, permit the person, who calls a witness, to put any question to such a witness, which might be put to him in cross-examination, by the adverse party. The exercise of this discretion has, over a period of time, come to be settled by various judicial proceedings. There is unanimity in the judicial opinion that, a party will not be allowed to cross-examine his own witness unless the Court is satisfied that (a) the witness exhibits an element of hostility or (b) that the witness has resiled from a material statement already made by him or (c) whether the Court is satisfied that the witness is not speaking the truth and it is necessary to cross-examine him to extract the truth from him.In the case of Pushpendrasinh @ Paresh Vaghela vs State Of on 8 February, 2013 learned advocate for the petitioner has taken this Court through the f**act**ual matrix arising out of this petition. It is inter-alia contended that since

the witness has not stated anything contrary to his statement during the course of examination-in-chief, he was not sought to be declared hostile by the Assistant Public Prosecutor. It is further contended that during the course of cross-examination, the witness has not washed of examination-in-chief, nor he has stated anything contrary to his examination-in-chief and under such circumstances, no witness could have been sought to be declared as hostile witness by the Assistant Public Prosecutor at the stage of cross-examination. Court observed that under Section 154 of the **Evidence Act**, the witness can be declared hostile at the discretion of the Court having considered the ratio of the judgments cited before him, the Magistrate has declared the said witness as hostile. . In Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233, the Supreme Court held thus: Before proceeding further we might like to state the law on the subject at this stage. Section 154 of the **Evidence Act** is the only provision under which a party calling its own witnesses may claim permission of the court to cross-examine them. The **section** runs thus: The Court may, in its discretion permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. Considering the ratio laid down by the Hon'ble Apex Court, this Court as well as other High Courts, the powers under Section 154 of the Evidence Act is to be exercised in a judicious manner.

SECTION 155: Impeaching credit of a witness__ The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:-

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has [accepted] the offer of bride, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.--A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Section 155 deals with manners by which the credit of a witness may be impeached. Impeaching the credit of witness means exposing him before the court as what is real character, so that the court does not trust him. Impeaching the credit of witness may be done either by the opposite party or with the permission of court by the party who called him. This and other sections of a act dealing with impeaching credit of witness:

1. Section 155 provides for impeaching the credit of witness.

2. Impeaching the credit of a witness by cross-examination (Sections 138, 140, 145 and 154).

3. By putting questions injuring character of witness in cross-examination (Section 146).

In Rup Chand vs Mahabir Parshad And Anr. on 15 May, 1956 The plaintiff objected to the admissibility of **evidence** by tape-recorder but the trial Court overruled the objection and the plaintiff has come to this Court in revision. The only two **sections** which appear to have any bearing on the matter in

controversy between the parties are Sections 145 and 155(3) Indian Evidence Act. Section 145 provides that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The other provision on which reliance has been placed is Section 155(3), Evidence Act. This section provides that the credit of a witness may be impeached by proof of former statements inconsistent with any part of his **evidence** which is liable to be contradicted. If the witness in the present case made a statement to the defendant before the commencement of case which is at variance with the statement made by him on a later date, there can be no doubt that it can be proved by the defendant going into the witness-box and deposing that the statement was in f**act** made to him.

SECTION 156: Questions tending to corroborate evidence of relevant fact, admissible.—When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies. Illustration A, an accomplice, gives an account of a robbery in which he took

part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Under this section court can test the veracity of a witness who may be made to state about the surrounding circumstances. But the statements of witness about the surrounding circumstances may be admitted or rebutted with the help of independent witness. Illustration explains the occurrence.“The meaning of the section is that for the purpose of corroborating the testimony of a witness as to any relevant fact, he may be asked about other surrounding circumstances or events observed by him at or near to the same time or place.” It is elementary that the evidence of an infirmed witness does not become reliable merely because it has been corroborated by a member of witnesses of the same brand; for evidence is to be weighed not counted.

SECTION 157: Former statements of witness may be proved to corroborate later testimony as to same fact.—In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Section 157 allows the statement of a witness to be corroborated by his former statement relating to same fact at or about the time when the fact took place or before any competent authority. It requires that the former statement must relate to the same fact, i.e., the fact under inquiry and it must have been made at or about the time when took place.

Two conditions have to be fulfilled if the previous testimony of witness is admitted for corroboration, viz., (i) the statement must have been made at or about the time when the fact took place, (ii) the statement must have been made before a competent authority. Thus, the section provides for admission of evidence given for the purpose, not of proving a directly relevant fact, but of testing the truthfulness of the witness. The previous statement of particular witness can be used to corroborate only his evidence during trial and not evidence of other witness.

SECTION 158: What matters may be proved in connection with proved statement relevant under section 32 or 33.—Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination of the truth the matter suggested.

This section admits al the evidence which condraticts or corroborates other evidence relevant under section 32 or 33.Hon'ble Supreme Court in Vajrala Paripurnachary v. State of A.P., AIR 1998 SC 2680 has, succinctly, expounded the proposition relating to dying declaration and the applicability of the provisions of section 32 of the Evidence Act, and the value of the dying declaration. It was held that the recording of dying declaration by the Judicial Magistrate and the evidence of the Judicial Magistrate showing that she was in fit condition to make statement, discrepancy in dying declaration regarding exact spot where she was set ablaze neither affecting its credibility nor identity of the accused was blurred due to it. In that case, highlighting the value of dying declaration and converting the acquittal into conviction, the Hon'ble Apex Court has clearly propounded that micro level discrepancy in different statements turn out to be dying declarations should not warrant non-credibility or authenticity of the prosecution version

SECTION 159: Refreshing memory.—A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction

concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct. When witness may use copy of document to refresh memory.—Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original. An expert may refresh his memory by reference to professional treatises.

