

CREDIBILITY OF RELATED AND INTERESTED WITNESSES

-Shaheen Banoo

ABSTRACT

"A witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim."

Witnesses play a pivotal role in the pursuit of justice delivery foundation of which rests on the pillars of truth and impartiality. The conclusiveness and truthfulness of the testimony runs in favour of the witness as they are made under oath. Therefore, witnesses play a significant role in rendering justice as and when the wheel of criminal trial sets in motion.

A related witness possess some kind of relation with the victim, and interested witness postulates, someone having direct interest and derives some benefit out of the result of the litigation. Hence, it becomes imperative for the courts to examine the credibility of such witnesses to rule out any possibility of tainted evidence being given in the court of law. This essay attempts at analysing the evidentiary value of testimony given by related and interested witness.

The present analytical essay delves into examination of law on admissibility of testimony made by related and interested witness in India along with comparative jurisdiction vis-a-vis United Kingdom's law on conclusiveness of evidence given by interested witness.

Keywords: Related Witness, Interested Witness, Testimony, Credibility, Evidence Act, UK

I. INTRODUCTION AND BACKGROUND

"Plainly it is not every error made by a witness which affects his credibility. In each case the trier of fact has to make an evaluation; taking into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness's evidence."

– H.C. Nicholas

In the words of distinguished philosopher **Bentham**, ***"witnesses are the eyes and ears of justice"***, thereby underlining the importance of witnesses in a criminal trial.¹ Therefore, naturally

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comes the question of the credibility of related and interested witnesses wherein the latter, shares direct interest from the outcome of a litigation² or in seeing the accused meet ends of justice owing to animus motive or due to some varied reasons.³

It is pertinent to note that Indian Evidence Act, 1872 does not define witness.⁴ Further, **Black's Law Dictionary** defines witness, "*as one who sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition, or by affidavit*".⁵

This analytical essay attempts to evaluate the law relating to ***Credibility of Related and Interested Witness***. The essay is structured as follows. **First** part will lay out the relevant legal issues. **Second** part will construct analysis of the impugned issues along with illustration of classic and up to minute cases. The **third** part provides an examination of the rules in different jurisdiction viz. India and United Kingdom. Lastly, the **fourth** part shall give a conclusion to the legal issues under consideration.

II. LEGAL ISSUES

1. Whether related witness can be equated as an interested witness (*ref- State of Rajasthan vs. Kalki*, AIR 1981 SC 1390)?
2. Whether testimony of related and interested witness is bound to be rejected mechanically (*ref- Raju alias Balachandran vs. State of Tamil Nadu*, AIR 2013 SC 983)?
3. Whether testimony of a related witness is inadmissible on the basis of his/her relation with the victim?
4. Whether testimony of a related witness can be discredited if they also happen to be the natural witness on the ground of being partisan evidence?
5. Whether evidence given by an interested witness has authoritative value?
6. Whether presence of interest or lack of interest affects the truthfulness and credibility of the testimony of the witnesses?

¹ *Decision on the Prosecutor's Bar Table Motions*, INTERNATIONAL CRIMINAL COURT, COUR PÉNALE INTERNATIONALE, p.16, ICC-01/04-01/07-2635 17-12-2010 1/35 FB T.

² *Sudbakar vs. State*, (2018) 5 SCC 435; *State of Andhra Pradesh vs. S. Rayappa*, (2006) 4 SCC 512.

³ *Bearing Witness at the International Criminal Court: An Interview Survey of 109 Witnesses*, HUMAN RIGHTS CENTER UNIVERSITY OF CALIFORNIA, BERKELEY, SCHOOL OF LAW, June (2014).

⁴ *Witness in a Criminal Trial: Their Role and Efficacy*, (February 15, 2020), https://shodhganga.inflibnet.ac.in/bitstream/10603/151368/13/13_chapter-3.pdf

⁵ B. Garner (Ed.), *Black's Law Dictionary*, p.1596.(WEST GROUP, ST. PAUL, MINNESOTA, 17th Ed., 1999).

7. Whether law related to credibility of interested witnesses in India is identical with law of evidence in United Kingdom?

