LECTURE ON CONTRADICTION FROM PRIOR STATEMENTS UNDER SECTION 145 & 153 IEA AND SECTION 148 & 156 BNSS WITH BNS CORRESPONDENCE

- **INTRODUCTION**

  One of the fundamental principles in adjudication is **testing the credibility of a witness**. The tools of **contradiction** and **corroboration** play a central role in ensuring that justice is based on truth and not on unverified assertions. The provisions of **Section 145 and 153 of the Indian Evidence Act, 1872**, and their corresponding modern codifications in the **Bharatiya Sakshya Adhiniyam, 2023**-namely, **Section 148 and Section 156**, form the statutory backbone of these principles.

- **Contradiction from Prior Statement – Section 145 of IEA / Section 148 of BSA**

  - **Section 145 of Indian Evidence Act, 1872**

    "A witness may be cross-examined as to previous statements made by him in writing or reduced into writing... 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."

  - **Corresponding Provision – Section 148 of BSA, 2023**

    This provision retains the **same language, structure, and purpose** as Section 145 of IEA.

  - **Essence of the Provision:**

    - **A** prior statement **may be used in cross-examination to** challenge credibility**.**

- **But before it can be used for contradiction, the** attention of the witness must be drawn **to the specific inconsistent part.**
- **If the witness denies, the statement must be** proved through the person who recorded it **(usually the IO in criminal cases).**

III. Landmark Case Laws on Contradiction

➢ ***Tahsildar Singh v. State of U.P.*, AIR 1959 SC 1012-A Constitution Bench clarified:**

- Mere marking of a 161 Cr. PC statement is **not enough**.
- Contradiction must be **proved through the investigating officer**.

➢ ***Ram Chander v. State of Haryana* (1981) 3 SCC 191**

- The procedural steps under Section 145 are **mandatory**.
- Without proper confrontation and proof, the contradiction has **no evidentiary value**.

IV. Section 153 IEA – Restriction on Contradiction on Collateral Issues (Corresponding to Section 156 of BSA, 2023)

> ***"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.*

Illustrations(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.*

Illustrations(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 witnesses might, if his denial was false, be charged with giving false evidence.*

Illustrations (d) *A is asked whether his family has to 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.*

Corresponding Provision – Section 156 of the BSA, 2023:

"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."

This section bars extrinsic evidence **to contradict a witness on** collateral facts**- like character, unless:**

- It directly relates to a fact in issue.
- Or falls within the **exceptions** (e.g., previous conviction under Explanation 2).
- **Purpose:**

➢ **To** avoid trials within trials **and prevent unnecessary diversion into matters** not directly connected **with the case.**

V. Practical Illustration:

➢ In court, PW-1 says: *"I saw the accused stab the victim."*

➢ But in his **161 Cr. PC statement**, he had said: *"I only heard someone shouting, I did not see the incident."*

➢ To contradict:

- The defense must ask: *"Did you tell the police that you did not see the accused stab anyone?"*
- If denied, the Investigating Officer must testify: *"Yes, this is what PW-1 told me."*

➢ Without step 2, the contradiction is **not proved**.

VI. Landmark Judgments

The procedure under Section 145 has been consistently elaborated and clarified by courts. Some landmark judgments include:

➢ **Tahsildar Singh v. State of UP**, AIR 1959 SC 1012

Held that:

- A contradiction must be put to the witness**.**
- If denied, it must be proved through the investigating officer**.**

➢ **Ram Chander v. State of Haryana, (1981) 3 SCC 191**

Held that:

- Mere reading from a statement is not sufficient.
- Procedural requirements are mandatory.

➢ **R. Murugesan v. State, 2014 SCC OnLine Mad 273**

- This Judgment Discussed the evidentiary value of statements recorded under Section 164 of the Criminal Procedure Code (Cr. PC)**.**

➢ **Edakkandi Dineshan v. State of Kerala, (2025) 3 SCC 273**

- Hon'ble Supreme Court clarified the treatment of contradictions in eyewitness testimonies under Indian criminal law, particularly under Sections 145 and 155 of the Evidence Act.

VII. Conclusion

The power to **contradict a witness** on a prior statement is an essential check against perjury and memory lapses. But this power must be exercised **carefully and procedurally**, as laid down under **Section 145/148**. Simultaneously, **Section 153/156** ensures that a witness is not unduly harassed or discredited on matters **not central** to the dispute.

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1959 SCC OnLine SC 17 : 1959 Supp (2) SCR 875 : AIR 1959 SC 1012 : 1959 Cri LJ 1231

In the Supreme Court of India

(BEFORE B.P. SINHA, SYED JAFER IMAM, J.L. KAPUR, A.K. SARKAR, K. SUBBA RAO AND M. HIDAYATULLAH, JJ.)

Tahsildar Singh and Another ... Appellants;

Versus

State of U.P ... Respondent.

Criminal Appeal No. 67 of 1958[*]

Decided on May 5, 1959

Advocates who appeared in this case :

Jai Gopal Sethi, Senior Advocate, (R.L. Kohli, Advocate, with him), for the Appellants;

S.P. Sinha, Senior Advocate, (G.C. Mathur & G.N. Dikshit, Advocates, with him), for the Respondent.

The Judgment of the Court was delivered by

K. SUBBA RAO, J.:— This appeal by special leave raises the question of construction of Section 162 of the Code of Criminal Procedure. On 16-6-1954, one Ram Sanehi Mallah of Nayapura gave a dinner at his home and a large number of his friends attended it. After the dinner, at about 9 p.m., a music performance was given in front of the house of Ram Sanehi's neighbour, Ram Sarup. About 35 or 40 guests assembled in front of Ram Sarup's platform to hear the music. The prosecution case is that a large number of persons armed with firearms suddenly appeared near a well situated on the southern side of the house of Ram Sarup and opened fire which resulted in the death of Natthi, Bharat Singh and Saktu, and injuries to six persons, namely, Nasari, Bankey, Khem Singh, Bal Kishen, Misaji Lal and Nathu.

2. The topography of the locality where the incident took place is given in the two site-plans, Ex. B-57 and Ex. P-128. It appears from the plans that the house of Ram Sarup faces west, and directly in front of the main door of his house is a platform; to the south-west of the platform, about 25 paces away, is a well with a platform of 3 feet in height and about 13 feet in width around it; and to the west of the platform in front of Ram Sarup's house the audience were seated.

3. The prosecution version of the sequence of events that took place on that fatal night is as follows : After the dinner, there was a music performance in front of the platform of Ram Sarup's house and a number of persons assembled there to hear the music. Saktu played on

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the Majeera while Nathu was singing. It was a full moon night and there were also a gas lamp and several lanterns. Bankey and Asa Ram placed their guns on a cot close to the platform and Bharat Singh was sitting on that cot. While Bankey was among the audience, Asa Ram was still taking his dinner inside the house. At about 9 p.m., the accused along with 15 or 20 persons arrived from an eastern lane, stood behind the well, shouted that no one should run away and advanced northward from the well firing shots. Natthi and Saktu were hit and both of them died on the spot. Bharat Singh, who was also hit, ran northward and was pursued by some of the culprits and was shot dead in front of Bankey's house shown in the plan. Bankey, who was also shot at and injured, took up Asa Ram's gun and went up to the roof of Ram Sarup's house wherefrom he fired shots at the dacoits, who were retreating. Asa Ram, who was luckily inside the house taking his dinner, ran up to the roof of Ram Sarup's house and saw the occurrence from over the parapet. The culprits turned over the dead bodies of Saktu, Natthi and Bharat Singh and, on seeing Bharat Singh's face, they exclaimed that Asa Ram was killed. Thereafter, they proceeded northward, passed through the corner of Ram Sarup's house and disappeared in the direction of the Chambal. They also carried away Bankey's gun which was on the cot.

4. The motive for the offence is stated thus : The culprits were members of a notorious gang called the Man Singh's gang, who, it is alleged, were responsible for many murders and dacoities in and about the aforesaid locality. That gang was in league with another gang known as Charna's gang operating in the same region. Asa Ram and Bankey had acted as informers against Charna's gang, and this information led to the killing of Charna. Man Singh's gang wanted to take vengeance on the said two persons; and, having got the information that the said two persons would be at the music party on that fateful night, they organised the raid with a view to do away with Asa Ram and Bankey.

5. Out of the nine accused committed to the Sessions, the learned Sessions Judge acquitted seven, convicted Tahsildar Singh and Shyama Mallah under 14 charges and awarded them various sentences, including the sentence of death. Before the learned Sessions Judge, Tahsildar Singh took a palpably false plea that he was not Tahsildar Singh but was Bhanwar Singh, and much of the time of the learned Sessions Judge was taken to examine the case of the prosecution that the accused was really Tahsildar Singh, son of Man Singh. The other accused, Shyama Mallah, though made a statement before the Sub-Divisional Magistrate admitting some facts, which were only exculpatory in nature, denied the commission of the offence before the committing Magistrate and before the learned Sessions Judge. As many as eight

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eyewitnesses described the events in detail and clearly stated that both the accused took part in the incident. When one of the witnesses, Bankey (PW 30), was in the witness box, the learned counsel for the accused put to him the following two questions in cross-examination:

1. "Did you state to the investigating officer that the gang rolled the dead bodies of Nathi, Saktu and Bharat Singh, and scrutinise them and did you tell him that the face of Asa Ram resembled that of the deceased Bharat Singh?"
2. "Did you state to the investigating officer about the presence of the gas lantern?"

In regard to the first question, the learned Sessions Judge made the following note:

> "The cross-examining counsel was asked to show the law which entitles him to put this question. He is unable to show any law. I, therefore, do not permit the question to be put unless I am satisfied."

In respect of the second question, the following note is made:

> "He is also unable to show any law entitling him to put this question. I will permit him to put it if he satisfies me about it."

It appears from the deposition that no other question on the basis of the statement made before the police was put to this witness. After his evidence was closed, the learned Judge delivered a considered order giving his reasons for disallowing the said two questions. The relevant part of the order reads:

> "Therefore if there is no contradiction between his evidence in court and his recorded statement in the diary, the latter cannot be used at all. If a witness deposes in court that a certain fact existed but had stated under Section 161 CrPC either that that fact had not existed or that the reverse and irreconcilable fact had existed, it is a case of conflict between the deposition in the court and the statement under Section 161 CrPC and the latter can be used to contradict the former. But if he had not stated under Section 161 anything about the fact, there is no conflict and the statement cannot be used to contradict him. In some cases an omission in the statement under Section 161 may amount to contradiction of the deposition in court; they are the cases where what is actually stated is irreconcilable with what is omitted and impliedly negatives its existence."

It is enough to notice at this stage that the learned Sessions Judge did not by the said order rule that no omission in the statement made under Section 161 of the Code of Criminal Procedure can be put to a witness, but stated that only an omission which is irreconcilable with what is stated in evidence can be put to a witness. The said two

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omissions were not put to any of the other witnesses except to one to whom only one of the said omissions was put. No other omissions were put in the cross-examination either to PW 30 or to any other witness. The learned Sessions Judge on a consideration of the voluminous evidence in the case held that the guilt was brought home to the said two accused and convicted them as aforesaid. Tahsildar Singh and Shyama Mallah preferred two separate appeals to the High Court against their convictions and sentences. The two appeals were heard along with the reference made by the learned Sessions Judge under Section 374 of the Code of Criminal Procedure for the confirmation of the sentence of death awarded to the appellants. The learned Judges of the High Court, after reviewing the entire evidence over again, accepted the findings of the learned Sessions Judge and confirmed the convictions and sentences passed on the appellants. Before the High Court a petition was filed by the appellants alleging that the learned Sessions Judge did not allow the counsel for defence to put omissions amounting to material contradictions to the eyewitnesses and therefore the said eyewitnesses should be summoned so that the said questions might be put to them. That petition was filed on 1-5-1957, and on 30-7-1957, after the argument in the appeals was closed, the petition was dismissed. Presumably, no attempt was made to press this application either before the appeals were taken up for argument or during the course of the argument; but the question raised in the petition was considered by the learned Judges of the High Court in their judgment. The judgment discloses that the learned counsel appearing for the appellants argued before the High Court that the learned Sessions Judge wrongly disallowed the aforesaid two questions, and the learned Judges, conceding that those two questions should have been allowed, hold that the accused were not prejudiced by the said fact. They justified their conclusion by the following reasons:

> "We did so because among other reasons we decided to ignore these two circumstances and to base our findings on matters of greater certainty, namely, the fact of the miscreants firing while advancing, passing in front of Ram Sarup's platform and taking away Bankey's gun from the cot, movements which brought them close to the eyewitnesses and thereby gave the witnesses an unmistakable opportunity of seeing their faces in the light of the lanterns and the full moon. These factors made recognition by witnesses independent of any gas lantern or any scrutiny of the dead bodies, so that these matters ceased to be of any real consequence and therefore made the summoning of the eyewitnesses before us quite unnecessary."

In the result, they dismissed the appeals. The present appeal is by special leave filed against the judgment of the High Court.

6. Learned counsel for the appellants raised before us the following

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points : (1)(*a*) Section 162 of the Code of Criminal Procedure by its own operation attracts the provisions of Section 145 of the Evidence Act and under the latter section, the whole vista of cross-examination on the basis of the previous statement in writing made by the witnesses before the police is open to the accused; to illustrate the contention : a witness can be asked whether he made a particular statement before the police officer; if he says "yes", the said assertion can be contradicted by putting to him an earlier statement which does not contain such a statement. (1)(*b*). The word "contradiction" is of such wide connotation that it takes in all material omissions and a court can decide whether there is one such omission as to amount to contradiction only after the question is put, answered and the relevant statement or part of it is marked, and, therefore, no attempt should be made to evolve a workable principle, but the question must be left at large to be decided by the Judge concerned on the facts of each case. (*2*) The High Court erred in holding that only two questions were intended to be put in cross-examination to the prosecution witnesses whereas the advocate for the accused intended to put to the witnesses many other omissions to establish that there was development in the prosecution case from time to time but refrained from doing so in obedience to the considered order made by the learned Sessions Judge. (*3*) Even if only two questions were illegally disallowed, as it was not possible to predicate the possible effect of the cross-examination of the witnesses on the basis of their answers to the said questions on their reliability, it should be held that the accused had no opportunity to have an effective cross-examination of the witnesses and therefore they had no fair trial. (*4*) The learned Judges committed an illegality in testing the credibility of the witnesses other than the witness who gave the first information report by the contents of the said report.

7. The arguments of the learned counsel for the respondent in respect of each of the said contentions will be considered in their appropriate places.

8. We shall proceed to consider the contentions of the learned counsel for the appellants in the order in which they were addressed:

Re (1)(a)

9. Diverse and conflicting views were expressed by courts on the interpretation of Section 162 of the Code of Criminal Procedure. A historic retrospective of the section will be useful to appreciate its content. The earliest Code is that of 1872 and the latest amendment is that of 1955. Formerly Criminal Procedure Code for Courts in the Presidency towns and those in the mofussil were not the same. Criminal Procedure Code, 1882 (10 of 1882) consolidated the earlier Acts and prescribed a uniform law to all courts in India. It was superseded by Act 5 of 1898 and substantial changes were made by Act 18 of 1923.

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Since then the Code stands amended from time to time by many other Acts. The latest amendments were made by Act 26 of 1955 which received the assent of the President on 10-8-1955, and by notification issued by the Central Government its provisions came into force on and from 1-1-1956. We are not concerned in this case with the amending Act of 1955, but only with the Act as it stood before the amendment of 1955.

10. In Act 10 of 1872 the section corresponding to the present Section 162 was Section 119 which read:

> "An officer in charge of a police station, or other police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.
>
> Such person shall be bound to answer all questions relating to such case, put him by such officer, other than questions criminating himself.
>
> No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence."

This section enables a police officer to elicit information from persons supposed to be acquainted with facts, and permits him to reduce into writing the answers given by such persons, but excludes the said statement from being treated as part of the record or used as evidence. Act 10 of 1882 divided the aforesaid Section 119 into two sections and numbered them as Sections 161 and 162, which read:

> "161. Any police officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.
>
> Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
>
> "162. No statement, other than a dying declaration, made by any person to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused.
>
> Nothing in this section shall be deemed to affect the provisions of Section 27 of the Indian Evidence Act, 1872."

The first two paragraphs of Section 119 of Act 10 of 1872 with slight modifications not relevant for the present purpose constituted the corresponding paragraphs of Section 161 of Act 10 of 1882; and the third paragraph of Section 119 of the former Act, with some changes,

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was made Section 162 of the latter Act. There was not much difference between the third paragraph of Section 119 of the Act of 1872 and Section 162 of the Act of 1882, except that in the latter Act, it was made clear that the prohibition did not apply to a dying declaration or affect the provisions of Section 27 of the Indian Evidence Act, 1872. The Code of 1898 did not make any change in Section 161, nor did it introduce any substantial change in the body of Section 162 except taking away the exception in regard to the dying declaration from it and putting it in the second clause of that section. But Section 162 was amended by Act 5 of 1898 and the amended section read:

> "(1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence:
>
> Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, the court shall, on the request of the accused, refer to such writing, and may then, if the court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof; and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.
>
> (2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Section 32 clause (1) of the Indian Evidence Act, 1872."

