Criminal Consequences of witnesses turning hostile

Case study : Section 191, 192, 193, 199, 503 and 506 of the Indian Penal Code, 1860.

193. PUNISHMENT FOR FALSE EVIDENCE.

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1 **:** A trial before a Court-martial is a judicial proceeding.

Explanation 2 **:** An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

196. USING EVIDENCE KNOWN TO BE FALSE.

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

199. FALSE STATEMENT MADE IN DECLARATION WHICH IS BY LAW RECEIVABLE AS EVIDENCE.

Whoever, in an declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

In context of cases under above sections section 195 of the Criminal Procedure Code[1] is applicable. According to this section the Court shall take cognizance of such offence only on the complaint of such Court or any other Court to which such Court is subordinate. The relevant portion of Section 195(b) of the Code reads:

> **195.PROSECUTION FOR CONTEMPT OF LAWFUL AUTHORITY OF PUBLIC SERVANTS, FOR OFFENCES AGAINST PUBLIC JUSTICE AND FOR OFFENCES RELATING TO DOCUMENTS GIVEN IN EVIDENCE.-** (1) No Court shall take cognizance-...
> (b) (I) of any offence punishable under any of the following sections of the Indian Penal Code,(45 of 1860) namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
>
> (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
>
> (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (I) or sub-clause (ii),
>
> except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

In this context, reference may be made to Section 340 of the Code under Chapter X X VI under the heading "**Provisions as to certain offences affecting the administration of justice**". This section confers an inherent power on a Court to make a complaint in respect of an offence committed in or in relation to a proceeding in that Court, or as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, if that Court is of opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in

[1] Hereinafter referred to as the Code

clause (b) of sub-section (1) of Section 195 and authorises such Court to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing after recording a finding to that effect as contemplated under sub-section (1) of Section 340. The words "in or in relation to a proceeding in that Court" show that the Court which can take action under this section is only the Court operating within the definition of Section 195 (3) before which or in relation to whose proceeding the offence has been committed. There is a word of caution in built in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by this Section 340 of the Code should be used with utmost care and after due consideration.[2]

Section 340 of the Code is as follows:

> **340. PROCEDURE IN CASES MENTIONED IN SECTION 195:-** (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court, or as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,--
>
> (a) record a finding to that effect;
>
> (b) make a complaint thereof in writing;
>
> (c) send it to a Magistrate of the first class jurisdiction;
>
> (d) take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate, and
>
> (e) bind over any person to appear and give evidence before such Magistrate.

[2] KTMS Mohd. V UOI, http://supremecourtonline.com/cases/4287.html.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in Section 195.

In the case of ***K. Karunakaran v TV Eachara Warrier AIR 1978 SC 290*** established the two pre-conditions for an enquiry held under Section 340(1) of the Code. These are that there has to be *prima facie* case to establish the specified offence and that it has to be expedient in the interest of justice to initiate such enquiry. This was relied upon in the case of ***KTMS Mohd. V UOI*** [3], where the Court held that Section 340 of the Code should be alluded to only for the purpose of showing that necessary care and caution is to be taken before initiating a criminal proceeding for perjury against the deponent of contradictory statement in a judicial proceeding.

In India, law relating to the offence of perjury is given a statutory definition under Section 191 and Chapter XI of the Indian Penal Code, incorporated to deal with the offences relating to giving false evidence against public justice. The offences incorporated under this Chapter are based upon recognition of the decline of moral values and erosion of sanctity of oath. Unscrupulous litigants are found daily resorting to utter blatant falsehood in the courts which has, to some extent, resulted in polluting the judicial system.[4]

---

[3] Supra n. 2.

[4] Re : Suo Moto Proceedings against Mr. R. Karuppan, Advocate, AIR 2001 SC 2004 (Para 12).

In the case of ***State of Gujrat v Hemang Prameshrai Desai***[5], the Court stressed upon the need to corroborate the falsity of a statement with ample evidence. Mere police evidence was held insufficient to convict the accused. Also where the conviction of the accused was based on his voluntary admission of guilt, his statements were to construed literally and strictly.

In the same year in the Allahabad High Court in ***Narmada Shankar v Dan Pal Singh***[6], a case of malicious prosecution, where defendant-respondent was charged under Section 193 of the IPC for having arrested the Petitioner and subsequently lying under oath as to the presence of such orders, admitted during cross-examination that he had previously lied about the orders. SS Dhavan, J held in this case that when a witness comes to Court prepared to make a false statement and makes it, but is cornered in cross-examination and compelled to admit his false statements he cannot claim that the admission neutralises the perjury committed by him. The real test in all such cases was held to be whether the witness voluntarily corrected himself due to realisation of his error or genuine feeling of remorse before his perjury was exposed. In the given circumstances, though, the defendant was let off with a warning.