III. ANALYSIS

LEGAL REGIME ON CREDIBILITY OF RELATED AND INTERESTED WITNESSES- DECODED

Section 3 of the **Indian Evidence Act, 1872** comes into play here. *Section 3* bifurcates evidence as **oral evidence** i.e., evidence given by witnesses and **documentary evidence**. Further, the Latin maxim, "**falsus in uno, falsus in omnibus**"⁶ is not applicable in India, which is why witnesses cannot be labelled as liars is a protection available to witnesses. **Chapter IX, "OF WITNESSES"** of the Indian Evidence Act⁷ deals with provisions relating to witnesses *vis-a-vis* their competency, compatibility, privileges, and quantity of witnesses.⁸

i) Questioning the Credibility of Related Witness - The Need?

A related witness is a witness having some relation with the victim.⁹ A wife giving testimony about her husband's death would be an example of testimony given by a related witness. However, it is of paramount importance to note that, "*a related witness cannot be equated as an interested witness*" were the views expressed by the Supreme Court in the infamous case of **State of Rajasthan vs. Kalki**, that invited discussions and deliberations by courts later.¹⁰

The general perspective runs that a related witness would not falsely implicate an innocent person as they would be inclined to see the real culprits getting punished as held in **Jarnail Singh vs. State of Punjab**.¹¹ However, testimony of such witnesses should be analysed with caution for its credibility¹² as duly laid down in **Gangadhar Behera and others vs. State of Orissa**.¹³

⁶ Roman Legal Principle Indicating That a Witness Who Wilfully Falsifies One matter is Not Credible on Any Matter, (February 15, 2020), Legal Definition at USLEGAL, <https://definitions.uslegal.com/f/falsus-in-uno-falsus-in-omnibus/>.

⁷ Chapter IX titled "OF WITNESSES" of the Indian Evidence Act, 1872, Sections 118 to 134.

⁸ *Appreciation of Evidence in Criminal Cases With Special Reference To Interested Witness, Child Witness, Hearsay Witness, Hostile Witness and Injured Witness*, (February 15, 2020), Title NO.37(As Per Workshop List title no37 pdf).pdf [http://mja.gov.in/Site/Upload/GR/Title%20NO.37\(As%20Per%20Workshop%20List%20title%20no37%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.37(As%20Per%20Workshop%20List%20title%20no37%20pdf).pdf).

⁹ *Vishnu vs. State of Rajasthan* (2009) 10 SCC 477.

¹⁰ AIR 1981 SC 1390.

¹¹ (2009) 9 SCC 719.

¹² Supra note 8 at 6.

¹³ 2003 SCC (Cri) 32.

Criteria for Discerning the Credibility of Witnesses are as follows:-

- i.* Witnesses' access to correct information;
- ii.* Witnesses' motive behind hiding the truth, if any;
- iii.* Whether witnesses' agree in their testimony.¹⁴

ii) Testimony of Related Witness - Evidentiary Value

In *Prahalad Patel v. State of M.P.*¹⁵ the Supreme Court held that the testimony of related witnesses cannot be discredited on the ground of being related to the deceased.¹⁶ Furthermore, in *Balraje vs. State of Maharashtra*,¹⁷ it was reiterated that if the eye witnesses are alleged to be interested and to have inimical intentions for the accused, then it is imperative for the court to adopt a pragmatic approach while examining their testimony for its credibility.¹⁸

In *Balraje vs. State of Maharashtra*¹⁹ the Supreme Court held as follows-

*..."if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same."*²⁰

Therefore, it is of paramount importance to note that the credibility of a related witness is not dependent upon the relationship with the complainant or the deceased provided truthfulness of the evidence can be established with caution and care as held in *Waman and others vs. State of Maharashtra*²¹.

¹⁴ *Law Relating to Witness: Historical Development*, (February 15, 2020), https://shodhganga.inflibnet.ac.in/bitstream/10603/8788/11/11_chapter%202.pdf.

¹⁴ 2003 SCC (Cri) 32.

¹⁵ (2011) 4 SCC 262.

¹⁶ *Anisetti Verabhadra Rao & Anr vs. State of Andhra Pradesh*, 2009 Cri. L.J. 730.

¹⁷ (2010) 6 SCC 673.

¹⁸ *The Evidence of Interested Witnesses in Negligence Cases*, THE AMERICAN LAW REGISTER FOUNDED 1852, UNIVERSITY OF PENNSYLVANIA, DEPARTMENT OF LAW Vol. {460: S- JULY, x898.

¹⁹ Supra note 12.

