

State (Delhi Administration) Vs. Harish Kumar Etc.

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Court : Delhi

Decided On : Sep-18-1974

Reported in : ILR1975Delhi182

Judge : Jagjit Singh and; V. Yas Dev Misra, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 161(3) and 162(1);
[Evidence Act, 1872](#) - Sections 145

Appeal No. : Criminal Appeal No. 133 of 1970

Appellant : State (Delhi Administration)

Respondent : Harish Kumar Etc.

Advocate for Pet/Ap. : D.R. Sethi and ; B.B. Lal, Advs

Judgement :

V.D. Misra, J.

(1) This is an appeal- against the acquittal of Harish Kumar of offences under sections 302 and 316, Indian Penal Code, for committing the murder of Sharda Devi who was carrying a quick unborn child.

(2) The prosecution case, briefly stated, is that Sharda Devi deceased was married to Krishan Gopal. They were living with Madan Gopal, brother of Krishan

Gopal, at house No. 2052, Gali Mahavir, Teliwara, Delhi. Krishan Gopal's grandmother Kailash Wati was also living in the house and so were Shakuntia wife of Madan Gopal and their son Harish Kumar respondent. Madan Gopal and Krishan Gopal were not on good terms since they wanted their business to be partitioned. Shakuntia and Harish Kumar used to quarrel with Sharda Devi and they were not on speaking terms.

(3) Sharda Devi had pregnancy of about 28 weeks in June, 1969. On June 3, 1969, at about 1 p.m. Dr. Jagan Nath Public Witness 4, who is a resident of the same locality, was approached by Madan Gopal who told him that Sharda Devi was bleeding. The doctor came to the house and saw Sharda lying in an injured condition on the floor and all her clothes were besmeared with blood. He advised Madan Gopal to remove her to Irwin Hospital at once. The doctor neither examined Sharda nor rendered any first aid.

(4) Natho Devi Public Witness 16 is the sister of Sharda Devi's mother and is living with her husband Prabhu Dayal Public Witness 15 in the same Gali. They came to know about the serious condition of Sharda. Nathu Devi rushed to the house of Sharda. She enquired from one Chandar Wati about the condition of Sharda and she was told what Sharda had aborted, and that Madan Gopal had already gone to fetch a taxi. Madan Gopal and Chander Wati put Sharda in a taxi. By that time Prabhu Dayal also arrived at the spot. Though Madan Gopal was not agreeable to Natho Devi going in that taxi, still Natho Devi forced her way and sat by the side of Sharda in the rear seat. She had placed Sharda's head on her lap. As she placed her hand on the forehead of Sharda near her face, she felt some wound on her neck and asked Sharda in a low tone as to what had happened. Sharda replied in a feeble voice that she had been stabbed by Harish and she should be saved immediately. Finding Natho Devi talking to Sharda, Madan Gopal reprimanded her and told her not to talk and keep quiet. Instead of going to the Irwin Hospital, Madan Gopal took Sharda to the City Clinic situated on Asaf Ali Road. This Clinic is run by Dr. Tara Chand.

(5) Prabhli Dayal Public Witness 15 saw Shakuntia and Kailash Wati washing the floor of the room in which Sharda was lying injured. Prabhu Dayal went to the

shop of Rattan Lal Public Witness 7, father of Sharda, to inform him about the incident. This shop is situated near Novelty Cinema on Queens Road. Prabhu Dayal told Rattan Lal about the incident. He also informed Prabhu Dayal that Sharda had been removed to the hospital of Dr. Tara Chand. Rattan Lal Public Witness 7 and Prabhu Dayal Public Witness 15 immediately left for the hospital and reached there at about 1.45 p.m.

