World Wide Journal of Multidisciplinary Research and Development

WWJMRD 2015; 1(2): 1-4
www.wwjmrd.com
e-ISSN: 2454-6615

Rajiv Kumar Singh
Advocate of Patna High Court

Tanya Singh
4th year, BBA, LLB (Hon.)
Amity University, Noida,
Utter Pradesh, India

Pramod Kumar Singh
Professor, Veer Kunwar Singh University, Arrah, Bihar, India

Correspondence:
Pramod Kumar Singh
Professor, Veer Kunwar Singh University, Arrah, Bihar, India

Successful defences in criminal trial: A critical note

Rajiv Kumar Singh, Tanya Singh, Pramod Kumar Singh

Abstract
The basis objective of a criminal trial is approximation of justice. Cross examination of witness produced by the prosecution is a valuable right of the accused. There are three stages in the examination of a witness, namely chief examination, cross examination and re-examination. All the witness for the prosecution need not necessarily be called but it is important that the witness, whose evidence is essential to the unfolding of narrative of occurrence, should be called. Cross-examination is powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of his story. The cross-examiner should thoroughly and carefully study all records furnished to the accused as well as the other record relied on by the prosecution. Defence lawyer should take advantage of non-production of material witness by prosecution. Only plea of alibi are expected to be disclosed at the earliest point of time. Other pleas can be reserved till the accused enters upon his defences though the line of defence can be deduced from the cross-examination of the prosecution witness. There are certain other general defences available to an accused such adstotal denial, cases instituted due to previous or long standing enmity, mistaken identity, alibi, case instituted for statistical purposes by the police, counter incident, political motive, case being against settled principles of law etc. The delay in lodging the FIR affects the credibility of the FIR. Where there was delay in dispatch and receipt of FIR by the Magistrate, then the case of prosecution may necessarily throw out on this ground alone. The delay of five weeks in recording statement of witness shall provide benefit of doubt to the accused. If the FIR was lodged by a Police Officer and the same Police Officer conducted the investigation also, then such investigation shall be vitiated in law. If there is discrepancy between medical evidence and oral evidence, it creates doubt and accused is entitled to acquittal. Entire trial is vitiated if no opportunity is given to the accused to produce the defence witnesses. The duty of defence lawyer is of great importance and responsibility. To save a person from false and frivolous prosecution is of course a great services to humanity.

Keywords: Criminal Trial, Defence, Objective

Introduction
The basis objective of a criminal trial is approximation of justice. During the process of a criminal trial, the accused or opposite party has a valuable right of defence. Cross examination of witness produced by the prosecution is a valuable right of the accused and therefore in case no such opportunity is given by the court, then it would be a grave error on the part of the court. The chapter X of Indian Evidence Act, 1872 contains the provision regarding the examination of witness. There are three stages in the examination of a witness, namely chief examination, cross examination and re-examination. The examination of witness by the party, who call him, shall be called as '*chief examination'*. The examination of witness by the adverse party shall be called 'cross-examination'. The examination of witness, called him shall be called *'re-examination'*. Usually the witness shall be examined in chief, then if the adverse party so desires, can be cross-examined further and if the party calling him so desires he may re- examine. The object of chief examination is to enable the party calling the witness to elicit information in his knowledge pertaining to the matter in dispute which would support or established the party's case.

All the witness for the prosecution need not necessarily be called but it is important that the witness, whose evidence is essential to the unfolding of narrative of occurrence should be called.[1] So, in case enough number of witness have been examined with regards to the actual occurrence and their evidences are reliable and sufficient to base the conviction of the accused thereon, the prosecution may well decide to refrain from examining the other witnesses.[2] The examination in chief should be confined to the facts relevant to the enquiry.

Cross –examination

Cross-examination is powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of his story. The objects of cross- examination is to weaken, qualify or destroy the case of opponent, to established party's own case through the opponent's witness, to elicit something in the examiner's favour and the shift the truth from falsehood.

In brief, it may be stated that the primary objects of cross examination is to test the truth of evidence given in chief examination and thus facilitates the dispensation of justice by the court of law in accordance with justice, equity and good conscience. Though the objects of cross examination is laudable as it is intended to get at the real truth and exposing falsehood, but in practise it is to get something to help one's case and to derive support for the proof of his case. Unlike examination in chief it is not compulsory but only optional, yet a valuable right of the defence.