The Supreme Court in the case of ***Re : Suo Moto Proceedings against Mr. R. Karuppan, Advocate***[7] has stressed upon stern and effective to prevent the evil of perjury. It remains a fact that most of the parties despite being under oath make false statements to suit the interests of the parties calling them. In the present case the respondent filed an affidavit stating that the age of the then CJI was undetermined by the President of India according to Article 217 of the Constitution of India in another matter in 1991. As regards this the affidavit *prima facie* was held to have made a false statement. It was not disputed that an affidavit is evidence within the meaning of Section 191 of the Indian Penal Code and a person swearing to a false affidavit is guilty of perjury punishable under Section 193 IPC. The respondent herein, being

---

[5] 1966 Cri LJ 474.
[6] 1966 Cri LJ 834.

legally bound by an oath to state the truth in his affidavit accompanying the petition was *prima facie* held to have made a false statement which constitutes an offence of giving false evidence as defined under Section 191 IPC, punishable under Section 193 IPC.

Also in the case ***KTMS Mohd. v UOI***[8] the Bench observed that the mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under Section 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the `judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. Further, such a prosecution for perjury should be taken only if it is expedient in the interest of justice.

According to Section 199 of the IPC to constitute an offence the declaration made by the accused must be of such nature as may be admissible as evidence in a Court of Law and any public authority or public servant must be bound by law to accept such declaration as evidence. The statement, which is alleged to be false in such a declaration, must be of material importance to the object of the declaration and the accused must have reasonable knowledge of its falsity. If the falsity of the statement is proved then the accused will be punished as he would be for giving false evidence.

In the case ***Jotish Chandra v State of Bihar***[9]***,*** the falsity of the statement as touching upon any point material to the object of the declaration was held to be essential to constitute an offence under Section 199 of the IPC.

The section was subjected to further interpretation in the case ***MS Jaggi v Registrar, Orissa HC***[10]***.*** Herein the accused was held to have made a reckless and false allegation against a Judge in order to have a revision petition to which he is a party, transferred to another Judge. Dwelling upon the essentials of constituting a

---

[7] AIR 2001 SC 2004.
[8] Supra n.2.
[9] AIR 1969 SC 7.
[10] 1983 Cri LJ 1527.

crime under Section 199 of the IPC there must be a deliberate false statement. Statement made in a reckless and haphazard manner, though untrue in fact, need not constitute an offence when the person making such statements immediately admits the mistake and corrects the statements. If, however, a person makes a reckless and false allegation against a Judge (or for that matter ant other person) in an affidavit, he lays himself open to prosecution under this section.

503. CRIMINAL INTIMIDATION.

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.

Explanation : A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

506. PUNISHMENT FOR CRIMINAL INTIMIDATION.

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

[if threat be to cause death or grievous hurt, etc.] and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. CRIMINAL INTIMIDATION BY AN ANONYMOUS COMMUNICATION.

Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

The Indian Penal Code punishes anyone who threatens another with injury to his person, property or reputation or to the person or reputation of anyone that such person is interested in. There must be an intention to cause alarm to such person or cause that person to do any act or omit to do anything in order to avoid the execution of such threat. The offence is so defined in Section 503 and the punishment is prescribed under Section 506.

The fact that threat has to real was emphasised in the case ***Rangaswami v State of Tamil Nadu***[11]***,*** that in case the threat is merely construed by the 'victim' then the person accused on criminal intimidation is to be given the benefit of doubt.

Arijit Pasayat, J presiding in the Orissa High Court in the case ***Amulya Kumar Behera v Nagabhushana Behera***[12]***,*** laid down the essentials of the offence defined under Section 503 of the IPC:

1. Threatening a person with any injury,

(a) to his person, reputation or property;

(b) to the person or reputation of anyone in whom that person is interested

2. The threat must be with intent;

(a) to cause alarm to that person; or

(b) to cause that person to do any act which he is not legally bound to do as means of avoiding execution of such threat; or

(c) to cause that person to omit to do any act which that person is legally entitled to doa as means of avoiding execution of threat.

In this case the defense pleaded that the victim had admitted the fact that he was not alarmed upon being threatened by the accused. The Court observed that, whether the victim was alarmed or not was of no consequence and that the intention was the sole objective in determining culpability. The gist of the offence was held to be the effect which the threat is intended to have upon the mind of the person threatened.

---

[11] AIR 1989 SC 1137.

[12] 1995 Cri LJ 3559.