For the first time the proviso to Section 162 introduced new elements, namely : (*i*) The right of the accused to request the court to refer to the statement of a witness reduced to writing; (*ii*) a duty cast on the court to refer to such writing; (*iii*) discretion conferred on the court in the interests of justice to direct that the accused be furnished with a copy of the statement; and (*iv*) demarcating the field within which such statements can be used, namely, to impeach the credit of the witness in the manner provided by the Indian Evidence Act, 1872. From the standpoint of the accused, this was an improvement on the corresponding sections of the earlier Codes, for whereas the earlier Codes enacted a complete bar against the use of such statements in evidence, this Code enabled the accused subject to the limitations mentioned therein, to make use of them to impeach the credit of a witness in the manner provided by the Indian Evidence Act. On the basis of the terms of Section 162 of Act 5 of 1896, two rival contentions were raised before the courts. It was argued for the prosecution that on the strength of Section 157 of the Evidence Act the right of the prosecution to prove any oral statement to contradict the testimony of any witness under that section was taken away by Section 162 of the Code of Criminal Procedure which only provided that the writing shall

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not be used as evidence. On the other hand it was contended on behalf of the accused that when the statement of a witness was admittedly reduced into writing, it would be unreasonable to allow any oral evidence of the statement to be given when the writing containing the statement could not be proved. The judgment of Hosain, J. in the case of *Rustam* v. *King Emperor*[1] and the decisions in *Fanindra Nath Banerjee* v. *Emperor*[2], *King Emperor* v. *Nilakanta*[3] and *Muthukumaraswami Pillai* v. *King Emperor*[4] represent one side of the question, and the judgment of Knox, J. in *Rustam* v. *King Emperor*[1] and the observations of Beaman, J. in *Emperor* v. *Narayan*[5] represent the other side. A Division Bench of the Bombay High Court in *Emperor* v. *Hanmaraddi Bin Ramaraddi*[6] after noticing the aforesaid decisions on the question, ruled that the police officer could be allowed to depose to what the witness had stated to him in the investigation for the purpose of corroborating what the witness had said at the trial. In that context, Shah, J. observed at p. 66:

> "The point is not free from difficulty which is sufficiently reflected in the diversity of judicial opinions bearing on the question."

Presumably, in view of the aforesaid conflict, to make the legislative intention clear the section was amended by Act 18 of 1923. Section 162 as amended by the aforesaid Act reads:

> "(1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
>
> Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the court shall, on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness but for the purpose only of explaining any matter referred to in his cross-examination:
>
> Provided, further that, if the court is of opinion that any part of any such statement is not relevant to the subject-matter of

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> the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused."

Sub-section (1) of the substituted section attempted to steer clear of the aforesaid conflicts and avoid other difficulties by the following ways : (*a*) Prohibited the use, of the statement, both oral and that reduced into writing, from being used for any purpose at any inquiry or trial in respect of any offence under investigation; (*b*) while the earlier section enabled the accused to make use of it to impeach the credit of a witness in the manner provided by the Indian Evidence Act, 1872, the new section enabled him only to use it to contradict the witness in the manner provided by Section 145 of the said Act; (*c*) the said statement could also be used for the purpose of only explaining any matter referred to in his cross-examination; and (*d*) while under the old section a discretion vas vested in the court in the matter of furnishing the accused with a copy of an earlier statement of a prosecution witness, under the amended section, subject to the second proviso, a duty was cast upon the court, if a request was made to it by the accused, to direct that the accused be furnished with a copy thereof. The effect of the amendment was that the loopholes which enabled the use of the statement made before the police in a trial were plugged and the only exception made was to enable the accused to use the statement of a witness reduced into writing for a limited purpose, namely, in the manner provided by Section 145 of the Indian Evidence Act, 1872, and the prosecution only for explaining the matter referred to in his cross-examination. The scope of the limited use also was clarified. Under the old section the statement was permitted to be used to impeach the credit of a witness in the manner provided by the Indian Evidence Act; under the said Act, the credit of a witness could be impeached either under Section 145 or under Section 155(3). While the former section enables a witness to be cross-examined as to a previous statement made by him in writing without such writing being shown to him, the latter section permits the discrediting of the witness by proof of his previous statement by independent evidence. If a statement in writing could be used to discredit a witness in the manner provided by those two sections, the purpose of the legislature would be defeated. Presumably in realisation of this unexpected consequence, the legislature in the amendment made it clear that the said statement can only be used to contradict a witness in the manner provided by Section 145 of the Evidence Act. By Act 2 of 1945, the following sub-section (*3*) was added to Section 161:

> "The police officer may reduce into writing any statement made to

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him in the course of an examination under this section, and if he does so, he shall make a separate record of the statement of each such person whose statement he records."

This sub-section restored the practice obtaining before the year 1923 with a view to discourage the practice adopted by some of the police officers of taking a condensed version of the statements of all the witnesses or a precis of what each witness said. It is not necessary to notice in detail the changes made in Section 162 by Act 26 of 1955 except to point out that under the amendment the prosecution is also allowed to use the statement to contradict a witness with the permission of the court and that in view of the shortened committal procedure prescribed, copies of the statements of the prosecution witnesses made before the police during investigation are made available by the police to the accused before the commencement of the inquiry or trial. The consideration of the provisions of the latest amending Act need not detain us, for the present case falls to be decided under the Act as it stood before that amendment.

11. It is, therefore, seen that the object of the legislature throughout has been to exclude the statement of a witness made before the police during the investigation from being made use of at the trial for any purpose, and the amendments made from time to time were only intended to make clear the said object and to dispel the cloud cast on such intention. The Act of 1898 for the first time introduced an exception enabling the said statement reduced to writing to be used for impeaching the credit of the witness in the manner provided by the Evidence Act. As the phraseology of the exception lent scope to defeat the purpose of the legislature, by the Amendment Act of 1923, the section was redrafted defining the limits of the exception with precision so as to confine it only to contradict the witness in the manner provided under Section 145 of the Evidence Act. If one could guess the intention of the legislature in framing the section in the manner it did in 1923, it would be apparent that it was to protect the accused against the user of the statements of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Both the section and the proviso intended to serve primarily the same purpose i.e., the interest of the accused.

12. Braund, J. in *Emperor* v. *Aftab Mohd. Khan*[7] gave the purpose of Section 162 thus at p. 299:

"As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from the

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prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths."

A Division Bench of the Nagpur High Court in *Baliram Tikaram Marathe* v. *Emperor*[8] expressed a similar idea in regard to the object underlying the section, at p. 5, thus:

"The object of the section is to protect the accused both against overzealous police officers and untruthful witnesses."

The Judicial Committee in *Pakala Narayana Swami* v. *King Emperor*[9] found another object underlying the section when they said at p. 78:

"If one had to guess at the intention of the legislature in framing a section in the words used, one would suppose that they had in mind to encourage the free disclosure of information or to protect the person making the statement from a supposed unreliability of police testimony as to alleged statements or both."

Section 162 with its proviso, if construed in the manner which we will indicate at the later stage of the judgment, clearly achieves the said objects.

13. The learned counsel's first argument is based upon the words "in the manner provided by Section 145 of the Indian Evidence Act, 1872" found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradict him. In support of this contention reliance is placed upon the judgment of this Court in *Shyam Singh* v. *State of Punjab*[10]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act thus at p. 819:

Resort to Section 145 would only be necessary if the witness *denies* that he made the former statement. In that event, it would be necessary to prove that he did, and *if the former statement was reduced to writing*, then Section 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made."

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in

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two parts : the first part enables the accused to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction : in other words, both parts deal with cross examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness 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 proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate : A says in the witness box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus : If the witness is asked “did you say before the police officer that you saw a gas light?” and he answers “yes”, then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies : one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the

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witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all : only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure.

14. This leads us to the main question in the case i.e. the interpretation of Section 162 of the Code of Criminal Procedure. The cardinal rule of construction of the provisions of a section with a proviso is succinctly stated in *Maxwell's Interpretation of Statutes*, 10th Edn., at p. 162 thus:

> "The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.
>
> The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."

Unless the words are clear, the court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two.

15. As the words in the section declare the intention of the legislature, we shall now proceed to construe the section giving the words used therein their natural and ordinary sense.

16. The object of the main section as the history of its legislation shows and the decided cases indicate is to impose a general bar against the use of statement made before the police and the enacting clause in clear terms says that no statement made by any person to a police officer or any record thereof, or any part of such statement or record, be used for any purpose. The words are clear and unambiguous. The proviso engrafts an exception on the general prohibition and that is, the said statement in writing may be used to contradict a witness in the manner provided by Section 145 of the Evidence Act. We have already noticed from the history of the section that the enacting clause was mainly intended to protect the interests of accused. At the state of investigation, statements of witnesses are taken in a haphazard manner. The police officer in the course of his investigation finds himself more often in the midst of an excited crowd and babel of voices raised all round. In such an atmosphere, unlike that in a court of law, he is expected to hear the statements of witnesses and record

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separately the statement of each one of them. Generally he records only a summary of the laments which appear to him to be relevant. These statements are, therefore only a summary of what a witness says and very often perfunctory. Indeed, in view of the aforesaid facts, there is a statutory prohibition against police officers taking the signature of the person making the statement, indicating thereby that the statement is not intended to be binding on the witness or an assurance by him that it is a correct statement.

17. At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by Section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a court witness. Nor can it be used for contradicting a defence or a court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar.

18. If the provisions of the section are construed in the aforesaid background, much of the difficulty raised disappears. Looking at the express words used in the section, two sets of words stand out prominently which afford the key to the intention of the legislature. They are:“statement in writing”, and “to contradict”. “Statement” in its dictionary meaning is the act of stating or reciting. Prima facie a statement cannot take in an omission. A statement cannot include that which is not stated. But very often to make a statement sensible or self -consistent, it becomes necessary to imply words which are not actually in the statement. Though something is not expressly stated, it is necessarily implied from what is directly or expressly stated. To illustrate:‘A’ made a statement previously that he saw ‘B’ stabbing ‘C’ to death; but before the court he deposed that he saw ‘B’ and ‘D’ stabbing ‘C’ to death : the court can imply the word “only” after ‘B’ in the statement before the police. Sometimes a positive statement may have a negative aspect and a negative one a positive aspect. Take an extreme example : if a witness states that a man is dark, it also means that he is not fair. Though the statement made describes positively the colour of a skin, it is implicit in that statement itself that it is not of any other colour. Further, there are occasions when we come across two statements made by the same person at different times and both of

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them cannot stand or co exist. There is an inherent repugnancy between the two and, therefore, if one is true, the other must be false. On one occasion a person says that when he entered the room, he saw 'A' shooting 'B' dead with a gun; on another occasion the same person says that when he entered the room he saw 'C' stabbing 'B' dead : both the statements obviously cannot stand together, for, if the first statement is true, the second is false and vice versa. The doctrine of recital by necessary implication, the concept of the negative or the positive aspect of the same recital, and the principle of inherent repugnancy, may in one sense rest on omissions, but, by construction, the said omissions must be deemed to be part of the statement in writing. Such omissions are not really omissions strictly so called and the statement must be deemed to contain them by implication. A statement, therefore, in our view, not only includes what is expressly stated therein, but also what is necessarily implied therefrom.

19. "Contradict" according to the *Oxford Dictionary* means to affirm to the contrary. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. This indicates that there is something in writing which can be set against another statement made in evidence. If the statement before the police officer — in the sense we have indicated — and the statement in the evidence before the court are so inconsistent or irreconcilable with each other that both of them cannot coexist, it may be said that one contradicts the other.

20. It is broadly contended that a statement includes all omissions which are material and are such as a witness is expected to say in the normal course. This contention ignores the intention of the legislature expressed in Section 162 of the Code and the nature of the non-evidentiary value of such a statement, except for the limited purpose of contradiction. Unrecorded statement is completely excluded. But recorded one is used for a specified purpose. The record of a statement, however perfunctory, is assumed to give a sufficient guarantee to the correctness of the statement made, but if words not recorded are brought in by some fiction, the object of the section would be defeated. By that process, if a part of a statement is recorded, what was not stated could go in on the sly in the name of contradiction, whereas if the entire statement was not recorded, it would be excluded. By doing so, we would be circumventing the section by ignoring the only safeguard imposed by the legislature viz. that the statement should have been recorded.

21. We have already pointed out that, under the amending Act of 1955, the prosecution is also allowed to use the statement to contradict a witness with the permission of the court. If construction of the section

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as suggested by the learned counsel for the appellants be accepted, the prosecution would be able to bring out in the cross-examination facts stated by a witness before a police officer but not recorded and facts omitted to be stated by him before the said officer. This result is not decisive on the question of construction, but indicates the unexpected repercussions of the argument advanced to the prejudice of the accused.

22. As Section 162 of the Code Criminal Procedure enables the prosecution in the re-examination to rely upon any part of the statement used by the defence to contradict a witness, it is contended that the construction of the section accepted by us would lead to an anomaly, namely, that the accused cannot ask the witness a single question, which does not amount to contradiction whereas the prosecution, taking advantage of a single contradiction relied upon by the accused, can re-examine the witness in regard to any matter referred to in his cross-examination, whether it amounts to a contradiction or not. I do not think there is any anomaly in the situation. Section 145 of the Evidence Act deals with cross-examination in respect of a previous statement made by the witness. One of the modes of cross-examination is by contradicting the witness by referring him to those parts of the writing which are inconsistent with his present evidence. Section 162, while confining the right to the accused to cross -examine the witness in the said manner, enables the prosecution to re -examine the witness to explain the matters referred to in the cross-examination. This enables the prosecution to explain the alleged contradiction by pointing out that if a part of the statement used to contradict be read in the context of any other part, it would give a different meaning; and if so read, it would explain away the alleged contradiction. We think that the word “cross-examination ‘in the last line of the first proviso to Section 162 of the Code of Criminal Procedure cannot be understood to mean the entire gamut of cross-examination without reference to the limited scope of the proviso, but should be confined only to the cross-examination by contradiction allowed by the said proviso.

23. The conflict of judicial opinion on this question is reflected in the decisions of different High Courts in this country. One of the views is tersely put by Burn, J. in *In Re Ponnuswami Chetty*[11] at p. 476:

> “Whether it is considered as a question of logic or language, ‘omission’ and ‘contradiction’ can never be identical. If a proposition is stated, any contradictory proposition must be a statement of some kind, whether positive or negative. To ‘contradict’ means to ‘speak against’ or in one word to ‘gainsay’. It is absurd to say that you can contradict by keeping silence. Silence may be full of significance, but it is not ‘diction’, and therefore it cannot be ‘contradiction’.”

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Considering the provisions of Section 145 of the Evidence Act, the learned Judge observed thus at p. 477:

> "It would be in my opinion sheer misuse of words to say that you are contradicting a witness by the writing, when what you really want to do is to contradict him by pointing out omissions from the writing. I find myself in complete agreement with the learned Sessions Judge of Ferozepore who observed that 'a witness cannot be confronted with the unwritten record of an unmade statement'."

The learned Judge gives an illustration of a case of apparent omission which really is a contradiction i.e. a case where a witness stated under Section 162 of the Code that he saw three persons beating a man and later stated in court that four persons were beating the same man. This illustration indicates the trend of the Judge's mind that he was prepared to treat an omission of that kind as part of the statement by necessary implication. A Division Bench of the Madras High Court followed this judgment in *In Re Guruva Vannan*[12]. In that judgment, Mockett, J., made the following observation at p. 901:

> "I respectfully agree with the judgment of Burn, J. in *Ponnuswamy Chetty* v. *Emperor*[11] in which the learned Judge held that a statement under Section 162 of the Code of Criminal Procedure cannot be filed in order to show that a witness is making statements in the witness box which he did not make to the police and that bare omission cannot be a contradiction. The learned Judge points out that, whilst a base omission can never be a contradiction, a *so-called* omission in a statement may sometimes amount to a contradiction, for example, when to the police three persons are stated to have been the criminals and later at the trial four are mentioned."

The Allahabad High Court in *Ram Bali* v. *State*[13] expressed the principle with its underlying reasons thus at p. 294:

> "Witness after witness was cross-examined about certain statements made by him in the deposition but not to be found in his statement under Section 162 CrPC. A statement recorded by the police under Section 162 can be used for one purpose and one purpose only and that of contradicting the witness. Therefore if there is no contradiction between his evidence in court and his recorded statement in the diary, the latter cannot be used at all. If a witness deposes in court that a certain fact existed but had stated under Section 162 either that that fact had not existed or that the reverse and irreconcilable fact had existed it is a case of conflict between the deposition in the court and the statement under Section 162 and the latter can be used to contradict the former. But if he had not stated under Section 162 anything about the fact there is no conflict and

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> the statement cannot be used to contradict him. In some cases an omission in the statement under Section 162 may amount to contradiction of the deposition in court; they are the cases where what is actually stated is irreconcilable with what is omitted and impliedly negatives its existence."