Cross Examination: Some Practical Tips

The cross-examiner should thoroughly and carefully study all records furnished to the accused as well as the other record relied upon by the prosecution. The material objects, such as weapon, cloths, P.O., mud and other articles connected with crimes should be examined with reference to the statement of the witness relating to the same. Defence counsel must proceed to the scene of occurrence and make a through sketch of the same and the surrounding nothing down the important features such as distances from assailant and victims, lamp post, electric lights, natures of surface whether it is a secluded place or a busy area, possibility of any new local witnesses etc.

The information published in newspaper and magazines if any about occurrence should also be gathered through the same can not be used in the court. These items may help to get some vital clues which may helpful in cross examination. The witnesses should not be examined at length unless it is absolutely necessary. No question should be asked which may be adverse or favourable and not expected to be only favourably. The objection and interruption of lawyer of opposite party should not be allowed unless such objections are well founded and legal.

The relevant case laws, both favourable and unfavourable, should be studied thoroughly and noting should be made of such cases. A broad understanding of the law and a clear grasp of such facts are indispensable. The antecedent of the deceased and prosecution witnesses should be ascertained as in criminal proceeding a man's character and conduct often a matter of importance in explaining his conduct and in judging his innocence or criminality. It is also important even on the question of punishment of accused when he is allowed to prove good character.[3]

Defence lawyer should take advantage of non-production of material witnesses by prosecution. It is the bounden duty of the prosecution to examine all material witnesses. It has to be presumed that in case of non-production, that it produced, he would not speak the truth. Not only does an adverse inference arise against the prosecution case from his non-production as witness in view of illustration (g) to section 114 of the Evidence Act, but the circumstances of his being withheld from the court casts as serious reflection on the fairness of trial.[4]

Defence Theory in Criminal Cases

Defence is something that a man does to defend himself from the legal consequences of the proceedings instituted against him whether civil or criminal. The success of any defence depends on its successful proof or based on the preponderance of probabilities. The nature of defence differs from case to case. It is should be carefully ensured that the defence should be believed by the court.

The law envisages the various defences in the form of 'General Exceptions' incorporated in chapter IV of the Indian Penal Code. Apart from these statutory defences, there are other general defences available to an accused person. It is the fundamental principles of criminal law that an accused person is presumed to be innocent unless or until the offence with which he is charged is proved beyond all reasonable doubts.

It is for the prosecution to prove it against the accused and the accused is not bound to spell out his version. This, however, is not an absolute proposition. Under section 103 and 105 of the Evidence Act dealing with burden of proof, the burden lies on that person who wished the court to believe the existence of facts and circumstance alleged by him and after he discharges the burden, it shifts to the opposite party who has to disprove the same. This is known as the shifting of burden.

Only plea of *alibi* are expected to be disclosed at the earlies point of time. Other pleas can be reserved till the accused enters upon his defences though the line of defence can be deduced from the cross-examination of the prosecution witness. The accused has a right to examine himself on his behalf while examining defence witnesses. It should be ensured that the witness would support the accused and withstand gruelling cross-examination by the prosecution.

Legal And General Defences

There are certain legal defences available to the accused in a criminal trial. An Act done by mistake of facts in good faith (SS. 76 to 79, IPC) does not attract on offence. An a done by accident or misfortune without criminal intent or knowledge (SS. 80, IPC) can not called an offence. Any act done without criminal intention resulting in physical injuries (S. 81, IPC) are not an offence. For example, if a school teacher inflicts a reasonable punishment in good faith and for the benefit of the child he is protected by section 81, 89 of Indian Penal Code.[5]

Act done by a child under seven years of age and above seven years but under 12 years of age (S. 82 & 83, IPC) can not be called an offence, an act done while being of unsound mind (S. 84, IPC) and an act done in a state of induced intoxication (S. 85, 86, IPC) are also not an offence. An act done with consent, express or implied (S. 87 to 89) also within the exception.

The act with constructive consent (S. 90 to 93, IPC) and act done under compulsion (S. 94, IPC), committing trival offences (S. 95, IPC), private defence (S. 96 to 106, IPC) etc. are also the available legal defences.

There are certain other general defences available to an accused such as total denial, cases instituted due to previous or long standing enmity, mistaken identity, alibi, case instituted for statistical purposes by the police, counter incident, political motive, case being against settled principles of law etc.