(6) Dr. Vijay Jain Public Witness 11, who was working as a Surgeon in the City Clinic, examined Sharda at 1.42 p.m. Though her pulse was not palpable and her blood-pressure was not recordable and she was suffering from intense shock, she answered the questions put by the doctor she gave a history of having been stabbed by somebody. Though the doctor specifically asked her about the name of the assailant, she did not disclose it but stated that her abdominal pain he first cured and then she would tell the name of her assailant. The following injuries were found on her person by the doctor:

(1) Clean oblique cut on the left side of the neck, lower one third, 1' X 1/2' X 1/4' .
(2) Clean incised cut medial side left breast 1' X 1/2' X (3) Clean cut over right hypochondrium 1 1/2' X 1/2' X (4) Clean cut over left lower costal margin 2' X 1' x Omentum protruding out of the wound, midaxillary line. (5) Superficial echymosis over the right side of the neck. (6) Clean abrasions-linear over right costal margins and right breast. (7) Clean cut bleeding left side vertebral lumbar region.

The doctor found that she had a pregnancy of five months. The only medical aid given by this doctor was desferrioxamine. He had also requisitioned blood. In the opinion of this doctor, Sharda was not fit to be operated upon under anesthesia. He had asked the relatives of the injured if they had informed the police and he got a reply in the affirmative. After waiting for 1' hours, the doctor became suspicious because no policeman reached the hospital and so he asked the relatives to inform the police. Since they did not do so, he rang up Kamla Market police station and informed them about Sharda. The report recorded by this police-station is Exhibit Public Witness 17/A and shows that the telephone was received at 3.20 p.m. This report also shows that since the police-station came to the conclusion that the case relates to police-station Sadar Bazar, the latter was informed on

telephone which was received by Head Constable Man Mohan Singh, who had asked for the deputation of some police officer for taking necessary action. At 3.40 p.m. Sharda died in the hospital.

(7) On hearing about the incident many persons of the Mohalla as well as relations had collected at the hospital. One of the person, who went to the hospital, is Rama Nand Public Witness 3. His son is married to the daughter of Rattan Lal, i.e; Sharda's sister. He went inside the operation theatre after declaring that he was the grand-father of Sharda. He found her lying on a trolley stretcher. He enquired from her as to what had happened. Sharda told him 'Harish ne mujhe Chakuon se Goda Hai'; Harish had given me several knife blows mercilessly. Thereafter, he came out of the operation theatre, had a talk with Madan Gopal and went straight to his shop since he was ill.

(8) When Rattan Lal Public Witness 7 reached city Clinic at about 1.45 p.m he found, among other persons, Rama Nand Public Witness 3 present there. He contacted Dr. Jain after disclosing that he was the father of the injured. Dr. Jain told him that her condition was very serious and that she had been brought to the hospital with knife injuries. He saw her daughter lying on a stretcher trolley in the operation theatre of the hospital, but had no talk with her. He went straight to the police station Sadar Bazar and lodged his report Exhibit Public Witness 7/A at 3.45 p.m. He told the police that he suspected Madan Gopal and the members of his family since she had told him about 15 or 20 days earlier that Shakuntia and her sons used to pick up quarrel with her every now and then. He came back to the hospital with the police and came to know that his daughter had succumbed to her injuries.

(9) The post-mortem examination on the dead body of Sharda was conducted by Dr. A. K. Ghosh of Police Hospital Delhi, on June 4, 1969, at 9.30 a.m. He found the following injuries on her person:-

'(1) One stab wound 1' X 1.5' X 1.5 elliptical in shape over the lower part of left neck. The wound was directed obliquely towards the mid line, and was covered with blood.

(2) One stab wound 1' X 1.5' X 4' over the lower part of left chest in the anterior axillary line. The direction of the wound was towards the mid line. The wound was covered with blood and omentum had been seen protruding out of the wound. The wound was elliptical in shape.

(3) One stab wound 1' X 1.5' x 1' elliptical in shape over the right breast. The wound was directed towards the mid line, and was covered with blood.

(4) One stab wound 1' X 1.5' X 1' hypochondrium. The wound was elliptical in shape and covered by blood. The wound was directed vertically downwards.

(5) One wound 1.5' X 4/10' X 1.5 over the left lumbar region. The wound was covered with blood and was elliptical in shape.