At a later stage of the judgment, the learned Judges laid down the following two tests to ascertain whether a particular omission amounts to contradiction : (*i*) an omission is not a contradiction unless what is actually stated contradicts what is omitted to be said; and (*ii*) the test to find out whether an omission is contradiction or not is to see whether one can point to any sentence or assertion which is irreconcilable with the deposition in the court. The said observations are in accord with that of the Madras High Court in *In Re Guruva Vannan*[12]. The Patna High Court in *Badri Chaudhry* v. *King Emperor*[14] expressed a similar view. At p. 22, Macpherson, J. analysing Section 162 of the Code of Criminal Procedure, after its amendment in 1923, observed:

> "The first proviso to Section 162(1) makes an exception in favour of the accused but it is an exception most jealously circumscribed under the proviso itself. "Any part of such statement" which has been reduced to writing may in certain limited circumstances be used to *contradict* the witness who made it. The limitations are strict : (*1*) Only the statement of a prosecution witness can be used; and (*2*) only if it has been reduced to writing; (*3*) only a part of the statement recorded can be used; (*4*) such part must be duly proved; (*5*) it must be a contradiction of the evidence of the witness in court; (*6*) it must be used as provided in Section 145 of the Evidence Act, that is, it can only be used after the attention of the witness has been drawn to it or to those parts of it which it is intended to use for the purpose of contradiction, and there are others. Such a statement which does not contradict the testimony of the witness cannot be proved in any circumstances and it is not permissible to use the recorded statement as a whole to show that the witness did not say something to the investigating officer."

In *Sakhawat* v. *Crown*[15] much to the same effect was stated at p. 284:

> "The section (Section 162) provides that such statements can be used only for the purpose of contradiction. Contradiction means the setting up of one statement against another and not the setting up of a statement against nothing at all. An illustration would make the point clear. If a witness in court says 'I saw A running away' he may be contradicted under Section 162 by his statement to the police 'I did not see A running away'. But by proving an omission what the learned counsel contradicts is not the statement I saw A 'running

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away' but the statement 'I stated to the police that I saw A running away'. As Section 162 does not allow the witness to depose 'I stated to the police that I saw A running away' it follows that there can be no basis for eliciting the omission. Our argument is further fortified by the use of the words '*any part* of such statement ... may be used to contradict'. It is not said that *whole* statement may be used. But in order to prove an omission the whole statement has to be so used, as has been done in the present case."

The contrary view is expressed in the following proposition:

"An omission may amount to contradiction if the matter omitted was one which the witness would have been expected to mention and the Sub-Inspector to make note of in the ordinary course. Every detail is expected to be noted."

This proposition, if we may say so, couched in wide phraseology enables the trial Judge to put into the mouth of a witness things which he did not state at an earlier stage and did not intend to say, on purely hypothetical considerations. The same idea in a slightly different language was expressed by Bhargava and Sahai, J.J. in *Rudder* v. *State*[16] at p. 240:

"There are, however, certain omissions which amount to contradictions and have been treated as such by this Court as well as other courts in this country. Those are omissions relating to facts which arc expected to be included in the statement before the police by a person who is giving a narrative of what he saw, on the ground that they relate to important features of the incident about which the deposition is made."

A similar view was expressed in *Mohinder Singh* v. *Emperor*[17], *Yusuf Mia* v. *Emperor*[18], and *State of M.P.* v. *Banshilal Beharz*[19]. Reliance is placed by the learned counsel for the appellants on a statement of law found in *Wigmore on Evidence* Vol. III, 3rd Edn., at p. 725. In discussing under the head "what amounts to a self-contradiction", the learned author tersely describes a self-contradiction in the following terms:

"...it is not a mere difference of statement that suffices; nor yet is an absolute oppositeness essential; it is an inconsistency that is required."

The learned author further states, at p. 733:

"A failure to assert a fact, when it would have been natural to assert it, amounts in effect to an assertion of the non-existence of the fact."

The said statement is no doubt instructive, but it cannot be pressed into service to interpret the provisions of Section 162 of the Code of Criminal Procedure. In America, there is no provision similar to Section

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162 of the Code. It is not, therefore, permissible, or even possible, to interpret the provisions of a particular Act, having regard to stray observations in a textbook made in a different context.

24. It is not necessary to multiply cases. The two conflicting views may be briefly stated thus : (*i*) omissions, unless by necessary implication be deemed to be part of the statement, cannot be used to contradict the statement made in the witness box; and (*ii*) they must be in regard to important features of the incident which are expected to be included in the statement made before the police. The first proposition not only carries out the intention of the legislature but is also in accord with the plain meaning of the words used in the section. The second proposition not only stretches the meaning of the word "statement" to a breaking point, but also introduces an uncertain element, namely, ascertainment of what a particular witness would have stated in the circumstances of a particular case and what the police officer should have recorded. When the section says that the statement is to be used to contradict the subsequent version in the witness box, the proposition brings in, by construction, what he would have stated to the police within the meaning of the word "statement". Such a construction is not permissible.

25. From the foregoing discussion the following propositions emerge : (1) A statement in writing made by a witness before a police officer in the course of investigation can be used only to contradict his statement in the witness box and for no other purpose; (2) statements not reduced to writing by the police officer cannot be used for contradiction; (3) though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement; (4) such a fiction is permissible by construction only in the following three cases : (*i*) when a recital is necessarily implied from the recital or recitals found in the statement; illustration : in the recorded statement before the police the witness states that he saw A stabbing B at a particular point of time, but in the witness box he says that he saw A and C stabbing B at the same point of time; in the statement before the police the word "only" can be implied i.e. the witness saw A only stabbing B; (*ii*) a negative aspect of a positive recital in a statement : illustration in the recorded statement before the police the witness says that a dark man stabbed B, but in the witness box he says that a fair man stabbed B; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion; and (*iii*) when the statement before the police and that before the court cannot stand together : illustration : the witness says in the recorded statement before the

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police that A after stabbing B ran away by a northern lane, but in the court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing i.e. at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false.

26. The aforesaid examples are not intended to be exhaustive but only illustrative. The same instance may fall under one or more heads. It is for the trial Judge to decide in each case, after comparing the part or parts of the statement recorded by the police with that made in the witness box, to give a ruling, having regard to the aforesaid principles, whether the recital intended to be used for contradiction satisfies the requirements of law.

27. The next point is what are the omissions in the statement before the police which the learned Sessions Judge did not allow the accused to put to the witnesses for contradicting their present version. The learned counsel for the appellants contends that the accused intended to put to the witnesses the following omissions, but they did not do so as the learned Sessions Judge disallowed the two questions put to PW 30 and made a considered order giving his reasons for doing so, and that the learned counsel thought it proper not to put the same questions or other questions in regard to omissions to PW 30 or to the other witnesses that followed him. The said omissions to are : (*1*) The warning by the members of the gang on their arrival to the audience at the music party not to stir from their places; (*2*) the presence of a gas lantern; (*3*) the chase of Bharat Singh by the assailants; (*4*) the scrutiny of the dead bodies by the gang; and (*5*) the return of the gang in front of the house of Bankey. The learned counsel for the respondent contests this fact and argues that only two omissions, namely, the presence of a gas lantern and the scrutiny of the dead bodies by the gang, were put in the cross-examination of PW 30 and no other omissions were put to him or any other witness, and that indeed the order of the learned Sessions Judge did not preclude him from putting all the omissions to the witnesses and taking the decision of the Judge on the question of their admissibility. He further contends that even before the learned Judges of the High Court, the advocate for the appellants only made a grievance of his not having been allowed to put the aforesaid two omissions and did not argue that he intended to rely upon other omissions but did not do so as he thought that the learned Sessions Judge would disallow them pursuant to his previous order. Before the High Court an application was filed for summoning eight eyewitnesses on the ground that the learned Sessions Judge did not allow the counsel for defence to put the omissions amounting to material contradiction to them, but no mention was made in that

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application of the number of omissions which the accused intended to put to the eyewitnesses if they were summoned. That application was filed on 1-5-1957, but no attempt was made to get a decision on that application before the arguments were heard. Presumably, the court as well as the parties thought that the application could more conveniently be disposed of after hearing the arguments. On 30-7-1957 i.e. after the appellants were fully heard, that application was dismissed and the detailed reasons for dismissing it were given in the judgment, which was delivered on 11-9-1957. The judgment of the learned Judges of the High Court clearly indicates that what was argued before then was that two omissions sought to be put to PW 30 were disallowed and therefore the accused did not put the said omissions to the other witnesses. It was not contended on behalf of the accused that other omissions were intended to be used for contradiction, but were not put to the witnesses as the advocate thought that in view of the order of the learned Sessions Judge they would not be allowed automatically. The learned Judges held that the said two omissions amounted to material contradiction and that the learned Sessions Judge was wrong in disallowing them, but they ignored those two circumstances and based their findings on matters of greater certainly. If really the Judges had made a mistake in appreciating the arguments of the learned counsel for the appellants in the context of omissions, one would expect the accused to mention the said fact prominently in their application for special leave. Even if they omitted to mention that fact in the application for special leave, they could have filed an affidavit sworn to by the advocate, who appeared for them before the learned Judges of the High Court, mentioning the fact that in spite of the argument specifically directed to the other omissions the learned Judges by mistake or oversight failed to notice that argument. The learned counsel who argued before us did not argue before the High Court, and, therefore, obviously he is not in a position to assert that the Judges committed a mistake in omitting to consider the argument advanced before them. But he made strenuous attempts before us to persuade us to hold that there must have been a mistake. He would say that the learned counsel had in fact relied upon all the aforesaid omissions in support of his contention that there was development of the case of the prosecution from time to time and therefore he must have also relied upon the said omissions in the context of the statements made under Section 162 of the Code of Criminal Procedure; on the other hand, the fact that the learned Judges considered all the alleged omissions in connection with the said contention and only considered two omissions in regard to the contention based on Section 162 of the Code is indicative of the fact that the learned counsel, for reasons best known to him, did not think fit to rely upon all the alleged omissions. The

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deposition of PW 30 also shows that only two omissions in the statement before the police viz. the existence of a gas-lantern and the scrutiny of the dead bodies by the gang, were put to him in cross-examination and the learned Sessions Judge disallowed those questions on the ground that the learned counsel was not able to show any law entitling him to put the said questions. Though the witness was examined at some length, no other alleged omissions in the statement before the police were sought to be put to him. It would be seen from the short order made by the learned Sessions Judge at the time each one of the two questions were put, that the learned Sessions Judge did not give a general ruling that no omissions in a statement before the police could be put to a witness. The rulings were given, having regard to the nature of the omissions relied upon. But after the entire evidence of PW 30 was closed, the learned Sessions Judge gave a considered order. Even in that order, he did not rule out all omissions as inadmissible, but clearly expressed the view that if what was stated in the witness box was irreconcilable with what was omitted to be stated in the statement, it could go in as material contradiction. Even after this order, it was open to the appellants to bring out all such omissions, but no attempt was made by them to do so. These circumstances also support the impression of the learned Judges of the High Court that what was argued before them was only in respect of the two specified omissions put to PW 30 in his cross-examination. We, therefore, hold that only two omissions relating to the existence of the gas-lantern and the scrutiny of the faces of the deceased by the appellants were put to PW 30 and were intended to be put to the other witnesses, but were not. so done on the basis of the ruling given by the court.

28. Would those two omissions satisfy the test laid down by us? The witness stated in the court that there was a gas-lamp and that some of the miscreants scrutinised the faces of the dead bodies. In their statements before the police they did not mention the said two facts and some of the witnesses stated that there were lanterns. Taking the gas-lamp first : the scene of occurrence was not a small room but one spread over from the well to Bankey's house. From that omission in the statement it cannot necessarily be implied that there was no gas-lamp in any part of the locality wherein the incident took place; nor can it be said that, as the witnesses stated that there were lanterns, they must be deemed to have stated that there was no gas-lamp, for the word “lantern” is comprehensive enough to take in a gas-lantern. It is also not possible to state that the statements made before the police and those made before the court cannot coexist, for there is no repugnancy between the two, as even on the assumption that lantern excludes a gas-lantern, both can exist in the scene of occurrence. The same can be said also about the scrutiny of the faces of the dead bodies. In the

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statements before the police, the movements of the appellants were given. It was stated that they shot at the people and decamped with the gun of Bharat Singh. The present evidence that in the course of their pursuit, they looked at the faces of two of the dead bodies does not in any way contradict the previous versions, for the said incident would fit in with the facts contained in the earlier statements. The appellants could have shot at the audience, pursued them, taken the gun of Bharat Singh and on their way scrutinized the dead bodies. The alleged omission does not satisfy any of the principles stated by us.

29. In this view, it is unnecessary to express our opinion on the question whether, if the said two omissions amounted to contradiction within the meaning of Section 162 of the Code of Criminal Procedure, the appellants were in any way prejudiced in the matter of their trial.

30. The last contention of the learned counsel for the appellants is that the learned Judges of the High Court acted illegally in testing the veracity of the witnesses with reference to the contents of the first information report. A perusal of the judgment of the High Court shows that the advocate for the appellants contended before them, inter alia, that the witnesses should not be believed as their present version was inconsistent with the first information report. Learned Judges assumed that the said process was permissible and even on that assumption they rejected the plea of the learned counsel for the appellants that there was improvement in the prosecution case. The learned Judges were really meeting the argument of the learned counsel for the appellants. It is idle to suggest that they erred in law in relying upon the first information report to discredit the witnesses for the simple reason that they accepted the evidence in spite of some omissions in the first information report.

31. In the result, we confirm the judgment of the High Court and dismiss the appeal.

M. HIDAYATULLAH, J.— The judgment which I am delivering has been prepared by my learned Brother, Imam, J. and myself.

33. We agree that the appeal be dismissed but would express in our own words the grounds upon which it should be dismissed.

34. The main contention advanced on behalf of the appellants was as follows : There was no fair trial of the appellants as they had been deprived of the right of cross-examination of the prosecution witnesses with reference to their statements made to the police during the police investigation. The trial Judge had disallowed two questions in this respect, and the lawyer for the appellants regarded the decision of the learned Judge as one which prevented him from putting further questions with respect to other matters concerning the police statements of the witnesses. The order of the learned Judge had to be respected. The order of the learned Judge was illegal, as on a proper

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interpretation of the provisions of Section 162 of the Code of Criminal Procedure, the appellants were entitled not only to put the two questions which were ruled out, but also questions with respect to other matters arising out of the police statements of the witnesses. The purpose of cross-examination is to test the reliability of the witnesses both as to what they had to say about the occurrence itself and concerning their identification of those who had participated in it. There were several matters with respect to which, if questions had been allowed to be put, an effective cross-examination might have resulted and enabled the appellants to persuade the trial Judge to hold that the witnesses were entirely unreliable. In a case of this kind in which the appellants were involved, there were only two principal questions which were of vital importance : (*1*) how far the witnesses had improved their story in their evidence in court from what they had said to the police concerning the occurrence, and (*2*) the existence of opportunity and sufficient light to enable proper identification.

35. It may be assumed, although it has been a matter of controversy, that the order of the trial Judge disallowing the two questions which were put was understood by the lawyer for the defence to mean that all similar questions in the nature of omissions in the police statements with respect to matters stated in court would be disallowed and therefore no attempt was made to put further questions to the witnesses in this respect.

36. Unfortunately, the lawyer for the defence had not in this particular case laid any adequate foundation upon which the two questions, which were ruled out, could have been properly put. From that point of view, the order of the trial Judge in disallowing those questions was not improper. It could not, therefore, be said that the trial Judge had done anything which could be rightly characterised as infringement of the provisions of Section 162 of the Code of Criminal Procedure or of the Indian Evidence Act, or even of the rules of natural justice.

37. Johari Chowkidar had reported the occurrence to the police station, which was a brief statement. Certain matters were, however, definitely mentioned — the names of the persons recognised in the occurrence, the number of persons killed and injured, the taking away of a gun which was with Bharat Singh, Bankey Kumhar firing his gun at the culprits in such a manner that some of them must have been injured, and the existence of light from the moon and lantern. The principal comment had been that in this report there was no mention of the culprits having advanced from the well towards the open place where villagers had gathered to hear the music. On the contrary, the first information report indicated that the firing was done from the parapet of the well. It is clear, however, from Johari's statement that

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the culprits had taken away the gun which was with Bharat Singh. This could only have been done if the culprits had advanced from the well to the place where the villagers had assembled.

38. It was then commented that in the first information report the culprits were said to have come from the southern lane, while in court the evidence was that they had come to the well from the eastern lane. The discrepancy is a minor one. Johari must have been concerned with reporting the first firing from the well, and he might have mistaken the actual direction from which the culprits had approached the well. Johari's statement made no mention of the culprits uttering any warning that no one was to run away as they advanced from the well, whereas in court the witnesses spoke to that effect. This was a detail which Johari might not have considered to be of sufficient importance, as he was anxious to make a bare statement in order to get the police to proceed to the place of occurrence as quickly as possible. Johari'a statement also makes no mention of the culprits examining the bodies of the dead and examining their faces and exclaiming that Asa Ram, one of the men whom they wished to kill, had been killed. Here again, this was a matter of detail which Johari might not have considered necessary to mention. The first information report made no mention of the existence of gaslight. It did, however, mention the existence of light of lantern and existence of moonlight. The existence of light from lantern and the full moon obviously was sufficient to recognise known persons. It is in evidence that the appellants were known for several years to the witnesses who has identified them as participants in the occurrence. It could not be said with absolute certainty that the mention of the existence of light of lantern excluded the existence of gaslight. The statement of Johari gives clear, indication that the culprits did not remain all the time at the well, because they must have advanced to take away the gun which was with Bharat Singh. The culprits must have stayed at the place of occurrence for some time to enable Bankey Kumhar to fire his gun at them and to convey to Johari's mind the certainty that some of the culprits must have been injured. Reference is made only to some of the details and not to all the discrepancies pointed out in order to determine whether the alleged improvement in the story of the witnesses in court from what they are alleged to have stated to the police was with reference to vital matters, which went to the root of the prosecution case.

