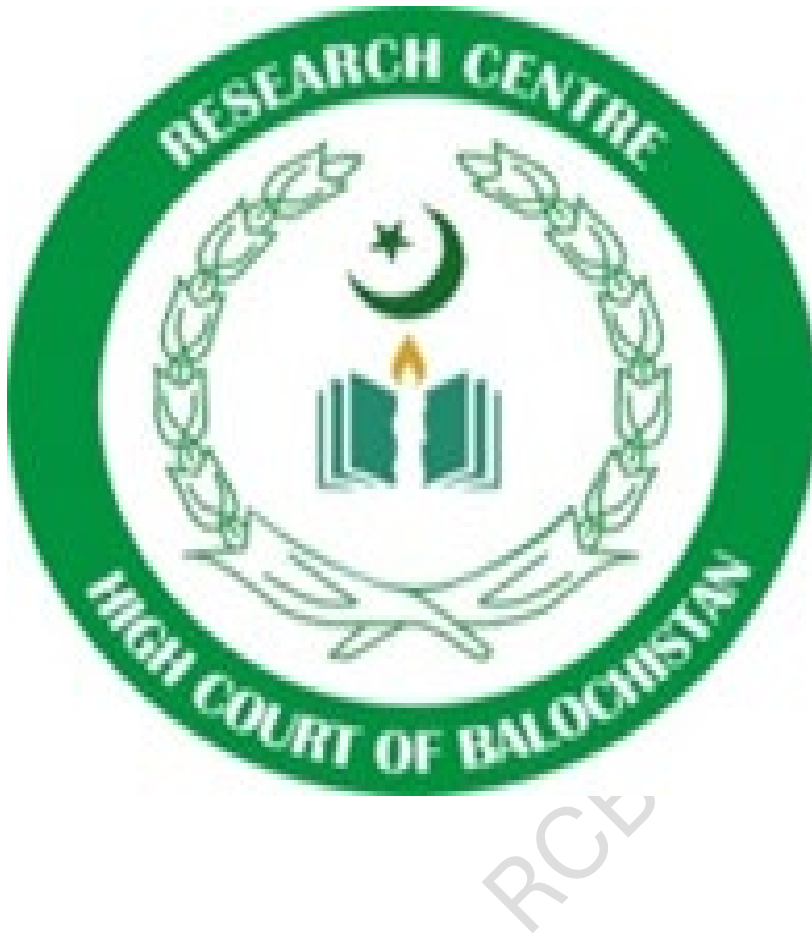

RULE OF APPRECIATION OF HOSTILE WITNESSES?



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN

COURT: HON'BLE CHIEF JUSTICE

SUBJECT: CRIMINAL/EVIDENCE LAW

DATE: 18 MAY 2024

BY: WASEEM AHMED RESEARCH OFFICER

QUERY: HOW TO APPRECIATE EVIDENCE OF A HOSTILE WITNESS
IN CRIMINAL CASE

KEYWORDS:

Research Note:

MEMO.

My lord, it is humbly submitted as under:

Introduction

The appreciation of evidence provided by a hostile witness and the right of the prosecution to confront such a witness with their statement recorded under Section 161 of the Criminal Procedure Code (Cr.P.C.) is a **delicate** area of criminal jurisprudence. This memorandum examines the relevant legal principles and judicial interpretations concerning these issues.

Appreciation of Evidence of Hostile Witness

A hostile witness is one who does not intend to tell the truth at the instance of the party calling him. The testimony of a hostile witness is subject to scrutiny and can be used by the defense to contradict the witness. However, the prosecution may not use such statements for any purpose other than contradiction.

Legal Principles

1. **Hostile Witness Declaration:** A witness may be declared hostile if their testimony deviates from previous statements or is adverse to the party that called them (P L D 2003 Supreme Court 635; P L D 2013 Supreme Court 386).
2. **Use of Hostile Witness Testimony:** The testimony of a hostile witness can be considered by the court, but with caution. The entire testimony should not be discarded outrightly unless it is proven to be based on lies or the witness is deemed untruthful (P L D 2020 Sindh 596).
3. **Prosecution's Right to Confront:** The prosecution is generally not permitted to confront a witness with their statement recorded under Section 161 Cr.P.C.

for the purpose of contradicting the witness after they have been declared hostile (P L D 2013 Supreme Court 386).

4. **Rehabilitation of Witness:** The process of cross-examining a hostile witness is not aimed at total impeachment but rather at restoring any damage caused to the party's case by the witness's testimony (P L D 2020 Sindh 596).
5. **Evidence Remains Intact:** Even after a witness is declared hostile and cross-examined, their evidence remains part of the record and can further damage the party that called them if the cross-examination does not rehabilitate their case (P L D 2020 Sindh 596).

Judicial Interpretations

The Supreme Court in P L D 2003 Supreme Court 635 emphasized the importance of the credibility of a hostile witness and the conditions under which their testimony can be used. In P L D 2013 Supreme Court 386, the Court clarified that the prosecution cannot use a witness's statement recorded under Section 161 Cr.P.C. to contradict the witness after declaring them hostile. The Sindh High Court in P L D 2020 Sindh 596 further elaborated on the role of a privately engaged counsel in assisting the prosecution and the process of rehabilitating a witness's testimony.

Conclusion

The principles governing the appreciation of evidence from a hostile witness and the prosecution's right to confront such a witness with their statement recorded under Section 161 Cr.P.C. are well-established. The prosecution's ability to confront a hostile witness is limited, and the testimony of such a witness must be carefully considered in the context of the entire case.

Principles

1. A witness may be declared hostile if their testimony is adverse to the party calling them.
2. The testimony of a hostile witness should be scrutinized with caution.
3. The prosecution cannot use a witness's statement under Section 161 Cr.P.C. for contradiction after declaring them hostile.
4. Rehabilitation of a witness through cross-examination aims to restore any damage to the party's case.
5. Evidence from a hostile witness remains part of the record and can be damaging if not rehabilitated.