(6) Multiple small abrasions scattered over the back of the left hand.

(7) One abrasion 3' X 1' over the right side of neck. Hyoid bone normal. Neck tissue on the right side was normal.'

(10) On opening the chest the cavity was seen full of blood. Injury No. 2 was seen to pass between 8th and 9th ribs through the diaphragm puncturing the stomach wall making an opening of 1' X 1/2 '. The contents of the stomach, digested food containing rice was seen coming out of the stomach wound, injury No. 4 was in continuation with wound in the liver 1 1/2' X 1/2' x 2' he also found her uterus containing a male foetus weighing 600 grams. In the opinion of the doctor, injuries Nos. 1, 2 and 4 either individually or collectively were sufficient to cause death in the ordinary course of nature. According to him, Sharda was in her 28th week of pregnancy.

(11) Inspector K. K. Chhabra Public Witness 18 had reached the hospital after recording the statement of Rattan Lal (Exhibit Public Witness 7/A). He prepared the inquest report Exhibit Public Witness 18/B, and took into possession wearing apparels Exhibits P. 1 to P. 4 of the deceased and duly converted them into sealed parcels. Thereafter, he went to the place of incident and took into possession bloodstained lime plaster of the wall of the room and various clothes which were lying there or near about. He noticed that the floor of the room had been washed

and there was no trace of blood. He found pants Exhibit P10 and shirt Exhibit P11 lying near the heap of wood in a corner of the roof. Both were bloodstained and had labels of the tailor and markings of the washerman. These were duly taken into possession. Shakuntia produced two more pants Exhibit P. 12 and P. 13 as of Harish when the investigating officer asked her to produce clothes of Harish Kumar. These also bore the labels of the tailor and the markings of the Dhobi. These were converted into sealed parcels and taken into possession.

(12) The police failed to trace Harish Kumar and on June 4, 1969, warrants of his arrest were obtained. Still he could not be arrested till June 9, 1969, when he voluntarily surrendered himself in the Court of the Judicial Magistrate.

(13) During the trial, tailor Prem Kumar Public Witness 5, Dhobi Umi-ao Singh P.W. 6 and tenant P. N. Pathak Public Witness 10, did not support the prosecution. The defense of Harish Kumar was that his school was closed for summer vacation and he had gone to Kanpur and was not present on the day of occurrence in Delhi. Shakuntia Devi and Kailash Wati also pleaded alibi and stated that at the time of occurrence they were at Gandhi Nagar with some relative.

(14) The learned Additional Sessions Judge held that there was no evidence to show that Harish Kumar had murdered Sharda Devi. He disbelieved the oral dying declarations alleged to have been made to Natho Devi and Rama Nand Public Witnesses and acquitted all of them. The State came up in appeal against their acquittal and this Court admitted the appeal against Harish Kumar only.

(15) Mr. D. R. Sethi, learned counsel for the State submits that the learned Additional Sessions Judge was not justified in rejecting the statement of Natho Devi Public Witness 16 and Rama Nand Public Witness 3 to whom the deceased had made oral dying declaration. He also contends that pants Exhibit P. 10 and bushirt Exhibit P. 11, which were found bloodstained, belong to Harish Kumar respondent who had absconded immediately after the incident. According to him, these facts show that it was Harish Kumar who was the assailant and had murdered the deceased.

(16) There is evidence on record to show that Sharda Devi was in a position to talk after receiving the injuries. Before I discuss the alleged dying declarations made to Rama Nand Public Witness 3 and Natho Devi Public Witness 16, I have something to say about the two doctors who had attended on her. Dr. Jagan Nath Public Witness 4 was summoned by Madan Gopal, father of Harish Kumar, at about 1 p.m. This witness is not only a Medical Practitioner but is also a Municipal Councillor of that area. He found Sharda Devi 'lying in an injured condition on the floor and all her clothes were besmeared with blood'. To say the icast, it is astonishing that this doctor did not care to examine the injured nor render any first aid. It is also surprising that he did not feel it his duly to inform the police after having seen a patient who has received injuries.