39. It is apparent from what has been stated above that even if the defence had been allowed to put questions concerning these alleged omissions in the statements of the witnesses to the police, it could not have made their evidence in court unreliable with respect to any material particular concerning the occurrence or the identification of the accused.

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40. From the above, it seems to us that there is no merit in the appeal. As, however, considerable argument has been made concerning the right of cross-examination and as to how the provisions of Section 162 of the Code of Criminal Procedure should be construed, it becomes necessary to consider the submissions of the learned counsel for the appellants.

41. The provisions of the Code of Criminal Procedure of 1861 and 1872 have been referred to by our learned Brother, Subba Rao, J. Section 162 of the Code of 1872 made it clear that except for a dying declaration and matters coming within the provisions of Section 27 of the Indian Evidence Act of 1872, no statement of any person made to a police officer in the course of investigation, if reduced into writing, could be used as evidence against the accused. There was no restriction as to the extent of the right of an accused to cross-examine a prosecution witness concerning his statement to the police. Section 162 of the Code of 1898 prohibited the use of a statement reduced into writing, as evidence except any statement falling within the provisions of Section 32 of the Indian Evidence Act, 1872. The proviso to this section, however, expressly stated that in spite of the prohibition in the main provision, the accused could use such a statement to impeach the credit of the witnesses in the manner provided in the Indian Evidence Act of 1872. It will be seen therefore that until 1898 there was no restriction imposed upon the accused as to the extent of his right of cross-examination. As Section 162 of the Code of 1898 entirely prohibited the use of the statement reduced into writing as evidence, the proviso to it safeguarded the right of the accused to impeach the credit of such witness in the manner provided in the Indian Evidence Act, 1872. Under the Indian Evidence Act, a witness's credit can be impeached under Sections 145 and 155 of that Act. The manner in which the provisions of these sections could be utilised to impeach the credit of a witness covers a wide field. If, however, it was intended to contradict a witness concerning his previous statement reduced into writing, then the provisions of Section 145 require that those parts of the writing by which it was sought to contradict the witness must be shown to him. There can be no doubt that the provisions of the Code from 1861 to 1898 in no way curbed the right of cross-examination on behalf of the accused. The provisions were intended to protect the accused in that no statement of a witness to the police reduced into writing could be used as evidence against him, but the right to cross-examine the witness to the fullest extent in accordance with the provisions of the Indian Evidence Act in order to show that he was unreliable, remained unaffected. The real question for consideration is whether the amendment of the Code in 1923 brought about such a radical change in the provisions of Section 162 of the Code as to

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suggest that the legislature had taken a retrograde step, and had intended to deprive the accused of the right of cross-examination of prosecution witnesses concerning their police statements except in one restricted particular, namely, to make use of the statements reduced into writing to contradict the witnesses in the manner provided by Section 145 of the Indian Evidence Act.

42. The provisions of Section 162 of the Code of 1898 were amended in 1923 in the hope that the amendment would resolve the various doubts which had sprung up, as the result of divergent judicial opinions as to the meaning of these provisions. The provisions of Section 162 of the Code of 1898 had been variously construed, and the amendment in 1923 has not improved matters. The amended section still remains difficult to construe. We shall endeavour now to construe it.

43. Under Section 161 of the Code, the police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case. He may also reduce into writing any statement made to him in the course of such examination, and if he does so, he must make a separate record of the statement of each such person.

44. The legislature has, however, put restrictions upon the use of such statements at the inquiry or trial of the offence. The first restriction is that no statement made by any person to a police officer, if reduced into writing, be signed by the person making it. The intention behind the provision is easy to understand. The legislature probably thought that the making of statements by witnesses might be thwarted, if the witnesses were led to believe that because they had signed the statements they were bound by them, and that whether the statements were true or not, they must continue to stand by them. The legislature next provides that a statement, however recorded, or any part of it shall not be used for any purpose (save as provided in the section) at the inquiry or trial in respect of any offence under investigation at the time such statement is made. The object here is not easily discernible, but perhaps is to discourage overzealous police officers who might otherwise exert themselves to improve the statements made before them. The Privy Council considered the intention to be:

> "If one had to guess at the intention of the legislature in framing a section in the words used, one would suppose that they had in mind to encourage the free disclosure of the information or to protect the person making the statement from a supposed unreliability of police testimony as to alleged statements or both."

It is possible that the legislature had also in mind that the use of statements made under the influence of the investigating agency might, unless restricted to a use for the benefit of the accused, result in

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considerable prejudice to him. But whatever the intention which led to the imposition of the restrictions, it is manifest that the statements, however recorded, cannot be used except to the extent allowed by the section. The prohibition contained in the words "any purpose" is otherwise absolute.

45. Then follow two provisos. The first gives the right to the accused to make use of the statements for contradicting a witness for the prosecution in the manner provided by Section 145 of the Indian Evidence Act. It also gives a right to the prosecution to use the statement for purposes of re-examination of the same witness but only to explain any matter referred to in the cross-examination of the witness.

46. The first proviso, when analysed, gives the following ingredients:

(*i*) A prosecution witness is called for the prosecution;

(*ii*) whose statement has previously been reduced to writing;

(*iii*) The accused makes a request;

(*iv*) The accused is furnished with a copy of the previous statement;

(*v*) In order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act.

If the accused exercises the right in (*v*) above in any instance, then the prosecution has the right to use the statement in the re-examination of the witness but only to explain any matters referred to by him in cross-examination.

47. Section 145 of the Indian Evidence Act reads:

> "*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 section analysed gives the following result:

(1) Witnesses can be cross-examined as to previous statements in writing or reduced into writing;

(2) These writings need not be shown to the witnesses or proved beforehand;

(3) But if the intention is to contradict them by the writings,

(*a*) their attention must be drawn to those parts which are to be used for contradiction;

(*b*) This should be done before proving the writings.

48. Our learned Brother, Subba Rao, J. restricts the use by the

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accused of the previous statements to the mechanism of contradiction as detailed in (3) above, but says that the accused has no right to proceed under (1) and (2). He deduces this from the words of Section 162 of the Code of Criminal Procedure, where it is provided:

> "in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872."

The fact that the accused can use the previous statement for the purpose of contradicting, shows that the previous statement cannot be used for corroborating the witness. Also there must be some basis for contradicting. This may arise, because of there being a contrary statement, irreconcilable statement or even material omissions. The accused can establish a contradiction by cross-examining the witness but only so as to bring out a contradiction and no more. We regret we cannot agree (and we say this with profound respect) that the accused is not entitled to cross-examine but only to contradict. In our opinion, the reference to Section 148 of the Indian Evidence Act brings in the whole of the manner and machinery of Section 145 and not merely the second part. In this process, of course, the accused cannot go beyond Section 162 or ignore what the section prohibits but cross-examination to establish a contradiction between one statement and another is certainly permissible.

49. This question loses much of its importance when there are patent contradictions and they can be put to the witness without any cross-examination as in the two statements:

(*a*) I saw A hit B.

(*b*) I did not see A hit B.

But there are complex situations where the contradiction is most vital and relevant but is not so patent. There are cases of omissions on a relevant and material point. Let us illustrate our meaning by giving two imaginary statements:

(*a*) When I arrived at the scene I saw that X was running away, chased by A and B who caught him.

(*b*) When I arrived at the scene I saw X take out a dagger from his pocket, stab D in his chest and then take to his heels. He was chased by A and B who caught him.

There is an omission of two facts in the first statement viz. (*a*) X took out a dagger from his pocket, and (*b*) he stabbed D in the chest. These two statements or their omission involve a contradiction as to the stage of the occurrence, when the observation of the witness began.

50. What Section 145 of the Indian Evidence Act provides is that a witness may be contradicted by a statement reduced into writing and that is also the use to which the earlier statement can be put under

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Section 162 of the Code of Criminal Procedure. When some omissions occur, there is contradiction in one sense but not necessarily on a relevant matter. The statements of witnesses may and do comprise numerous facts and circumstances, and it happens that when they are asked to narrate their version over again, they omit some and add others. What use can be made of such omissions or additions is for the accused to decide, but it cannot be doubted that some of the omissions or additions may have a vital bearing upon the truth of the story given. We do not think that by enacting Section 162 in the words used, the legislature intended a prohibition of cross-examination to establish which of the two versions is an authentic one of the events as seen by the witness. The use of the words "re-examination" and "cross-examination" in the same proviso shows that cross-examination is contemplated or in other words, that the manner of contradiction under Section 145 of the Indian Evidence Act comprises both cross-examination and contradiction. Indeed, the second part is only the final stage of the contradiction, which includes the earlier stages. Re-examination is only permissible where there is cross-examination.

51. It must not be overlooked that the cross-examination must be directed to bringing out a contradiction between the statements and must not subserve any other purpose. If the cross-examination does anything else, it will be barred under Section 162 which permits the use of the earlier statement for contradicting a witness and nothing else. Taking the example given above, we do not see why cross-examination may not be like this:

Q. I put it to you that when you arrived on the scene X was already running away and you did not actually see him stab D as you have deposed today?

A. No. I saw both the events.

Q. If that is so, why is your statement to the police silent as to stabbing?

A. 1 stated both the facts to the police.

The witness can then be contradicted with his previous statement. We need hardly point out that in the illustration given by us, the evidence of the witness in court is direct evidence as opposed to testimony to a fact suggesting guilt. The statement before the police can only be called circumstantial evidence of complicity and not direct evidence in the strict sense. Of course, if the questions framed were:

Q. What did you state to the police? or

Q. Did you state to the police that D stabbed X?

they may be ruled out as infringing Section 162 of the Code of Criminal Procedure, because they do not set up a contradiction but attempt to get a fresh version from the witnesses with a view to

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contradicting him. How the cross-examination can be made must obviously vary from case to case, counsel to counsel and statement to statement. No single rule can be laid down and the propriety of the question in the light of the two sections can be found only when the facts and questions are before the court. But we are of opinion that relevant and material omissions amount to vital contradictions, which can be established by cross-examination and confronting the witness with his previous statement.

52. The word "contradict" has various meanings, and in the *Oxford English Dictionary* it is stated as "To be contrary to in effect, character etc. to be directly opposed to; to go counter to, go against" as also "to affirm the contrary of; to declare untrue or erroneous; to deny categorically" and the word "contradiction" to mean "A state or condition of opposition in things compared; variance; inconsistency, contrariety". In *Shorter Oxford English Dictionary*, "contradict" is said to mean "To speak against; to oppose in speech; to forbid; to oppose; to affirm the contrary of; to declare untrue or erroneous; to deny; to be contrary to; to go counter to and go against" and "contradiction" to mean "A state of opposition in things compared; variance; inconsistency". The meaning given to the words "contradict" and "contradiction" in these dictionaries must at least include the case of an omission in a previous statement which by implication amounts to contradiction and therefore such an omission is a matter which is covered by the first proviso to Section 162 and questions in cross-examination can be put with respect to it in order to contradict the witness. It is difficult to say as an inflexible rule that any other kind of omission cannot be put to a witness in order to contradict him, when the proper foundation had been laid for putting such questions. The words "to contradict him" appearing in Section 145 of the Evidence Act must carry the same meaning as the words "to contradict such witness" in Section 162 of the Code. In a civil suit, where the provisions of Section 162 of the Code of Criminal Procedure have no application, would it be correct to say that only questions concerning omissions of the kind suggested by our learned Brother could be put and none other? We cannot see why a question of the nature of cross-examination regarding an omission with respect to a matter which the witness omitted to make in his previous statement and which, if made, would have been recorded, cannot be put. The facts and circumstances of each case will determine whether any other kind of omission than that referred to by our learned Brother could be put to a witness in order to contradict him. It would be for the Judge to decide in each case whether in the circumstances before him the question could be put. The purpose of cross-examination is to test the veracity of the statement made by a witness in his examination-in-chief as also to

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impeach his credit. Not only is it the right of the accused to shake the credit of a witness, but it is also the duty of the court trying an accused to satisfy itself that the witnesses are reliable. It would be dangerous to lay down any hard and fast rule.

53. We pause to look at the matter from another angle. We shall assume that the interpretation which the State claims should be put upon Section 162(1) is correct and compare the respective rights of the accused and the prosecution. According to this interpretation, the accused has no right of cross-examination in respect of the contradiction. This means that no question can be put about the previous statement but only the part in which there is a contradiction can be brought to the witness's notice and his explanation, if any, obtained. In other words, there is only "contradiction" and no more. But when the accused has used the statement to contradict the witness — it may be only on one point — what are the rights of the prosecution? The prosecution can use *any part of the statement* in the re-examination not only to explain the "contradiction" but also *to explain any matter referred to in the cross-examination of the witness.*

54. If "contradiction" does not include the right of cross-examination, the right of the prosecution must necessarily extend to re-examination in respect of *any other* matter needing explanation in the cross-examination at large. Thus, the accused cannot ask a single question of the nature of cross-examination but because he sets up a "contradiction" in the narrow sense, the prosecution can range all over the previous statement and afford the witness a chance of explaining any matter in his cross-examination by re-examining him which right includes the possibility of asking leading questions with the permission of the court.

55. Thus, the accused makes a "contradiction" at his own peril. By making a single "contradiction", the accused places the entire statement in the hands of the prosecution to explain away everything with its assistance. One wonders if the legislature intended such a result, for it is too great a price for the accused to pay for too small a right. Fortunately, that is not the meaning of Section 162 of the Code of Criminal Procedure, and it is not necessary to read the word "cross-examination" in the proviso in a sense other than what it has.

56. The right of both the accused and the prosecution is limited to contradictions. It involves cross-examination by the accused as to that contradiction within Section 145 of the Indian Evidence Act and re-examination in relation to the matters "referred to in the cross-examination of the witness". The prosecution cannot range at will to explain away every discrepancy but only such as the accused under *his* right has brought to light. In our opinion, reading the section in this way gives effect to every part and does not lead to the startling and, if

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we may say so, the absurd results which we have endeavoured to set out above.

57. The question may be asked, how is there to be a cross-examination about a previous statement? It is difficult to illustrate one's meaning by entering into such an exposition. Any one interested to see the technique is invited to read Mrs Maybrick's trial in the *Notable English Trials* (1912) at p. 77-79, the trial of William Palmer p. 35-36, 50-51. Examples will be found in every leading trial. The question is, did the legislature intend giving this right? In our opinion, the legislature did and for the very obvious reason that it gave the prosecution also a chance to re-examine the witness, to explain "any matter referred to in the cross-examination of the witness".

58. We respectfully do not agree that the section should be construed in the way our learned Brother has construed it. Though we agree as to the result, our opinion cannot be left unexpressed. If the section is construed too narrowly, the right it confers will cease to be of any real protection to the accused, and the danger of its becoming an impediment to effective cross-examination on behalf of the accused in apparent.

59. This brings us to the consideration of the questions, which were asked and disallowed. These were put during the cross-examination of Bankey, PW 30. They are:

Q. Did you state to the investigating officer that the gang rolled the dead bodies of Nathi, Saktu and Bharat Singh and scrutinized them, and did you tell him that the face of Asa Ram resembled that of the deceased Bharat Singh?

Q. Did you state to the investigating officer about the presence of the gas lantern?

These questions were defective, to start with. They did not set up a contradiction but attempted to obtain from the witness a version of what he stated to the police, which is then contradicted. What is needed is to take the statement of the police as it is, and establish a contradiction between that statement and the evidence in court. To do otherwise is to transgress the bounds set by Section 162 which, by its absolute prohibition, limits even cross-examination to contradictions and no more. The cross-examination cannot even indirectly subserve any other purpose. In the questions with which we illustrated our meaning, the witness was not asked what he stated to the police, but was told what he had stated to the police and asked to explain the omission. It is to be borne in mind that the statement made to the police is "duly proved" either earlier or even later to establish what the witness had then stated."

60. In our opinion, the two questions were defective for the reasons given here, and were properly ruled out, even though all the reasons

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given by the court may not stand scrutiny. The matter was not followed up with proper questions, and it seems that similar questions on these and other points were not put to the witness out of deference (as it is now suggested) to the ruling of the court. The accused can only blame themselves, if they did not.

61. The learned Judges of the High Court ruled out from their consideration that these two circumstances made it possible for the witnesses to recognise the accused, but held that there was ample opportunity even otherwise for the witnesses to do so. The High Court was justified in so doing, and there being ample evidence on which they could come to the conclusion that the witnesses had, in fact, recognised the accused, it must inevitably be regarded as one of fact in regard to which this Court does not interfere.

62. Since no other point was argued, the appeal must fail, and we agree that it be dismissed.

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* Appeal by Special Leave from the Judgment and Order dated the 11th September 1957 of the Allahabad High Court in Criminal Appeal No. 1388 of 1956 and Referred Trial No. 133 of 1956, arising out of the Judgment and Order dated the 8th September 1956 of the Court of the Additional Sessions Judge at Etawah in Sessions Trial Nos. 83 and 109 of 1955.