SECTION 160: Testimony to facts stated in document mentioned in section 159.—A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document. Illustration A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered

Section 159 enables a witness that he may refresh memory during examination by referring to the following documents:

1. Any writing made by himself at the time of transaction concerning which he is questioned or soon afterwards that the court considers it likely that transaction was fresh in his memory;

2. Any such writing made by any other person and read by witness within the time aforesaid;

3. Professional treatise, if the witness is an expert.

According to section there are two kinds of recollection of memory, viz.,

(a) Present recollection, and (b) past recollection. Section 159 deals with present recollection whereas Section 160 refers to past recollection.

In order to avail the opportunity of the section for purpose of refreshing memory it has to be proved that:The writing must have been made by the witness himself at the time of transaction or soon afterwards that the facts were fresh in his memory. The expert witnesses are permitted to refresh memory by consulting professional books. An investigating officer was allowed to refresh his memory by looking at the contemporaneous records made by him.

SECTION 161: Right of adverse party as to writing used to refresh memory.—Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if

he pleases, cross-examine the witness thereupon.1161. Right of adverse party as to writing used to refresh memory.—Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Any document if used for the purpose of refreshing memory , the other is having right to inspect the document.

SECTION 162: Production of documents.—A witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees, fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility. Translation of documents.—If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he

shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860)

A witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. It was argued in Governor-General-in-Council v. H. Peer Mohd. AIR 1950 EP 228 (FB) (A) that the Civil P. C. being a later statute O. 11, K. 19(2) had the effect of repealing pro tanto the provisions of Section 162, Indian Evidence Act. The Pull Bench repelled this contention holding that the prohibition with regard to the inspection of a State document arises out of the privilege of the State, and is not a procedural matter with which alone Sub-rule (2), Rule 19, Order 11, C. P. C. deals. Then the matter of State privilege is a matter of constitutional law and is dealt with specifically under Sections 123 and 162 of the Indian **Evidence Act**. It will be obvious that para two of Section 162 of the **Evidence Act** is clear on the point that the Court can inspect other documents but cannot inspect a document if it refers to matters of State. Under Section 124 it is for the Court to decide whether a document is a communication made to a public officer in official confidence, and for its decision the Court can surely inspect the document. In the present case, the documents have been inspected by the learned Sessions Judge who comes to

the conclusion that they are not communications made to a public officer in official confidence within the meaning of Section 124 of the Evidence Act.

SECTION 163: Giving, as evidence, of document called for and produced on notice.—When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Section 163 lays down that where a party gives notice to the opposite party to produce a document which is produced and he inspected it, he is being bound to give it as evidence if the party producing the document requires to do so.

The documents may be treated as evidence if the following conditions are fulfilled:

(a) The party requiring the document must give notice to produce it to opposite party.

(b) The opposite party must produce the document,

(c) The party requiring the document must inspect it,

(d) The party producing the document should require the party calling is bound to give it as evidence.

SECTION 164: Using, as evidence, of document, production of which was refused on notice.—When a party refuses to produce a document which he has had notice to produce, he cannot

afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

If a party having a document in his possession refuses to produce it when called upon at the hearing to do so, he is not at liberty afterwards to give the document in evidence for any purpose without(1) the consent of other party, or (2) the order of the court. This section does not contemplate the production of a document for the inspection, It says about the notice which has already been given to other party.

SECTION 165 : Judge's power to put questions or order production.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Section 165 has vested extensive power on the judges for the interest of administration of justice. A judge can, therefore, put any question to the witness or to the party at any time which it thinks fit for knowing the truth of a case and making it more clear.In Ved Parkash Kharbanda v. Vimal Bindal Delhi high court examined the scope of Section 165 of the Indian Evidence Act, 1872 to discover the truth to do complete justice between the parties. This Court also discussed the importance of Trial Courts in the dispensation of justice. Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties

whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided.

The first proviso deals with the power of the court to question a witness. It provides that the judgment must be based upon the facts, declared by this Act to be relevant, and duly proved and it would be intolerable that the court should decide rights upon suspicious unsupported by testimony.

SECTION 166:Power of jury or assessors to put questions.—In cases tried by jury or with assessors, the jury or assessors may put any question to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

This section is now redundant.

SECTION 167 :_ No new trial for improper admission or rejection of evidence.—The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision

The provisions of this section are applicable to all judicial proceedings in or before any Court. Thus, the section applies to

civil as well as criminal cases. Although the word decision (appearing in S. 167) is generally used as applicable to civil cases, it is an expression which would apply with equal force to a criminal proceeding as well. The object of section 167 is- that the Court of Appeal or Revision should not disturb a decision on the ground of improper admission or rejection of evidence, if in spite of such evidence, there is sufficient material in the case to justify the decision. In other words, technical objections will not be allowed to prevail where substantial justice has been done.