Some Practical Tips on Defence Pleas

The law comes into motion after recording of an FIR. The FIR, therefore, is an important pieces of evidence as per law. The FIR must be lodged as quickly as possible. The delay in lodging the FIR affects the credibility of the prosecution version. The defence lawyers, therefore, must first of all check the difference of time of occurrences and lodging the first information report. If there is delay in lodging FIR, then it leads to the suspicion that FIR was prepared subsequently to fit in with the case.[6] The Hon'ble Apex Court has ruled in *Krishnan –V- State of Tamil Nadu*,[7] that where there was unexplained delay of 'six days' in lodging the first information report, it may prove fatal to the prosecution.

According to section 157, Cr. P.C. the recorded FIR must be sent and received to the Magistrate within twenty four hours. Where there was delay in dispatch and receipt of FIR by the Magistrate, then the case of prosecution may necessarily be thrown out on this ground alone.[8] The Hon'ble Apex Court has ruled in '*Ramesh Baburao Devas –V- State of Maharashtra'*,[9] that the delay of '*four days*' in sending FIR to Magistrate, through place of occurrence was situated near district headquarter, is fatal to the prosecution.

The defence lawyer then must see whether there is any delay in recording statement of witness. The Hon'ble Apex Court has ruled in '*State of M.P. –V- Kalyan Singh'*,[10] that when no explanation was offered for delay of 'three weeks' in recording statement of eye witnesses, High Court was justified in giving benefit of doubt to the respondent accused. The Hon'ble Allahabad High Court has ruled in '*Shobha Ram –V- State of U.P.*',[11] that the delay of five weeks in recording statement of witness shall provide benefit of doubt to the accused. The Apex Court again held in '*Bhagwan –V- State of M.P.*',[12] that it is not safe to act on the evidence of witness if the delay in their examination in course of investigation has not been explained.

The defence lawyer must examine also all the aspects regarding investigation carefully. If the FIR was lodged by a Police Officer and the same Police Officer conducted the investigation, then such investigation shall be vitiated in law.[13] The police officer can not investigation the case in which he himself has arrested an accused and recovered the pistol and cartridges from him.[14] The Hon'ble Patna High Court has ruled *in'Chottu Mochi –V- State of Bihar'*,[15] that the investigation of a case by a police officer who has raided and seized the arms, is improper and thus conviction on such investigation is bad in law. The police officer must be authorised in law to conduct the investigation otherwise no reliance can be placed on such investigation.[16]

The disclosure of name of accused after a delay of '36 hours' by the witness is a serious infirmity and destroy the credibility of witness.[17] When no independent witness of the locality was examined by the prosecution, held Patna High Court, no conviction can be based on the testimony of interested witness.[18] Non-examination of I.O. and the Doctor, who conducted autopsy over dead body of the deceased, vitiates prosecution case.[19] The defence lawyer must ask relevant questions during cross-examination of witness, as well as examination u/s 313, Cr.P.C. when no question was raised from the accused while his examination him u/s 313 as to why the sword was not sent to the Forensic Laboratory, the issue becomes irrelevant for defence purposes.[20] No conviction can be based if there are material discrepancies in the testimony of witnesses.[21]

If there is discrepancy between medical evidence and oral evidence, it creates doubt and accused is entitled to acquittal.[22] The failure to send blood stained earth of P.O. to the chemical examiner gives benefits of doubt to the accused.[23] The admitted animosity between the parties renders the prosecution version doubtful.[24] No reliance can be placed on the witnesses whose version were recorded in absence of accused or his lawyer and no cross-examination was made.[25]

Unexplained delay in sending samples to chemical examiner after seizure of narcotise would cause dent in prosecution story.[26] Non-mentioning of time of occurrence in the first information report and delay of 'three months' in holding Test Identification Parade (TIP), is fatal to the prosecution.[28] Entire trial is vitiated if no opportunity is given to the accused to produce the defence witness.[29] It is not safe to base conviction on the basis of single identification.[30] It is settled principles of law that defence witness are entitled to equal treatment with those of prosecution.[31]

The above mentioned defence pleas, however, are merely illustrative and not exhaustive. There may be several other defences depending on the facts and circumstance of the case. The defence lawyers must be aware with the various case-laws, both for and against, concerned with the facts of their cases.

Conclusion

The duty of defence lawyer is of great importance as well as responsibility. While preparing a sound defence, the lawyer concerned must visit the place of occurrence (P.O.) and carefully study entire aspects of the case. The task of defence lawyer is much difficult than that of prosecution lawyers. To save a person from a false and frivolous prosecution is a great service to humanity.