[1] (1910) 7 All LJ 468

[2] (1908) 36 Cal 281

[3] (1912) 35 Mad 247

[4] (1912) 35 Mad 397

[5] (1907) 32 Bom 111

[6] (1915) 39 Bom 58

[7] AIR 1940 All 291

[8] AIR 1945 Nag 1

[9] (1939) LR 66 IA 66

[10] (1952) 1 SCC 514 : 1952 SCR 812

[11] ILR (1933) 56 Mad 475

[12] ILR 1944 Mad 897

[13] AIR 1952 All 289

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[14] AIR 1926 Pat 20

[15] ILR 1937 Nag 277

[16] AIR 1957 All 239

[17] AIR 1932 Lah 103

[18] AIR 1938 Pat 579

[19] AIR 1958 MP 13

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2014 (2) MWN (Cr.) 290 (DB)

IN THE HIGH COURT OF MADRAS

S. Rajeswaran & P.N. Prakash, JJ.

Crl.A. Nos.393 & 396 of 2012

5.2.2014

R. Murugesan [*Appellant in Crl.A. No.393 of 2012*]. **2.** M. Selvam *[Appellant in Crl.A. No.396 of 2012]* ***.....Appellants***

Vs.

State, rep. by the Inspector of Police, Mecheri Police Station, Mecheri, *Crime No.169/2008* ***.....Respondent***

Criminal Procedure

Statements of Witnesses recorded by Magistrate under Section 164 — Whether substantive evidence — Marking of Section 164-Statements through Magistrate, who recorded same — Effect of — Whether same can be used to corroborate their substantive evidence.

Evidence

Identification of Accused in Test Identification Parade — PWs not stating in their evidence before Trial Court that they took part in Test Identification Parade, but identified Accussed in dock — Whether evidence of Magistrate, who conducted Test Identification Parade and his Report can be used to corroborate testimony of PWs.

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 164 — EVIDENCE ACT, 1872 (1 of 1872), Section 3 — Statements of Witnesses recorded by Magistrate under Section 164 — If, a substantive evidence — "Substantive evidence", meaning of — Though not defined under Evidence Act, same traceable to definition of word "evidence" in Section 3 — Oral evidence *i.e.* statements made by witness in witness stand on oath in Court, which conducts inquiry/trial is called "substantive evidence" — Statement under Section 164 recorded by Magistrate during investigation at instance of Investigation Officer — Magistrate, while recording statement under Section 164, not conducting any inquiry like a Trial Court — Witness, who gave statement under Section 164, after narrating facts as evidence before Trial Court, should also depose that he stated same facts earlier to Magistrate — Statement under Section 164 then can be marked and proved through him — In instant case, statements of PWs.3 & 4 though recorded under Section 164, both not stated in witness box that they gave statement before Magistrate under Section 164 — Statements not proved through them but only through Magistrate, who recorded same — If witness admits in evidence before Court that he gave a statement to Magistrate and statement under Section 164 is marked, same stands proved — To corroborate and prove that he gave statement earlier, same should be marked and proved through him — Under Section 157, Evidence Act, a former statement

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must be proved — In such a case Magistrate, who recorded statement under Section 164, need not be examined. (Paras 9 to 15)

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 164 — Statements of Witnesses recorded by Magistrate under — Marked through Magistrate and not through witnesses themselves — Effect of — Statements, if marked through witnesses, in case of any contradictions in statements *vis-à-vis* their evidence in Court, defence would have had opportunity to impeach credibility of witnesses as provided under Sections 155(3) & 145, Evidence Act — Statements marked through Magistrate cannot be used as corroborative piece of evidence to corroborate their substantive evidence in witness box. (Paras 9 & 23)

EVIDENCE ACT, 1872 (1 of 1872), Section 3 — "Substantive evidence" — "Substantial evidence" — Difference between — Statements of witnesses in Trial Court about facts they perceived by sense is "substantive evidence" — Whereas "substantial evidence" falls within province of appreciation of evidence. (Para 11)

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 164 — EVIDENCE ACT, 1872 (1 of 1872), Section 3 — Examination of Magistrate, who recorded statement and marking of statement — When necessary — Where witness denies having given a former statement before Magistrate or denies suggestion put by prosecutor that he did give a statement or denies his signature in statement, Magistrate should be examined and statement should be marked through him and proved — However, statement cannot be treated as substantive evidence. (Para 16)

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 164 — Statement under — A corroborative piece of evidence which can corroborate substantive piece of evidence in Court *i.e.* evidence of witness that he stated same facts earlier before Magistrate — A corroborative piece of evidence can corroborate only a substantive piece of evidence and not another corroborative piece of evidence — Statement of witness under Section 164 cannot corroborate Complaint given by him to Police that formed basis for registering FIR. (Para 17)

EVIDENCE ACT, 1872 (1 of 1874), Sections 155(3) & 145 — CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 164 — Credibility of evidence of a Witness — Can be impeached under Section 155(3) by proof of former statements which are inconsistent with any part of his evidence — Procedure to bring on record contradictions provided under Section 145. (Paras 18 & 19)

PRACTICE & PROCEDURE — Marking and proving of Section 164 Statement at commencement of examination of Witness — Not proper — Section 164-Statement not substantive evidence — Proving factum of having given a statement to Magistrate is different from proving facts

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contained in statement — *Criminal Procedure Code, 1973 (2 of 1974), Section 164.* (Para 20)

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 164 — EVIDENCE ACT, 1872 (1 of 1874), Sections 80 & 74(iii) — Statement under Section 164 — A public document within meaning of Section 74(iii) and protected by presumption under Section 80 — Presumption under Section 80, however, can be extended to statement/document and not to its contents. (Para 21)

EVIDENCE ACT, 1872 (1 of 1874), Section 9 — Test Identification Parade — Identification of Accused by witnesses in Parade — Not substantive evidence — Identification of Accused in Court — Substantive evidence of witnesses in Court that he had earlier participated in Test Identification Parade and identified same Accused, stands corroborated by evidence of Magistrate, who conducted Test Identification Parade and his Test Identification Parade Report — In instant case, PWs.3 & 4 not stated in evidence before Court that they took part in Test Identification Parade earlier, but identified Accused in Court — Evidence of Magistrate and his Report cannot be used to corroborate testimony of PWs.3 & 4 regarding identification of Accused. (Paras 24 & 25)

EVIDENCE ACT, 1872 (1 of 1872) Section 9 — Test Identification Parade — Accused arrested on 22.3.2008 — Test Identification Parade conducted on 10.4.2008 — Categorical evidence of PW4 that he and PW3 were shown Accused in Police Station much before Test Identification Parade and identified them — Therefore, Test Identification Parade, *held,* a farce — Identification of Accused by PWs.3 & 4 in dock cannot be acted upon. (Paras 26 & 27)

INDIAN PENAL CODE, 1860 (45 of 1860), Sections 302, 341, 394 r/w 34 — Conviction under — Sustainability — Case of prosecution that deceased, while returning from his sister's house, was wrongfully restrained by Accused, A1 attacked him with Cricket Stump on his head and both Accused took away his Motorcycle — PWs.3 & 4 allegedly witnessed incident and chased Accused in their Motorcycle to some distance and returned to place of occurrence — PWs.1 & 2 took deceased to nearby hospital — PW2 though first person to talk with deceased at place of occurrence, nothing as to what he told PW2 — Evidence of PW11/Doctor, who gave first aid, that deceased told her that he was attacked by a known person, as established by defence — Accident Register-Ex.P23 and evidence of Doctor/PW2 to effect that deceased sustained head injuries in road accident — No evidence as to how Investigation Officer came to know that PWs.3 & 4 were eyewitnesses — Accused were shown to PWs.3 &4 even prior to Test Identification Parade — Recovery of MO1/Cricket Stump and

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MO2/Motorcycle not properly established — No evidence to show as to who was owner of Motorcycle — Defence established ownership of Motorcycle — Owner of Motorcycle found to be one 'K' and not deceased — *Held,* prosecution failed to prove case beyond reasonable doubt — Conviction set aside. (Paras 3-8, 23, 27-33)

CASES REFERRED

Bashapaka Laxmiah *v.* State of Andhra Pradesh, *2001 Crl.LJ 4066* 22
State of Delhi *v.* Shri Ram, *AIR 1960 SC 490* 16
State of Madras *v.* G. Krishnan, *AIR 1961 Mad 92* 21

V. Gopinath, Senior Counsel for R. John Sathyan, Advocate for Appellants in Crl.A. No.393 of 2012; R. Sankarasubbu, Advocate for Appellants in Crl.A. No.396 of 2012.

V.M.R. Rajendran, Additional Public Prosecutor for Respondent.

Finding — Cr. Appeal allowed.

Prayer : These Criminal Appeals have been preferred against the Order of Conviction dated 28.3.2012 made in S.C. No.215 of 2008 on the file of the Additional District & Sessions Judge-*cum*-Fast Track Court No1, Salem.

JUDGMENT

P.N. Prakash, J.

1. The Accused 1 & 2, who were tried and convicted for the offence under Sections 341, 302, 394 r/w 34, IPC by the Additional District & Sessions Court-*cum*-Fast Track Court No.1, Salem in S.C. No.215/2008 on 28.3.2012, are the Appellants before us.

2. It is the case of the prosecution that on 20.3.2008 at around 4.00 p.m. when Dhanakodi (deceased) was returning from his sister Mallika's (PW1) house, he was wrongfully restrained by the Appellants and A1 attacked him with a Cricket Stump on his head and both the Appellants took away his Motorcycle TVS Max 100 and went away.

(a) According to the prosecution, this incident was witnessed by Sundaramurthy (PW3) and Thangam (PW4) and that they chased the Accused in their Motorcycle upto a certain distance. Thereafter, they both returned to the place of occurrence and when they made enquiries with the local people, they were told that the injured person was carried away to the hospital by his relatives. They went back to their house. Selvam (PW2), a passerby, found a crowd at the place of occurrence and when he made enquiries, he learnt that the injured person was one Dhanakodi. He volunteered to elicit information from Dhanakodi about his residence and contacted Dhanakodi's sister, Mallika (PW1), who came to the place of occurrence soon. Thereafter, Mallika (PW1) and Selvam (PW2) took Dhanakodi in an omnivan to Naveen Nursing Home where Dr. Nandini (PW11) gave first aid around 5.00 p.m. Dhanakodi was conscious at that time. When PW11 found that he had serious head injuries, she referred him to the Salem Government Hospital, for further

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treatment. Dhanakodi was taken by Mallika (PW1) and Selvam (PW2) to Sri Gokulam Hospital, Salem, where Dr. Sreedhar (PW14) admitted Dhanakodi and gave him treatment. The copy of the Accident Register of Sri Gokulam Hospital was marked as Ex.P23. Dhanakodi was found to be unconscious and it is stated in the Accident Report (Ex.P23) that, he was brought by Selvam (PW2). It is further stated in Ex.P23 that, "patient is alleged to have sustained head injuries due to RTA [Road Traffic Accident] while he was riding a two wheeler hit by another two wheeler opposite SISCOL, Nangavalli Road, Mecheri on 20.3.2008 at around 3.30 p.m." He was admitted in Sri Gokulam Hospital on 20.3.2008 at 6.40 p.m. Intimation was sent by Sri Gokulam Hospital to the jurisdictional Police on 21.3.2008 at around 11.15 a.m.

(b) Thereupon, Arjunan, Sub-Inspector of Police (PW13) went to Sri Gokulam Hospital at around 12.15 noon and recorded the statement of Mallika (PW1), which is the Complaint [Ex.P21] in this case. Ex.P21 contains the Motorcycle make number and colour. He obtained that Complaint and registered a case in Mecheri Police Station Cr. No.169/2008 for offence under Section 307, I.P.C. r/w 394, I.P.C. on 21.3.2008 at 2.30 p.m. The printed copy of the FIR is Ex.P22. From the endorsement made by the learned Magistrate, it is evident that the Complaint and the FIR reached the Magistrate at 6.45 p.m. on 21.3.2008. Investigation was taken over by Muniappan (PW16), Inspector of Police, who went to the place of occurrence and in the presence of witnesses Sundaramurthy and Sudhakar, he prepared the Observation Mahazar and Rough Sketch (Ex.P27). The Observation Mahazar was not marked in the Court. The Inspector of Police (PW16) further examined other witnesses and on 22.3.2008 at around 7.00 a.m. he apprehended both the Accused while he was doing vehicle check near the railway gate. According to the prosecution, the Appellants were coming by the TVS MAXI vehicle bearing Registration No.TN-34-B-9844. The Inspector of Police, (PW16) examined the Accused in the presence of one Selvaraj (PW5) and recorded his Confession Statement. Thereupon, he seized the Motorcycle (MO2) and a Coca Cola water bottle (MO17) under the cover of Mahazar (Ex.P2) in the presence of Selvaraj (PW5). Based on the Disclosure Statement of the Accused, the Inspector of Police, recovered the Cricket Stump (MO1) allegedly used by the Accused under the cover of Mahazar [Ex.P3] in the presence of Selvaraj (PW5). He despatched the seized properties to the jurisdictional Court and went about with the examination of other witnesses. On 23.3.2008, he received information from the Government Hospital, Salem that Dhanakoi had died around 12.00 noon. The death intimation was given by Dr. Balamurugan (PW12), who was working at the Government Hospital, Salem, on 23.3.2008. According to Dr. Balamurugan (PW12), Dhanakodi was referred to Government Hospital, Salem by Sri Gokulam Hospital and at the time of his admission, he found that Dhanakodi had died. Ex.P20 is

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the copy of the Accident Register, wherein it is noted that Dhanakodi was brought dead to the hospital at 12 noon on 23.3.2008.

(c) The Inspector of Police (PW16) sent a Report praying for altering the offence from 307, I.P.C. r/w 394, I.P.C. to 394, I.P.C. to the learned Judicial Magistrate-2, Mettur. The Inspector of Police (PW16) proceeded to the mortuary of the Government Hospital, Salem around 2.45 p.m. and examined witnesses and in their presence conducted the inquest. The Inquest Report is Ex.P30. He despatched the body through Rajendran, Head Constable (PW9) for conducting Post-mortem.

(d) The autopsy over the body of deceased Dhanakodi was performed by Dr. Panneer Selvam [PW15]. On noting several injuries on the head of the deceased, in his opinion, he stated thus:

"Opinion : Died of effects of Head Injuries sustained."

(e) The body was thereafter handed over to the relatives of the deceased by Rajendran, Head Constable (PW9). The Inspector of Police (PW19) made a request to the Chief Judicial Magistrate, Salem for appointing a Magistrate to record the 164(3), Cr.P.C. statements of witnesses Sundaramurthy (PW3), Sudhakar (not examined) and Thangam (PW4). Accordingly, their statements were recorded by the learned Judicial Magistrate, Omalur. On 4.4.2008, the Inspector of Police (PW16) made a request to the Chief Judicial Magistrate, to depute a Magistrate for conducting Test Identification Parade to enable the witnesses Sundaramurthy (PW3), Sudhakar and Thangam (PW4) to identify the Accused.

(f) Mr. V. Sampathkumar [PW7] learned Judicial Magistrate, Omalur conducted Test Identification Parade on 10.4.2008, in which Sundaramurthy (PW3), Sudhakar [not examined] and Thangam (PW4) participated and they seem to have identified the Appellants therein. The Test Identification Parade Report is Ex.P13. The Inspector of Police (PW16) requested the jurisdictional Magistrate to send the seized Material Objects for chemical analysis. He examined Dr. Nandini (PW11), Dr. Balamurugam (PW12), Dr. Sridhar [PW14] and Dr. Panneerselvam [PW15]. After completing investigation, he filed a Final Report on 30.4.2008 against the Accused for offences under Section 341, 393, 394, 398 & 302, I.P.C. r/w 34, I.P.C. The Final Report was taken on file as PRC No.12/2008 by the learned Judicial Magistrate-2, Mettur.

(g) On appearance of the Accused, copies were furnished to them under Section 207, Cr.P.C. and the case was committed to the Court of Sessions. The Sessions Court framed the following charges against the Appellants:

(1) Against A1 & A2 for an offence under Section 341, I.P.C. for having wrongfully restrained the deceased at 4.00 p.m. on 20.3.2008;

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(2) Against A1 for the offence under Section 394, I.P.C. for attacking Dhanakodi (deceased) and robbing him of his Motorcycle;

(3) Against A2 for an offence under Section 394 r/w 34, I.P.C.;

(4) Against A1 & A2 for the offence under Section 398 r/w 34, I.P.C.;

(5) Against A1 for offence under Section 302, I.P.C. for having caused injuries on the deceased Dhanakodi;

(6) Against A2 for an offence under Section 302, I.P.C. r/w 34 I.P.C.

(h) The Accused pleaded not guilty to the charges and the prosecution examined 16 Witnesses, marked 31 Exhibits and 3 Material Objects. When the Accused were questioned under Section 313, Cr.P.C. against the incriminating circumstances, they refuted the same. Three witnesses were examined on behalf of the Accused.