²⁰ *Id.*

²¹ (2011) SCC 295).

iii) Appreciation of Evidence in Related Witness

The law advocates that the testimony of a related witness cannot be discredited mechanically²² because relationship of the witness cannot be a criteria to decide upon the credibility of the testimony as laid down in ***Raju alias Balachandran vs. State of Tamil Nadu***²³ and reiterated in ***A. Alagupandian vs. State of Tamil Nadu***.²⁴

Hence, it the truthfulness of the statement that demands acceptability under the law. Moreover, the fact that the related witnesses that are also natural witnesses to any incident will not render their evidence as inadmissible in the court of law, especially due to them being natural witnesses additionally for it would lead to failure of justice if discarded.²⁵

iv) Law on the Admissibility of the Testimony of an Interested Witness

"Interested witness, a close relative who is a natural witness cannot be regarded as an interested witness. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason."

– Kartik Malhar vs. State of Bihar²⁶

As per English law Dictionary definition, "an interested witness is a witness in the trial who has a personal interest in the outcome of the matter and has some kind of material stake in the outcome of the case."²⁷ Further, in ***Sahabuddin vs. State of Assam***²⁸ it was held that an interested witness is a biased witness who aims to **falsely implicate** the accused.²⁹

²² Shivani Trichnopoly Ravi Kanth, *Appreciation of The Evidence of An Inimical Witness - Raju alias Balachandran v/s Tamil Nadu*, LEGAL SERVICES INDIA, (February 15, 2020), <http://www.legalserviceindia.com/legal/article-611-appreciation-of-the-evidence-of-an-inimical-witness-raju-alias-balachandran-v-s-tamil-nadu.html>.

²³ AIR 2013 SC 983.

²⁴ 2012(3) RCR (Criminal) 729 (SC).

²⁵ *Binod Sinku vs. State of Jharkhand*, 2018 SCC OnLine Jhar 360.

²⁶ (1996) 1 SCC 614 (620).

²⁷ *Id.*

²⁸ (2012) 13 SCC 213.

²⁹ Ashok Kini, *Influence Of Bias In Testimony Of Interested Witnesses Should Never Be Overlooked: SC 2018*, LIVE LAW, (February 15, 2020), <https://www.livelaw.in/influence-of-bias-in-testimony-of-interested-witnesses-should-never-be-overlooked-sc-read-judgment/>.

The reason behind such a motive to falsely implicate the accused rests on the foundation that the witness has some direct interest in the outcome of the litigation as postulated in *Takdir Samsuddin Sheikh vs. State of Gujarat*.³⁰

v) Appreciation of Testimony of Interested Witnesses

It is an uncontested fact that the testimony of an interested witness lacks reliability and mandates corroboration for its acceptance.³¹ Furthermore, it is well settled that interested witness desires conviction of the accused³², therefore, due caution in judicial approach is a must while taking such testimony into consideration as postulated in *State of Haryana vs. Shakuntla*.³³

vi) Credibility of Evidence of Interested Witnesses

It is a settled position that the testimony of an interested witness cannot be discredited owing to the ground of it being an evidence of partisan nature.³⁴ However, the courts are required to be guarded while scrutinizing such evidence which requires corroboration to a material extent. Here, the acceptance of evidence is dependent upon two factors viz., **first**, scrutiny³⁵ by the court and, **second**, caution while considering such evidences as hypothesized in *Mano Dutt and Anr vs. State of U.P109 and State of Haryana v. Shakuntla*.³⁶

*..."Interestedness of the witness does not require outright rejection of evidence, only necessities the deeper scrutiny."*³⁷

vii) Admissibility of Evidence of Interested Witnesses- The Bottom Line

³⁰ 2011 (4) RCR (Criminal) 840 (SC).

³¹ Supra note 20.

³² *Sababuddin vs. State of Assam*, 2013 (1) RCR (Cr) 817.

³³ 2012 (2) RCR (Cri) 845 (SC).

³⁴ Ashok Kini, *Witness Can Be Called 'Interested' Only When He/She Derives Some Benefit Seeing An Accused Person Punished: SC- 2019*, LIVE LAW, (February 15, 2020), <https://www.livelaw.in/news-updates/when-can-a-witness-be-called-interested-144600?fbclid=IwAR1Xpb07oJcy7vLElzkWj9ockARIECMmyrgZWVEGRxxCDdAyDRtPcUSfeog>.

³⁵ *Gutturthi Eswara Rao vs. State of A.P.*, 2005 Cri. L.J 1632 (AP).

³⁶ 2012 (2) RCR (Cr) 844 (SC).