Notes

1. Habeeb –V- State of Hyderabad; AIR 1954 SC 778
2. Ram Prasad –V- State of U.P.; AIR 1973 SC 2673
3. Habeeb Mohamd –V- State of Hyderabad; AIR 1954 SC 50
4. Ibid.
5. AIR 1920 Rang. 107
6. Ishwar Singh –V- State of U.P.; 1976 Cr.LJ 1883, Narayan Mondal –V- State of Jharkhand; 2007 (2) Crimes 116 (P&T.)
7. Krishan –V- State of Tamilnadu; 2004 (4) Crimes (SC) 85.
8. Detar Singh –V-s State of Punjab= AIR1974 SC 1123; Mhabir –V- State; 1979 Cr.LJ 159; Rajdeo Paswan –V- State of Bihar; 1993 (2) PLJR 581; Baleshwar Singh –V- State of Bihar; 1992 (2) PLJR 581.
9. Ramesh Baburao Devaskar –V- State of Maharashtra; 2008 Cr.LJ 378.
10. State of M.P. –V- Kalyan Singh; 2008 (3) Crimes 65 SC.
11. Shobha Ram –V- State of U.P.; 2000 (2) Crimes 246 (All,)
12. Bhagwan –V- State of M.P.; 1980 Cr.LJ 1296.
13. Megha Singh –V- State of Haryana; 1996 (II) SCC 709; Deo Nath Singh –V- State of Bihar; 2008 (1)

Crimes 368; Mukhtar Ahmad Ansari –V- State; 2005 (2) Crimes 107 (SC).

14. Mahesh –V- State of M.P.; 2009 (3) Crimes 337 (M.P.)
15. Chottu Modi –V- State of Bihar; 1986 Cr.LJ 1031 (Patna)
16. Daund Munda –V- State of Bihar; 1984 (3) Crimes 606.
17. State of Orissa –V- Brahmdeo Mandal; AIR 1976 SC 2488.
18. State of Rajsthan –V- Pooran; 1986 (2) Cr.LJ 386; State of Bihar –V- Prabhu Sahay; 1969 BLJR 578.
19. Kapildeo Sinha –V- Krshnadeo Prasad; 2008 (4) PLJR (SC) 198.
20. State of Rajsthan –V- Wakteng; AIR 2007 SC 2020.
21. Prabir Mandal –V- State of W.B.; 2008 (4) Crimes 153 (SC)
22. Damodar Dubey –V- State of Bihar; 1984 PLJR 441.
23. State of Bihar –V- Mithilesh Rai; 1990 (1) BLJ 555.
24. Abdul Gaffur –V- State of Assam; 2008 (1) NNCJ 288 (SC); Dharamdeo Singh –V- State of Punjab 1992 (3) Crimes 749 (SC).
25. Badri –V- State of Rajasthan; AIR 1976 SC 560; Narsingh –V- Gokul das; AIR 1953 Assam 176
26. Ramesh –V- State of Haryana; 1998 (1) Crimes 566 (P&H).
27. Laxmi –V- State of U.P.; 1992 (1) Crimes 809.
28. Shabad Pulla Reddy –V- State of A.P.; AIR 1997 SC 3087.
29. Kameshwar Singh –V- State of Bihar; 1974 BBCJ 95.
30. Wakil Singh –V- State of Bihar; 1982 PLJR (SC) 83.
31. Bap –V- State of Orissa; 2009 (3) Crimes 770 (Orissa).

References

1. Tyagi, S.P. : *Criminal Trial*, (Vinod Publication, Delhi, 2012)
2. Gaur, G.D. : *Criminal Law* : Cases & Materials, (Lexis-Nexis Butter worth, New Delhi, 2008)
3. Dr. K. Vibhute : *PSA Pilai's Criminal Law*, (Lexis-Nexis Butter worth, Gurgaon, 2004)
4. Ratan Lal & Dhiraj Lal : *The Code of Criminal Procedure*; (Wadhwa, Nagpu,2004)
5. Neghawan Singh : *Better Criminal Reference*, (Vinod Publication, Delhi, 2012)
6. Tyagi, S.P. : *Session Trial*; (Vindo Publication, Delhi, 2007)
7. Verma, R.S. : *Rights of an Accused*; (Verma Publication, Delhi. 1999)
8. Nishawan, Vinod : *Medical Science Helping the Process of Criminal Law*; (Vinod Publication, Delhi, 2009)