(i) After considering the case of the prosecution, the Trial Court convicted and sentenced the Accused as follows:

Accused	*Conviction*	*Sentence*
A1	341, I.P.C.	1 month's imprisonment
A1	394, I.P.C.	10 years' imprisonment and fine ₹1,000/- i/d one year's Rigorous Imprisonment
A2	394 r/w 34, I.P.C.	10 years' imprisonment and fine ₹1,000/- , i/d one year's Rigorous Imprisonment
A1 & A2	392 r/w 34, I.P.C.	10 years' imprisonment and fine ₹1,000/-, i/d one year's Rigorous Imprisonment
A1	302, I.P.C.	Life imprisonment and fine ₹1,000/-, i/d one year's Rigorous Imprisonment
A2	302 r/w 34, I.P.C.	Life imprisonment and fine ₹1,000/-, i/d one year's Rigorous Imprisonment

3. The entire prosecution case hinges on the testimony of the alleged eyewitnesses Sundaramurthy (PW3) and Thangam (PW4). Before discussing the evidence of these two witnesses, it may be appropriate to discuss certain other aspects in this case. From the evidence of Selvam (PW2) it can be seen that he saw a crowd at the place of occurrence and out of curiosity, when he went there, he saw that Dhanakodi was made to sit in the road margin. He also joined the crowd in questioning Dhanakodi. Admittedly, Dhanakodi was not known to PW2. PW2 instead of asking Dhanakodi about the manner in which he sustained the injuries, appears to have asked him about his relatives and friends and stated that he contacted the sister of Dhanakodi through the neighbour of hers in her village, which is far away. It is strange as to how it did not occur to Selvam (PW2) to ask Dhanakodi as to how he sustained these injuries for that could have been construed as a Dying Declaration.

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4. It is the case of Mallika (PW1) and Selvam (PW2) that they took Dhanakodi to the nearby Naveen Hospital for giving treatment. The fact that Dhanakodi was taken to Naveen Hospital at around 5 p.m. on 20.3.2008 has been established through the evidence of Dr. Nandini (PW11). Dr. Nandini (PW11) has given first aid to Dhanakodi and has referred him to Salem Government Hospital for further treatment and scan. In the cross examination of Dr. Nandini (PW11), initially she stated that Dhanakodi did not tell her as to how he sustained the injuries. According to Dr. Nandini (PW11), Dhanakodi was conscious. The Doctor, who treats a patient will first ask him as to how he sustained the injuries so as to get an idea as to what sort of treatment that can be given to him. This enquiry can be used only for that purpose, but strangely, that was also not asked to Dhanakodi by Dr. Nandini (PW11). In the course of cross-examination, she admitted that she told the Police that Dhanakodi told her that he was attacked by some known persons. This is a serious omission which amounts to a contradiction and is not hit by the bar contemplated by Section 162, Cr.P.C. The Inspector of Police (PW16) has also stated that Dr. Nandini (PW11) told him that Dhanakodi told her that he was assaulted by known persons. Mallika (PW1) and Selvam (PW2) did not take Dhanakodi to Government Hospital, Salem and instead took him to Sri Gokulam Hospital, Salem, where Dr. Sridhar (PW14) examined him and recorded in the Accident Register (Ex.P23) that,—

> "Pt. alleged to have H/o sustained Head Injury due to RTA, while he riding a two- wheeler hit by an another two-wheeler at opp. SISCOL, Nangavalli Road, Mecheri on 20.3.2008 at around 3.30 p.m.
>
> Patient initially treated at Naveen Nursing Home, Mecheri."

5. From the evidence of Dr. Sridar [PW14] and from the Accident Register [Ex.P23], it can be seen that Dhanakodi was not conscious when he came to Sri Gokulam Hospital. In Ex.P23, the Accident Register, it is stated that he was brought to Sri Gokulam Hospital by Selvam (PW2), which Selvam (PW2) also admits. In the Accident Register [Ex.P23], a different version is given, which we have already extracted above, namely that the injuries were sustained in a road accident. The authorities in the Sri Gokulam Hospital also did not inform the Police immediately, though he was admitted at 6.40 p.m. on 20.3.2008.

6. The intimation to the Police Station was sent only on 21.3.2008 at 11.45 p.m. On receiving the intimation, Arjunan, Sub-Inspector of Police, [PW13] proceeded to Sri Gokulam Hopsital and recorded the statement of Mallika (PW1), which is treated as Complaint and marked as Ex.P21. Only there for the first time it was disclosed that Dhanakodi told Mallika that two persons attacked him with a Cricket Stump and took away his Motorcycle. In the Complaint-Ex.P21, there is no reference to the age or any description of the alleged attackers/assailants. The Sub-Inspector of Police (PW13), who registered the case has stated in Column 7 of the printed FIR relating to

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details of suspects, *two persons of around 20 years age*. He was not able to give any satisfactory explanation when he was confronted about this in the cross-examination. He merely stated that though Mallika (PW1) has not stated anything about the age in the Complaint, yet he remembered that she told him of the age and that is why he has recorded the same in Column 7. This explanation does not convince us and appears strained.

7. In this background, we propose to analyse the evidence of Sundaramurthy (PW3) and Thangam (PW4). PW3 in his evidence has stated that Thangam (PW4) was working under him. He was returning from his field by his Motorcycle along with Thangam (PW4) and one Kumar [not examined] and at that time, he saw a dark person and a fair person attacking a motor cyclist with a Cricket Stump and snatching away his Motorcycle and fleeing. He has further stated that Thangam (PW4) and he gave them a chase upto a certain distance and thereafter, returned to the place of occurrence. They did not find the victim there and on enquiry with the local people they were told that the victim was taken to the hospital. Thangam (PW4) also in his examination-in-chief stated the same facts. What is surprising to us is, according to Selvam (PW2), the victim was sitting in the road margin with injuries and he sent word to his sister, who thereafter came to the place of occurrence from another village and only thereafter they had taken the victim to Naveen Hospital at 5.00 p.m. on that day. Therefore, the evidence of PWs.3 & 4 that on their return they did not find the victim there, appears to be improbable.

8. Yet another improbability is, when PWs.3 & 4 had taken so much of strain to chase the assailants upto a certain point of time, it is strange as to how they did not choose to inform the Police of this incident. There is no evidence from the Inspector of Police as to how he came to know that Sundaramurthy (PW3) and Thangam (PW4) were eyewitnesses. The FIR in the case itself is registered only on the next day after intimation from the Sri Gokulam Hospital. Sundaramurthy (PW3) and Thangam (PW4) admittedly did not know who the victim was and from which village he hails. According to the Inspector of Police, he went to the place of occurrence on 21.3.2008 and prepared an Observation Mahazar in the presence of witnesses Sundaramurthy and Sudhakar [not examined] and Rough Sketch (Ex.P27). The Observation Mahazar has not been filed in the Court. Sundaramurthy (PW3) did not speak anything about the fact that he was a witness to the Observation Mahazar on 21.3.2008. According to the Inspector of Police, he recorded the statement of Sundaramurthy (PW3) and Thangam (PW4) and Sudhakar [not examined] on 21.3.2008, but there is no evidence to show how the Police knew that Sundaramurthy (PW3) and Thangam (PW4) had witnessed the offence. Neither Sundaramurthy (PW3) nor Thangam (PW4) in their evidence stated that they had voluntarily gone and told the Police that they were eyewitnesses to the incident.

9. The statements of Sundaramurthy (PW3) and Thangam (PW4) were recorded by the learned Judicial Magistrate on 4.4.2008 under Section 164,

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Cr.P.C., 1973. Both of them did not state in the Witness Box that they gave a statement before the Magistrate earlier. Their statements recorded under Section 164, Cr.P.C. was not proved through them. They were later on marked as Ex.P6 and Ex.P8 only through the Magistrate [PW7]. This sort of practise in the Trial Courts deserves to be exhaustively dealt with by us.

10. A statement under Section 164, Cr.P.C is not substantive evidence. What is the meaning of the expression "Substantive Evidence" ? The Evidence Act does not define this. It is the creature of Judiciary and its meaning is traceable to the definition of the word Evidence in Section 3 of the Evidence Act.

> " "Evidence" means and includes —
>
> *(1)* All statements, which the Court permits or requires to be *made before it* by witnesses, in relation to matters of fact under inquiry;
>
> such statements are called oral evidence;
>
> *(2)* All documents including electronic records produced for the inspection of the Court;
>
> such documents are called documentary evidence."

11. Oral evidence means statements made by a witness in the witness stand on oath in the Court which conducts the inquiry or trial in connection with matters of fact. This is called Substantive evidence. It should not be confused with the expression Substantial evidence. Substantial evidence falls within the province of appreciation of evidence. Statements of witnesses in the Trial Court about facts they have perceived by senses is Substantive evidence.

12. A statement under Section 164, Cr.P.C., 1973 is recorded by a Magistrate during the investigation of a case under Chapter XII of the Code of Criminal Procedure. The Magistrate is not conducting an inquiry in relation to matters of fact like a Trial Court. He merely records the statement of the persons on a request made by the Investigating Officer.

13. The witness, who gave the statement under Section 164, Cr.P.C., should tell the facts known to him again as evidence before the Trial Court. After narrating the facts, he should depose that he had already stated the same thing earlier before the Magistrate. Then the Trial Court Prosecutor should show him the Section 164-Statement and prove it as an exhibit through him.

14. The narration of the events by the witness in the Trial Court is Substantive evidence. Then his further statement before the Trial Court that he told the same facts earlier to the Magistrate is also a Substantive piece of evidence. To corroborate and prove that he in fact gave a statement to the Magistrate, his Section 164-Statement should be shown and marked and

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proved through him. Why should it be shown and marked through him ? Because Section 157, Evidence Act states:

> "*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."

15. A statement recorded under Section 164, Cr.P.C.,1973 is a former statement given before an authority, namely a Magistrate, who is legally competent to record the statement by virtue of the power conferred upon him by Section 164, Cr.P.C., 1973 in order to aid the investigation conducted under Chapter XII of the Code. Section 157, Evidence Act says that the former statement must be proved. Therefore the witness, who gave the Section 164-Statement should be made to prove it while marking the statement through him. If the witness admits in his evidence before the Court that he gave a former statement to the Magistrate and the statement shown to him is that, then the Section 164-Statement stands proved. In that case the Magistrate, who recorded the Section 164-Statement need not be examined.

16. If the witness completely denies that he gave a former statement before the Magistrate, then the Prosecutor should dispute it and suggestions should be put to him that he did give a statement and his signature in the statement should be marked. If he denies the signature also, then that also should be disputed and suggestions that the signature found in the Section 164-Statement is that of his should be put to him. Thereafter the Magistrate should be examined and the Section 164-Statement should be marked and proved. The Investigating Officer should also say that on his request the Magistrate recorded the statement of that witness on such and such date. Only this will complete the circle in a case where the witness denies everything. Even if this process is completed and the Section 164-Statement is proved, then also the Section 164-Statement cannot be treated as substantive evidence and the Accused be convicted based on it. The Court can only give a finding that the witness, who gave the Section 164-Statement is a liar and take action against him for giving false evidence. In ***State of Delhi v. Shri Ram,*** AIR 1960 SC 490, it has been held:

> "Statements recorded under Section 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness. An admission by a witness that a statement of his was recorded under Section 164 of the Code and that what he had stated there was true would not make the entire statement admissible; much less could any part of it be used as substantive evidence in the case.
>
> A Judge commits an error of law in using the statement of a witness under Section 164, as a substantive evidence in coming to the conclusion that he had been won over."

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17. A statement under Section 164, is a corroborative piece of evidence. It corroborates the substantive piece of evidence in the Court, namely the evidence of the witness that he told the same facts earlier to a Magistrate. A corroborative piece of evidence can only corroborate a substantive piece of evidence and not another corroborative piece of evidence. In other words the 164, statement of 'A' cannot corroborate the complaint given by 'A' to the Police that formed the basis for registering the FIR.

18. The credit of a witness can be impeached under Section 155(3) of the Evidence Act by proof of former statements which are inconsistent with any part of his evidence. The procedure to bring on record the contradictions is provided by Section 145 of the Evidence Act:

> "*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."

19. For example, if the witness has stated in the Complaint and Section 164-Statement that 'A' gave the lethal blow on the head but in the Witness Box, if he says that 'B' gave the lethal blow on the head, then there is contradiction between the Complaint and Section 164-Statement on one hand and the substantive evidence in the witness stand on the other hand. Many a time defence counsel remain silent in the fond hope that they can highlight the contradiction by simply reading to the Judge and comparing the former statements (Complaint and Section 164-Statement) and the deposition of the witness. This is impermissible. The corroborative evidence namely the former statement should be put to him and his attention should be drawn to the contradiction between what he stated in the former statement and the substantive evidence. In the above example he should be asked, you have stated in the Court that 'B' inflicted the lethal blow, but in your Complaint and Section 164-Statement you have stated 'A' has inflicted the lethal blow, is it not ? Defence counsel will get scared to ask this question because of fear that he may explain away. For that sake mandates of Section 145, Evidence Act cannot be jettisoned. If it wants to contradict the witness with a former statement there is no escape route other than Section 145 of the Evidence Act. Only contradictions between two substantive evidences can be read out to the judge. For example, in a case, if PW1 says in his evidence that 'A' gave the lethal blow and PW2 says that 'B' gave the lethal blow, then there are two contradictory substantive pieces of evidences. Then the defence Counsel can read PW1 and PW2's evidence and show the contradictions.

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20. In some Courts, the Prosecution, at the commencement of the examination itself would show the Section 164-Statement to the witness and ask him:

"Is this your statement" ?; Answer : "Yes";

Then mark it through him without anything more and argue that the prosecution has proved the facts stated in the Section 164-Statement. This procedure is incorrect because Section 164, statement is not substantive evidence. Proving the factum of having given a statement to the Magistrate is different from proving the facts contained in the statement.

21. Why do Police have the statement of a witness recorded under Section 164 ? A Full Bench of this Court in ***State of Madras v. G. Krishnan,*** AIR 1961 Mad 92, has succinctly answered this question in the following words:

> "*18.* .....The object of recording a statement under Section 164, Crl.P.C. are: (1) to use them as confession in case the person making them is ultimately charged with an offence, and (2) to deter a witness from changing his version later by sucumbing to temptations, influences, or blandishments."

In the same Judgment the Full Bench has held that a Section 164-Statement is a Public Document within the meaning of Section 74(iii) of the Evidence Act. Section 80 of the Evidence Act raises a presumption that a Statement or Confession by any prisoner or Accused person, taken in accordance with law and purporting to be signed by any Judge or Magistrate is genuine. A confession duly recorded by a Magistrate in accordance with Section 164, Cr.P.C. will come under the protective umbrella of the presumption under Section 80 of the Evidence Act. We see no reason as to why the protection of Section 80, Evidence Act be denied to a statement of a witness recorded under Section 164, Cr.P.C. The presumption under Section 80, Evidence Act can by no stretch of imagination extend to the statement of facts contained in the Section 164-Statement. Presumption under Section 80, is only for the genuineness of the document and not to its contents.

22. Judicial time of Magistrates can be saved substantially if the practise of examining them in the Trial Court to prove the recording of Section 164-Statement is given up. We hold that Trial Courts should summon the Magistrate, who recorded the Section 164-Statement only when the witness denies or disowns the statement. The Andhra Pradesh High Court in ***Bashapaka Laxmiah and another v. State of Andhra Pradesh,*** 2001 Crl. LJ 4066, has lamented thus:

> "*18.* Repeatedly, we have issued instructions that statement under Section 164, Cr.P.C. is not a substantive piece of evidence. It is not necessary to call the Magistrate to give evidence to prove Section 164-Statement. Statements under Section 164, Cr.P.C. are available to the defence for contradiction by obtaining the certified copies. The Section 164, statement recorded by the Magistrate is a public document. Such practice, hereinafter, be stopped."

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Of course, we do not agree with the observation in the Judgment that the defence can obtain certified copies of it because under Section 207(iv) Cr.P.C., 1973, Court is bound to supply the Section 164-Statements to the Accused.

23. Now coming to the case on hand, Sundaramurthy (PW3) and Thangam (PW4) did not state in their evidence that they appeared before a Magistrate and gave a statement. If the prosecution had marked the Section 164-Statements through PW3 and PW4, then if there are contradictions in the statements *vis-a-vis* their evidence in Court, the defence would have had the opportunity to impeach the credibility of PW3 and PW4 as provided under Section 155(3) and Section 145 of the Evidence Act. Therefore, we hold that the two Section 164-Statements, Ex.P6 and Ex.P8 of PW3 and PW4 respectively cannot be used as a corroborative piece of evidence to corroborate their substantive evidence in the Witness Box.

24. Now coming to the Test Identification Parade Report [Ex.P13] done by the Magistrate [PW7], we have to state the following. Identification of the Accused by PW3 and PW4 in the parade is not substantive evidence. They identified the Appellants in their substantive evidence in Court. The prosecution failed to elicit answers from them with regard to their participation in the Test Identification Parade. A witness should say in the Witness Box that he identified the Accused in the Identification Parade conducted by a Magistrate earlier. Thereafter, if the Identification Parade proceedings and the Identification Parade Report is proved by examining the Magistrate, who conducted the parade, then the substantive evidence of the witness in the Court that he had earlier participated in an Identification Parade and identified the same Accused will stand corroborated by the evidence of the Magistrate and his Identification Parade Report. When a Magistrate gives evidence with regard to the Test Identification Parade conducted by him, he will only give the name of the witness, who participated in the parade. He cannot say that the witness, who participated in the parade is prosecution witness so and so before the Trial Court.

25. In this case Sundaramurthy (PW3) and Thangam (PW4) did not even state in their evidence before the Trial Court that they took part in an Identification Parade earlier. But they identified the accused in the dock as the persons, who attacked the deceased. Hence, we hold that the evidence of the Magistrate [PW7] and his Report [Ex.P13] cannot be used to corroborate the testimony of PW3 and PW4 on the aspect of identification of the Accused.