³⁷ *Appreciation of Evidence in Criminal Cases With Special Reference To Interested Witness, Child Witness, Hearsay Witness, Hostile Witness and Injured Witness*, (February 15, 2020), Title NO.37(As Per Workshop List title no37 pdf).pdf [http://mja.gov.in/Site/Upload/GR/Title%20NO.37\(As%20Per%20Workshop%20List%20title%20no37%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.37(As%20Per%20Workshop%20List%20title%20no37%20pdf).pdf).

Further, question concerning the reliability and credibility of the testimony of an interested witness has been answered by the Supreme Court in *Joginder Singh vs. State*³⁸ wherein it was held that mere relationship cannot be a reason to discredit the statements given by an interested witness provided it gets sufficient corroboration as was reiterated in *State of Bihar vs. Shaukat Mian*³⁹ as follows-

*..."Its credibility cannot be doubted merely because he was an interested witness. Evidence of interested witness shall have to be tested with caution. Moreover, an interested witness, who is a relative of the victim, would be the person who is keen to ensure that justice is done to the victim."*⁴⁰

IV. UK AND INDIA: CREDIBILITY OF RELATED & INTERESTED WITNESSES: - COMPARITIVE OVERVIEW

Development of Law of Evidence in UK in Nineteenth Century

Nineteenth century developments in UK paved way for interested witnesses to be able to testify in a trial. However, soon surfaced the question of the credibility of such testimonies. Thus, the New York Court of Appeals held that '*interest*' of the witness is sufficient to discredit the truthfulness of the testimonies. Other Court of Appeals maintained the same stance on the newly developed jurisprudence in UK as the New York Court of Appeals.⁴¹

Further, *Elwood vs. Western Union Telegraph*⁴², held that witnesses' interest in the subject-matter of the case is sufficient for the court to discard the credibility of the evidence given by such a witness.

*..."that a witness, although unimpeached, may have such an interest in the question at issue as to affect his credibility"*⁴³

³⁸ 2009 Cri. LJ 2805.

³⁹ 2011 (6) RCR (Cri) 1967 Patna (DB).

⁴⁰ *Id.*

⁴¹ Sidney S. Bobbe, *Uncontradicted Testimony of an Interested Witness*, CORNELL LAW REVIEW, Article 2, Volume 20, Issue 1, December (1934).

⁴² *Elwood vs. Western Union Telegraph Co.*, 45 N. Y. 549 (871).

However, in *Hull vs. Littanuer*⁴⁴, the court held that, denying the conclusiveness of the testimony of a witness,⁴⁵ where it has not been contradicted by other evidence and other legitimate inferences. **Therefore**, this case crafted exception to the general rule by postulating that conclusiveness of evidence by interested witness should not be denied⁴⁶ unless found incredible by the courts⁴⁷ as follows-

*... "Where, however, the evidence of a party to the action is not contradicted by direct evidence, nor by any legitimate inferences from the evidence; and it is not opposed to the probabilities; nor in its nature surprising or suspicious, there is no reason for denying to it conclusiveness."*⁴⁸

Therefore, it can be concluded that law relating to the credibility of related and interested witness is identical in India and United Kingdom has analysed above, as India follows common law legal system whose skeleton rests on plenty of the principles that are majorly influenced by the English common law principles.

V. SUGGESTIONS & CONCLUSION

The researcher is of the view that the credibility and acceptability of the evidence given by interested witnesses and related witnesses depends on truthfulness of their statements. However, it is of paramount importance to note that the testimony cannot be discarded due to the relationship of the witness, therefore, the credulity of evidence is not dependent upon the relation or motive of the person, but truth which should be corroborated substantially.

Furthermore, the researcher opines that the judicial attitude towards victim justice is an instrumental factor while considering the credibility of the evidence given by the witnesses.

Therefore, it is opined that due care and caution, *inter alia*, is mandated while appreciation of

⁴³ *Id.*

⁴⁴ *Hull vs. Littanuer*, 5162 N. Y. 569, 57 N. E. 102 (1900).

⁴⁵ *Johnson vs. New York Central Railroad Co.*, 173 N. Y. 79

⁴⁶ *Ferris vs. Sterling*, 214 N. Y. 249, 108 N. E. 406 (1915).

⁴⁷ *Second National Bank vs. Weston*, 172 N. Y. 250, 55 N. E. 1080.

⁴⁸ *Supra* note 40.

evidence given by related and interested witnesses without any harassment of the witnesses at the hands of administration of justice. More so, witnesses shouldn't be taken for granted.

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