26. The alleged arrest of the Appellant was on 22.3.2008 and the requisition for Identification Parade was given on 31.3.2008 and the Test Identification Parade was conducted only on 10.4.2008.

27. To cap it all, Thangam (PW4) in the course of his cross-examination categorically admitted that Sundaramurthy (PW3) and he saw the accused in

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the Police Station and identified them. This means that the Police had shown the Appellants much before Test Identification Parade and hence, we hold that the Identification Parade was a farce. We are aware of the legal proposition that identification parade is not *sine-qua-non* in every case and that Courts can act on the identification of the Accused in the trial even if it is for the first time. On account of the categorical evidence of PW4 that, Sundaramurthy (PW3) and he were shown the Accused in the Police Station, we are unable to persuade ourselves to act on the identification of the accused by these witnesses in the dock.

28. Now coming to the recovery of Cricket Stump (MO1), Thangam (PW4) in the cross-examination has stated that the Accused dropped the Stump (MO1) at the place of occurrence. According to the Inspector of Police (PW16), the Stump was recovered from a ditch underneath a bridge as could be seen from the Recovery Mahazar (Ex.P3). The Recovery Witness-Selvaraj (PW5) in his evidence stated that the Stump was recovered from a bush near the place of incident. Whom should we believe ?

29. As regards the recovery of Motorcycle (MO2), the defence contended that the prosecution has not produced even a shred of evidence to show as to, who is the owner of the Motorcycle. It is the consistent case of the defence as could be seen from the suggestions put to various witnesses including the Investigating Officer, that the Motorcycle (MO2) was recovered by the police in a theft case and the same was planted in this case. In order to establish this aspect, the 2nd Appellant before us filed an Application under Section 391, Cr.P.C., 1973, M.P. No.2/2013 for adducing additional evidence with regard to the ownership of the Motorcycle. They appear to have obtained information under the R.T.I. Act from the concerned RTO Office that the said Motorcycle (MO2) stands in the name of one Kadirvelu and was under hypothecation with a financier. When Notice in this Application was ordered on the Respondent-Police, the present Inspector of Police filed a Counter enclosing a copy of the Registration Certificate duly authenticated by the R.T.O., Thiruchengode.

30. It shows that the TVS Motorcycle, Registration No.TN-34-B-9844 was registered on 8.2.2004 in the name of one K. Kathirvel, S/o Karuppana Mudaliar and the registration is valid upto 17.2.2019. The vehicle brand, Registration Number, Engine Number and Chasis Number in the R.C. Book tallies with the description in the Recovery Mahazar (Ex.P2). The certified copy of the R.C. Book submitted by the Police is admissible under Section 76 of the Evidence Act as it has been issued by the R.T.O., Thiruchengode under his hand and seal. The proof of it is by production in this Court of the certified copy under Section 77 of the Evidence Act. Since the genuineness of this has been accepted by the learned Counsel for the Appellants and State we take this on record and mark it as Ex.P32. We have passed separate Orders in M.P. No.2 of 2013 filed by the 2nd Appellant under Section 391, Cr.P.C., 1973 for admitting this document in evidence.

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31. The contentions of the defence that the deceased was not the owner of the Motorcycle (MO2) TN-34-B-9844 assumes significance in the light of Ex.P32 now marked. It is relevant to state here that even before we passed any Order in M.P. No.2/2013 under Section 391, Cr.P.C., Mr. R. Suresh Kumar, the present Inspector of Police, Mecheri Police Station has obtained this certified copy from the R.T.O. and has filed it with his Counter Affidavit. We record our appreciation for the efforts of Mr. R. Suresh Kumar for acting fairly in the cause of fostering justice. Under Section 2(30) of the Motor Vehicles Act, "owner" means a person in whose name a motor vehicle stands registered.

32. In the light of this statutory position, the owner of the vehicle (MO2) is one Kathirvelu and not the deceased Dhanakodi. The Investigating Officer (PW16) failed to conduct even the minimum enquiry to ascertain the ownership of the Motorcyle (MO2). Mallika (PW1) the sister of the deceased, Sundaramurthy (PW3) and Thangam (PW4) were not even shown the Motorcycle (MO2). The Motorcycle was marked through the recovery witness Selvaraj (PW5). The eyewitnesses namely PW3 and PW4, who identified the Cricket Stump (MO1) were not shown the Motorcycle (MO2) while they were examined as witnesses.

33. To sum up, we are recapitulating the reasons for acquitting the Accused:

(1) The prosecution has not proved as to what the deceased told PW2, who was the first person to talk to him;

(2) The prosecution had not proved what the deceased told Dr. Nandini (PW11). Whereas the defence has established that PW11 told the Police that the deceased told her that she was attacked by known person;

(3) The evidence of Dr. Sridhar of Sri Gokulam Hospital and the Accident Register Copy [Ex.P23] shows that the deceased is alleged to have sustained head injuries in a Road Accident. Selvam (PW2) was present with the deceased at that time;

(4) The evidence of Sundaramurthy (PW3) and Thangam (PW4) , the alleged eyewitnesses, does not inspire our confidence for the reasons set out in the body of this Judgment;

(5) The recovery of the Cricket Stump (MO1) has not been satisfactorily proved;

(6) No investigation was done so as to find out the ownership of the Motorcyle (MO2) ;

(7) Defence, through Ex.P32, has established that the Motorcycle is in the name of Kathirvelu.

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For the aforesaid reasons, we find that the prosecution has not proved the case beyond reasonable doubt and the Appeals stand allowed. The conviction and sentence imposed on the Accused 1 & 2 by the Additional District & Sessions Court-*cum*-Fast Track Court No.1, Salem in S.C. No.215/2008 on 28.3.2012 are hereby set aside. The Appellants are acquitted of all the charges levelled against them and they are directed to be set at liberty forthwith unless their presence is required in connection with any other case.

2014 (2) MWN (Cr.) 306 (SC)

IN THE SUPREME COURT OF INDIA

T.S. Thakur & C. Nagappan, JJ.

Crl.A. No.1985 of 2010 with Crl.A. No.1990 of 2010, Crl.A. No.1991 of 2010, Crl.A. No.1992 of 2010 & Crl.A. No.342 of 2011

26.2.2014

Nanak Ram *.....Appellant*

Vs.

State of Rajasthan *.....Respondent*

Appeal against Conviction

Sustainability of conviction under Section 304 Part II r/w 149.

INDIAN PENAL CODE, 1860 (45 of 1860), Section 304 Part I r/w 149 — Conviction under Section 304 Part II r/w 149 — Sustainability — Land dispute — Sudden quarrel — In heat of passion upon sudden quarrel, Accused causing injuries on deceased — Out of 9 injuries, one injury found to be grievous in nature and sufficient in ordinary course of nature to cause death — Acts done with intention of causing such bodily injury as is likely to cause death — Exception 4 to Section 300 attracted and offence would squarely come within Section 304 Part I — Setting aside conviction under Section 304 Part II r/w 149, Appellants convicted under Section 304 Part I r/w 149 — *Sentence :* Modified from 5 years' Rigorous Imprisonment to 7 years' Rigorous Imprisonment. (Paras 16 to 20)

CASES REFERRED

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2J

(BEFORE SUDHANSHU DHULIA AND PRASANNA B. VARALE, JJ.)

EDAKKANDI DINESHAN ALIAS P. DINESHAN AND OTHERS .. Appellants;

Versus

STATE OF KERALA .. Respondent.

Criminal Appeal No. 118 of 2013†, decided on January 6, 2025

A. **Evidence Act, 1872 — Ss. 155 and 145 — Eyewitnesses — Contradictions in testimony — When material — Law clarified**

— Though S. 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement, all inconsistent statements, held, not sufficient to impeach the credit of the witness — Held, only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness — Further, statement given before police during investigation under S. 161 CrPC, held, "previous statements" under S. 145 of the Evidence Act and therefore can be used to cross-examine a witness — But this held only for a limited purpose, to "contradict" such a witness — Thus, even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness

— Further held, to contradict a witness would mean to "discredit" a witness — Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it held would have little relevance — A mere variation in the two statements, held, would not be enough to discredit a witness — Though there found a variance in the statements of the witnesses, it found minor and not of such a nature which would drive their testimony untrustworthy — Further, the deposition of the witnesses found to be honest, truthful, and trustworthy — Further, principle of "*falsus in uno, falsus in omnibus*", held, not applicable to the Indian criminal jurisprudence — Further, it held the duty of the Court to separate the grain from the chaff — Further, in case of number of accused, the Courts, held, also empowered to differentiate the acquitted accused from the convicted accused — Resultantly, some immaterial contradictions, declined to be made ground for discarding entire prosecution story

— Penal Code, 1860 — Ss. 302/149 — Criminal Procedure Code, 1973, S. 161 (Paras 15 to 17 and 31)

Rammi v. *State of M.P.*, (1999) 8 SCC 649 : 2000 SCC (Cri) 26; *Birbal Nath* v. *State of Rajasthan*, (2024) 15 SCC 190 : 2023 SCC OnLine SC 1396; *Tahsildar Singh* v. *State of U.P.*, 1959 SCC OnLine SC 17, *followed*

† Arising from the Final Judgment and Order in *Edakkandi Dineshan* v. *State of Kerala*, 2011 SCC OnLine Ker 4368 (Kerala High Court, Criminal Appeal No. 1040 of 2006, dt. 12-4-2011) **[Affirmed]**

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B. **Penal Code, 1860 — Ss. 302/149 — Appreciation of evidence — Contradiction — Applicability of noscitur a sociis principle**

— In his examination-in-chief, PW 1, mentioned that deceased *S* was not seen — In his cross-examination, PW 1 stated that he told the police at the picket post that *S* was missing — This found apparently in contradiction to the stand of the defence that death of *S* was mentioned in the FIR at 3 a.m. itself while his body found only at 7.30 a.m. in the morning — Statement of PW 1 to the police mentioning that *S* is "missing", held, cannot be seen in the abstract — "*Noscitur a sociis*", a well-recognised principle used for interpretation of statutes, held, means that the meaning of a word can be determined by the context of the sentence and it is to be judged by the company it keeps — This principle, held, applicable to the facts of the case (Para 18)

C. **Penal Code, 1860 — Ss. 302/149 — Appreciation of evidence — Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness — Held, may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons, etc. — Further, principle called as "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything), held, foreign to Indian criminal law jurisprudence (Paras 21 and 22)**

Ram Vijay Singh v. *State of U.P.*, (2021) 15 SCC 241; *Ilangovan* v. *State of T.N.*, (2020) 10 SCC 533 : (2021) 1 SCC (Cri) 137; *Nisar Ali* v. *State of U.P.*, 1957 SCC OnLine SC 42, *followed*

D. **Penal Code, 1860 — Ss. 302/149 — Recovery of one of two dead bodies from a different place — When did not create doubt regarding the prosecution case**

— As per ocular evidence, mob of 11 persons including two deceased being apprehensive of their life rushed towards the river — Ocular evidence further indicated that the members of said group took shelter near a shed in bushy area — In this process, it held quite natural that all the members may not find a suitable place for hiding at a particular spot or one spot — This being the situation, it held also natural and possible that deceased *S* might have rushed to another spot to hide and save himself and, resultantly, his body found away from the dead body of another victim — Violent mob of accused persons led a deadly attack on the members of the mob, resulting in double murder — Therefore, mere recovery of dead body of *S* from a place little away from the place of body of other victim, declined to be made sole and decisive factor to discard the entire case of prosecution — Evidence Act, 1872, S. 27 (Paras 23 and 24)

E. **Penal Code, 1860 — Ss. 302/149 — Investigation — Faulty investigation or false implication — Duty of Court and effect when eyewitnesses in specifically naming the appellants remained consistent throughout the trial**

— Admittedly, incident resulting in two deaths occurred on account of existing rivalry between the two groups — Therefore, the possibility of exaggeration, held, cannot be ruled out — When the fact that certain accused was not at all present during the crime and that he was present in the hospital

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came to light of the prosecution, they moved a report and sought deletion of his name — Further, as per cumulative reading of the entire evidence, the investigation found to have not taken place in a proper and disciplined manner — There found various areas where a proper investigation could have strengthened its case

— However, lapse on the part of the investigating officer, held, should not be taken in favour of the accused, because such lapse, held, may be committed designedly or because of negligence — Hence, in such situation, the prosecution evidence, held, required to be examined dehors such omissions to find out whether the said evidence is reliable or not — Further, accused, held, not entitled to claim acquittal on the ground of faulty investigation done by the prosecuting agency — Version of eyewitnesses in specifically naming the appellants remained consistent throughout the trial — This held enough corroboration to drive home the guilt of the accused persons — Criminal Procedure Code, 1973, S. 157 (Paras 25 to 27)

Paras Yadav v. *State of Bihar*, (1999) 2 SCC 126 : 1999 SCC (Cri) 104; *Ram Bihari Yadav* v. *State of Bihar*, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085, *followed*

F. **Penal Code, 1860 — Ss. 302/149 — Interested eyewitnesses — Effect of interestedness and duty of court**

— Held, evidence of an interested witness does not suffer from any infirmity — However, the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with little care — Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth such evidence could be relied upon even without corroboration

— There found no inconsistency in the statements of the eyewitnesses to raise a reasonable suspicion about their evidence being concocted and untruthful — They found present at the spot where the incident took place and they delivered a version which found palpable one — Further, their versions about seeing and hearing the appellants inflicting injuries on the bodies of the deceased found in harmony with each other — Resultantly, on appreciation of the evidence, conviction of the appellants, affirmed (Paras 28, 29 and 32)

Raju v. *State of T.N.*, (2012) 12 SCC 701 : (2012) 4 SCC (Cri) 184; *Dalip Singh* v. *State of Punjab*, (1953) 2 SCC 36; *Sarwan Singh* v. *State of Punjab*, (1976) 4 SCC 369 : 1976 SCC (Cri) 646, *followed*

Edakkandi Dineshan v. *State of Kerala*, 2011 SCC OnLine Ker 4368, *affirmed*

G. **Arms and Explosives — Explosive Substances Act, 1908 — S. 5 — Liability of accused — Determination — Accused allegedly threw a bomb on the witnesses — Held, mere act of throwing the bomb by the accused would give rise to reasonable suspicion that he did not have the bomb in his control for a lawful object — Resultantly, conviction of accused under S. 5, held, rightly confirmed by the High Court (Para 30)**

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H. **Penal Code, 1860 — Ss. 302/149 — Appreciation of evidence — Omission in FIR — When does not amount to material omission or contradiction**

— Incident resulted in two deaths — In the FIR, PW 1 stated that one of the deceased *S* was taken in a jeep to the hospital — However, the defence submitted that there was no explicit mention of "police jeep" when the statement before the police was recorded — Appellants also pointed out absence of mahazar suggesting the particulars of the jeep or examination of the jeep for bloodstains — Further, there also found no other evidence to show that body was carried in a police jeep — Hence, the theory of police jeep claimed to be introduced by the police

— Held, it is a natural human conduct that to save the life of someone, the entire focus of the person in such a situation would be to take the injured to the hospital rather than wasting time on giving minute details — It held a prudent conduct on the part of PW 1 — Resultantly, the omission to state "police" jeep, held, does not constitute a material omission or contradiction — Criminal Procedure Code, 1973, S. 154 (Para 19)

SK-D/72115/CR

Advocates who appeared in this case :
C.K. Sasi (Advocate-on-Record) and Ms Meena K. Poulose, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2024) 15 SCC 190 : 2023 SCC OnLine SC 1396, *Birbal Nath* v. *State of Rajasthan* 280*a-b*
2. (2021) 15 SCC 241, *Ram Vijay Singh* v. *State of U.P.* 281*e*
3. (2020) 10 SCC 533 : (2021) 1 SCC (Cri) 137, *Ilangovan* v. *State of T.N.* 281*f-g*
4. (2012) 12 SCC 701 : (2012) 4 SCC (Cri) 184, *Raju* v. *State of T.N.* 284*b*
5. 2011 SCC OnLine Ker 4368, *Edakkandi Dineshan* v. *State of Kerala* 276*g*, 277*g*, 277*g-h*, 278*g-h*, 285*b*
6. (1999) 8 SCC 649 : 2000 SCC (Cri) 26, *Rammi* v. *State of M.P.* 279*f-g*, 280*a-b*, 280*d-e*
7. (1999) 2 SCC 126 : 1999 SCC (Cri) 104, *Paras Yadav* v. *State of Bihar* 283*b*
8. (1998) 4 SCC 517 : 1998 SCC (Cri) 1085, *Ram Bihari Yadav* v. *State of Bihar* 283*c-d*
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11. 1957 SCC OnLine SC 42, *Nisar Ali* v. *State of U.P.* 282*a*
12. (1953) 2 SCC 36, *Dalip Singh* v. *State of Punjab* 284*c*

The Judgment of the Court was delivered by

PRASANNA B. VARALE, J.— The present criminal appeal arises out of the judgment and order dated 12-4-2011 passed by the High Court of Kerala at Ernakulam, in *Edakkandi Dineshan* v. *State of Kerala*[1]. By the impugned judgment and order[1], the appellant-accused, A-4 to A-10 and A-13 to A-15 have been acquitted under Section 302 read with Section 149 of the Penal Code, 1860 (hereinafter "IPC") while conviction and sentence against A-1 to A-3 and A-11 and A-12 was confirmed. Additionally, A-3 was convicted and sentenced under Section 5 of the Explosive Substances Act, 1908.

1 2011 SCC OnLine Ker 4368

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Facts

2. For the sake of brevity and for maintaining continuity the accused persons are referred as per their sequence in the trial.

3. The factual matrix of the case are that on 1-3-2002, Rashtriya Swayam Sevak Sangh/Vishva Hindu Parishad (in short "RSS/VHP") had called for a hartal. The hartal led to clashes between members of the Communist Party of India (M) [in short "CPI (M)"] and RSS. A group of 11 persons, afraid of the mob led by CPI (M), hid and stayed near a shed situated near Meloor River. At midnight, they saw 11 persons coming from the eastern side and 5 persons coming from the northern side carrying deadly weapons like axe, dagger and chopper. All the 11 but for the 2 deceased persons were alerted and rushed towards the river to save themselves. The two deceased, namely, Sunil and Sujeesh, were asleep and thus, the mob inflicted fatal injuries on them. The body of Sujeesh was taken to a hospital in Thalassery where he was pronounced dead and based on the statement of PW 1, FIR No. 53/2002 dated 2-3-2002 was registered under Sections 43, 147, 148, 341, 506 Part II, 307, 302 read with Section 149 IPC and Sections 3, 5 of the Explosive Substances Act, 1908 at PS Dharmadam, on receipt of the report investigating agency was set in motion. PW 19 conducted the investigation and on 2-3-2002 body of the 2nd deceased person Sunil was found at a marshy land near the spot of occurrence in the morning. The inquest of both the dead bodies was conducted and inquest reports were prepared. Subsequently, post-mortem was done on the same day. A-1, A-9 and A-11 were arrested on 6-3-2002. Pursuant to the disclosure statement of A-11 made under Section 27 of the Evidence Act, 1872 (hereinafter "the IEA"), recovery of the axe used in the murder was made from the bushes near the spot of occurrence. A-2, A-4, A-10 and A-15 were arrested on 10-3-2002 and, based on the disclosure statement of A-12, a chopper was recovered. A-3, A-5 to A-8 and A-12 were arrested on 16-3-2002. It is pertinent to note here that though one Ashraf was named in the FIR as A-13, subsequently on 10-3-2002 a report for deletion of his name was moved by PW 19 before the learned Magistrate stating that Ashraf was undergoing treatment at Mangalore on the date of incident. On completion of investigation, charge-sheet was filed against all the accused persons (A-1 to A-15). The trial court vide its judgment dated 24-4-2006 found all accused persons guilty under Sections 143, 147, 506 Part II, and 302 read with Section 149 IPC. A-2, 3, 11, 12 were also found guilty under Section 148 IPC and under Section 5 of the Explosive Substances Act and A-15 was completely acquitted of all charges.

4. On appreciation of evidence on record, the High Court in its elaborate judgment dated 12-4-2011[1] convicted A-1 to A-3 and A-11 and 12 while acquitting A-4 to 10, A-13 and A-14 and confirmed the acquittal of A-15.

5. Aggrieved by the said judgment[1] of the High Court, A-1 to A-3 and A-11 and 12 are before us. For the sake of convenience, we will refer to the parties by their respective nomenclature before the trial court.

1 *Edakkandi Dineshan* v. *State of Kerala*, 2011 SCC OnLine Ker 4368

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6. It may be useful for our purposes to note that since A-1 had died, proceedings against him stood abated.

Contentions

7. The learned counsel for the appellants vehemently submitted that FIR is ante-timed, the prosecution story is not palpable. According to the prosecution, the FIR was registered on 3 a.m. on 2-3-2002 which was communicated to the police station at 3.45 a.m. The Magistrate has only noted the date of FIR as 2-3-2002 and did not note the time. The prosecution has failed to examine the handwriting of the person who had noted the time of the FIR as 3.45 p.m. Moreover, the FIR records the death of Sunil at 3 a.m. whereas the knowledge of death of Sunil was only at 7.30 a.m. It was vehemently argued that there are major interpolations in the FIR which needs consideration like insertion of names of A-14 and A-15 and correction of date. It was submitted that the prosecution has tried to implicate innocent persons and the same can be seen from testimonies of eyewitnesses PW 1, PW 2 and PW 4 who gave their statements about Ashraf being present on the spot of the alleged incident. Further, it was argued that there is violation of statutory provision of Section 154 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") as the FIR came to be lodged belatedly.

8. It was stressed upon by the learned counsel for the appellant that Sunil was murdered elsewhere, and the body was brought to the scene of occurrence to implicate the appellants. The FIR mentioned death of Sunil but his body was recovered only at 7.30 a.m. 6 m away from the spot towards the landside near the mangroves implying chances that the body was brought to the scene of occurrence to implicate the appellants. It is further submitted that the recovery made under Section 27 IEA is not credible. It was contended that a prudent man would mention a police jeep as a "police jeep" itself. There was no mahazar suggesting examination of jeep for bloodstains. It was submitted that the doctor who had examined Sujeesh had not recorded the names of persons who brought the dead body to him. As per the appellants, the body of Sunil was found not even close to the river and as such there cannot be any high tide. The eyewitnesses could not have seen the incident as alleged because of the obstacles such as heap of coconut husk, mangrove and shed. It was vehemently argued that inquest report was not made properly and the eyewitnesses were giving parrot like statements only to implicate the accused persons due to political enmity. It was submitted that it is an improbable human conduct for the eyewitnesses to keep standing when a bomb is being thrown at them rather than fleeing from the spot and that recovery of bomb was not made in a proper manner.

9. On the other hand, the learned counsel for the State of Kerala argued that the judgment[1] passed by the High Court is a very well-reasoned judgment. The High Court has rightly convicted the accused persons on appreciation of evidence and the appeal of the appellants needs to be set aside.

1 *Edakkandi Dineshan* v. *State of Kerala*, 2011 SCC OnLine Ker 4368

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Analysis

10. Crime creates a sense of societal fear and it affects adversely the societal conscience. It is inequitable and unjust if such a situation is allowed to perpetuate and continue in the society. In every civilised society, the purpose of criminal administrative system is to protect individual dignity and to restore societal stability and order and to create faith and cohesion in the society. The courts in the discharge of their duties are tasked with balancing of interests of the accused on one hand and the State/society on the other.

11. Having said this, let us consider the evidence on record to see as to whether the High Court has appreciated the evidence in a proper manner to partly allow the appeal.

12. Admittedly, there was a long-standing political rivalry between RSS and CPI. As has been stated by PW 1, he and 11 others were earlier a part of CPI and they had defected and joined RSS and hence there were estranged relations between the two groups. Admittedly, a call of hartal was given by one organisation and the same was opposed by another political party, leading to a clash between the followers of these two parties. The version of witnesses discloses that the group of 11 members rushed to a shed near River Meloor to save their lives from the violent mob. This group of 11 members were hiding themselves near the river and in the night the accused persons led a deadly attack on them and ultimately, two persons lost their lives as a result of this incident.

13. In the post-mortem report issued by PW 7, it was opined that the death of Sunil was due to injuries caused to vital organs like liver, lung, heart and shock resulting from loss of blood. Similarly, the post-mortem report pertaining to Sujeesh submitted by PW 8 concluded that the death of Sujeesh was due to injuries to vital organs like liver, lung, spleen, haemorrhage, and shock. A cumulative reading of both the reports sufficiently establishes that death of both the victims was homicidal.

14. It was urged by the counsel for the appellants that there are material contradictions in the testimonies given by the prosecution witnesses, particularly the eyewitnesses. In this context, the question arises, whether these contradictions are material enough for the benefit of doubt to be given to the appellants so as to set aside their conviction.

15. The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of *Rammi* v. *State of M.P.*[2] It was held that: (SCC pp. 656-57, paras 25-26)

> "*25*. It is common practice in the trial court to make out contradictions from the previous statements. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of

2 (1999) 8 SCC 649 : 2000 SCC (Cri) 26

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the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. …

26. … Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness." a

16. The abovementioned settled position of law in *Rammi*[2] was again reiterated by this Court in the judgment of *Birbal Nath* v. *State of Rajasthan*[3] wherein it was held as under: (*Birbal Nath case*[3], SCC paras 21 & 26)

"*21*. No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross-examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned Judges of the High Court have gone wrong. b c

* * *

26. In the landmark case of *Tahsildar Singh* v. *State of U.P.*[4] this Court has held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgment, including *Rammi*[2]." d

17. Bearing in mind the abovementioned settled position of law, this Court is of the considered opinion that though there is a variance in the statements of the witnesses, it is minor and not of such a nature which would drive their testimony untrustworthy. This Court finds the deposition of witnesses PWs 1, 2 and 4 to be honest, truthful, and trustworthy. Hence, the observations made by the High Court in this regard are well reasoned. e

18. It is worthwhile to mention that in his examination-in-chief, PW 1, V.K. Jithesh had mentioned that Sunil was not seen. In his cross-examination, PW 1 had stated that he had told the police at the picket post that Sunil was missing. This was apparently in contradiction to the stand of the defence that death of Sunil was mentioned in the FIR at 3 a.m. itself while his body was found only at 7.30 a.m. in the morning. The statement of PW 1 to the police mentioning that Sunil is "missing" cannot be seen in an abstract. "*Noscitur a sociis*" is a well-recognised principle used for interpretation of statutes. It means that the meaning of a word can be determined by the context of the sentence; it is to be judged by the company it keeps. Though this principle is used for interpretation of words in a statute, the inherent principle can very well be applied to the facts of the present case which have be seen in the context of the entire set of events f g

2 *Rammi* v. *State of M.P.*, (1999) 8 SCC 649 : 2000 SCC (Cri) 26
3 (2024) 15 SCC 190 : 2023 SCC OnLine SC 1396 : 2023 INSC 957
4 1959 SCC OnLine SC 17 : AIR 1959 SC 1012 h

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that had transpired that night. The High Court has also, in its well-reasoned judgment considered the fact that while struggling for his life, injured Sunil might have made some movements and while so he might have fallen into the slushy area and happened to be amidst the bushes which is the reason for him being allegedly "missing".

19. In the FIR, PW 1 had stated that Sujeesh was taken in a jeep to the hospital. However, the defence had submitted before this Court that there was no explicit mention of "police jeep" when the statement before the police was recorded. As per the appellants, this holds importance since there is no mahazar suggesting the particulars of the jeep or examination of the jeep for bloodstains or any other evidence to show that his body was carried in a police jeep showing that theory of police jeep was introduced by the police. This Court is of the opinion that it is a natural human conduct that to save the life of someone, the entire focus of the person in such a situation would be to take the injured to the hospital rather than wasting time on giving minute details. It was a prudent conduct on the part of PW 1. The omission to state "police" jeep does not constitute a material omission or contradiction. The same has also been rightly dealt with by the High Court in great details.

20. Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons, etc. At this stage, it may not be out of place to refer to the principle called as "*falsus in uno, falsus in omnibus*".

21. It is a settled position that "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgments. In *Ram Vijay Singh* v. *State of U.P.*[5], a three-Judge Bench of this Hon'ble Court had held that: (SCC pp. 254-55, paras 20-21)

> *20.* We do not find any merit in the arguments raised by the learned counsel for the appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the court. The maxim *falsus in uno, falsus in omnibus* is not the rule applied by the courts in India. This Court recently in a judgment in *Ilangovan* v. *State of T.N.*[6] held that Indian Courts have always been reluctant to apply the principle as it is only a rule of caution. It was held as under: (SCC p. 536, para 11)
>
> > '*11.* The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present accused must also be discarded. The counsel is, in effect, relying on the legal maxim "*falsus in uno, falsus in omnibus*", which Indian Courts have always been reluctant to apply. A three-Judge Bench of this Court, as far back as in 1957, in

5 (2021) 15 SCC 241
6 (2020) 10 SCC 533 : (2021) 1 SCC (Cri) 137

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Nisar Ali v. *State of U.P.*[7] held on this point as follows: (SCC OnLine SC paras 9-10)

> "*9. … This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. …*
>
> *10. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence".*" '
>
> *21.* Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony of the said witness cannot be disregarded qua the present appellant. Still, further, it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity." (emphasis in original)

22. Hence, as can be seen from above, it has been a consistent stand of this Hon'ble Court that the principle "*falsus in uno, falsus in omnibus*" is not a rule of evidence and if the court inspires confidence from the rest of the testimony of such a witness, it can very well rely on such a part of the testimony and base a conviction upon it.

23. Though the learned defence counsel vehemently submitted that the dead body of Sujeesh was found at a different place away from the dead body of the other victim Sunil and as such, on this count alone, the prosecution case is to be discarded. We are unable to accept the submissions of the learned counsel for the reason that the evidence of eyewitnesses clearly reveals that this mob of 11 persons being apprehensive of their life rushed towards the river. It is further disclosed in the version of witnesses that members of this group took shelter near a shed in bushy area. In this process, it is quite natural that all the members may not find a suitable place for hiding at a particular spot or one spot. This being the situation, it was also natural and possible that Sujeesh might have rushed to another spot to hide and save himself and as such his body is found away from the dead body of another victim Sunil. The violent mob of accused persons led a deadly attack on the members of the mob and was successful in killing two members of the mob.

24. Thus in our opinion, merely because the dead body of Sujeesh was found at a place little away from the place of body of other victim Sunil, it cannot be the sole and decisive factor to discard the entire case of prosecution.

25. One more thrust of argument from the appellants was that the prosecution has not conducted the investigation in a fair and impartial manner as they have tried to rope in innocent persons who were not present at the spot. There was an attempt to rope in one Ashraf and there was a consistency in the statements of the eyewitnesses that they had seen Ashraf when the crime

7 1957 SCC OnLine SC 42 : AIR 1957 SC 366

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was taking place. Admittedly, there is a rivalry between the two groups so the possibility of exaggeration cannot be ruled out. When the fact that Ashraf was not at all present during the crime and that he was present in the hospital came to light of the prosecution, they had moved a report and sought deletion of his name.

26. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a proper investigation could have strengthened its case. In *Paras Yadav* v. *State of Bihar*[8], the Supreme Court observed as under: (SCC p. 130, para 8)

> "*8.* ... the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from *Ram Bihari Yadav* v. *State of Bihar*[9]: (SCC pp. 523-24, para 13)
>
> > '*13.* ... In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.' "

27. Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report, etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW 1 Jitesh, PW 2 and PW 4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A-2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 a.m., it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have

8 (1999) 2 SCC 126 : 1999 SCC (Cri) 104
9 (1998) 4 SCC 517 : 1998 SCC (Cri) 1085

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been raised by the defence. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the accused and the witnesses were well acquainted with each other as PW 1, PW 2 and PW 4 had defected from CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry.

28. It has been held by this Court in *Raju* v. *State of T.N.*[10]: (SCC pp. 709-10, para 29)

> "*29*. The sum and substance is that the evidence of a related or interested witness should be meticulous and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in *Dalip Singh*[11] and pithily reiterated in *Sarwan Singh*[12] in the following words: (*Sarwan Singh case*[12], SCC p. 376, para 10)
>
> > '*10*. … The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses has a ring of truth such evidence could be relied upon even without corroboration.' "

29. Bearing in mind the above legal position of the interested witnesses the testimonies of PW 1, PW 2 and PW 4 is the only piece of evidence available of the eyewitnesses. Even if it is assumed that they are interested witnesses there is no such inconsistency in their statements which would raise a reasonable suspicion about their evidence being concocted and untruthful. They were present at the spot where the incident took place and they have delivered a version which is palpable one. Their versions about seeing and hearing the appellants inflicting injuries on the bodies of the deceased Sunil and Sujeesh are in harmony with each other.

30. As regards the conviction of A-3 under the Explosive Substances Act, 1908 is concerned, this Court is of the opinion that the mere act of throwing the bomb by A-3 would give rise to reasonable suspicion that he did not have the bomb in his control for a lawful object. The High Court has rightly upheld the conviction of A-3 for Section 5 of the Explosive Substances Act, 1908.

31. The entire submissions of the appellants were that since there are contradictions, the entire story of the prosecution is false. As we have already mentioned above, the principle of "*falsus in uno, falsus in omnibus*" does not

10 (2012) 12 SCC 701 : (2012) 4 SCC (Cri) 184
11 *Dalip Singh* v. *State of Punjab*, (1953) 2 SCC 36 : AIR 1953 SC 364
12 *Sarwan Singh* v. *State of Punjab*, (1976) 4 SCC 369 : 1976 SCC (Cri) 646

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apply to the Indian criminal jurisprudence and only because there are some contradictions which in the opinion of this Court are not even that material, the entire story of the prosecution cannot be discarded as false. It is the duty of the Court to separate the grain from the chaff. In a given case, it is also open to the Court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons, like in the present case.

32. On appreciation of the evidence, we are unable to find any fault with the judgment and order dated 12-4-2011 passed by the High Court of Kerala at Ernakulam in *Edakkandi Dineshan* v. *State of Kerala*[1]. Accordingly, we arrive at the conclusion that the present appeal deserves to be dismissed.

33. The present appeal is accordingly dismissed. Pending application(s), if any, shall be disposed of accordingly.

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1 2011 SCC OnLine Ker 4368