(17) The next doctor to attend on Sharda Devi is Dr. Vijay Kuniai Jam Public Witness 11, who was working as a. Surgeon in the City Clinic. He had examined the injured and had a talk with her. He had specilncally Jasked about the name of the assailant from the injured but would have us believe that the injured stated 'that her abdominal pain be first cured and then she would tell the name of the assailant. It is a very strange and unnatural conduct of an injured person who is nearing death. There was no reason for the injured to hide the name of the assailant at her death-bed and I am extremely doubtful if the injured did not disclose the name of the assailant to this doctor. The conduct of this doctor in not informing the police immediately about the admission of a patient with stab injuries in a serious condition, has no reasonable Explanationn. His only Explanationn is that he had enquired from. the relatives of the injured if they had informed the police and they had replied in the affirmative. Assuming the relatives of the injured had even informed the police, it was his duty as a doctor to inform the police about the medico-legal case. It was an hour and a half before he became suspicious. He did not realise that the police-stations are so near the hospital that it would not have taken more than 15 minutes for the police to arrive. Had these two doctors informed the police immediately, which, in my opinion, they should have done, in all probability the statement of the injured would have been duly recorded by independent persons, which, would have been a great help in the furtherance of justice.

(18) Rama Nand, Public Witness 3 is a close relation of the father of the deceased. The fact that he went to the hospital to see the injured cannot be doubted. But the question is, whether he had a talk with Sharda Devi To begin with, it is quite strange that when he went inside the operation theatre he only found one woman standing by the side of the wall and neither any nurse nor any doctor was present. Moreover, in case Sharda Devi had named Harish Kumar .is her assailant, he would not have kept this fact to himself and would not have gone back straight to his shop. Rattan Lal Public Witness 7, who reached the hospital at about 1.45 p.m., saw various persons including Rama Nand present there. Rama Nand could not have failed to notice the presence of Rattan Lal and other near relations including Prabhu Dayal. Had Sharda Devi named her assailant, he would have immediately disclosed it not only to Rattan Lal and other near relations but to all the persons who were known to him. It cannot be believed that he was ailing at that time because in that case he would not have gone straight to his shop but would have gone to his house. In my opinion, the learned Additional Sessions Judge was justified in rejecting the statement of this witness.

(19) Natho Devi Public Witness 16 is the sister of the deceased's mother, and was living in the same locality. She and her husband must have reached the house of the injured on coming to know of her serious condition. There is nothing to disbelieve her when she describes the condition in which she found Sharda Devi lying on the floor in a pool of blood and was informed that she had aborted. There is also no doubt that she was present when Madan Gopal brought a taxi and placed the injured in that taxi. Again, it is quite possible that she had accompanied the injured in the taxi because, after all she was the nearest female relative of Sharda present at that time. But again the question is, whether she was told by Sharda that she had been stabbed by Harish Kumar Had she been told about it, she would not have kept quiet at the hospital especially when her husband Prabhu Dayal had brought Rattan Lal to the hospital. Both Rattan Lal Public Witness 7 and Prabhu Dayal Public Witness 15 do not state that they were told by Natho Devi that Sharda had named Harish Kumar as the assailant. Natho Devi deposes that she had a talk with Rattan Lal and Prabhu Dayal to whom she 'told the whole incident'. The only purpose of telling the whole- incident to her husband as well as to Rattan Lal could have been nothing else but to disclose the material fact of

Harish Kumar being the assailant. Had this fact been told to Rattan Lal, he would have named Harish Kumar in his statement Exhibit Public Witness 7/A to the police. On the other hand this statement shows that he had expressed his doubt about 'someone out of the family members has injured my daughter Sharda Devi'. In these circumstances, the learned Additional Sessions Judge was correct in disbelieving the statement of Natho Devi about the alleged dying declaration made by Sharda Devi.

(20) Om Parkash Public Witness 13 and Dalip Singh Public Witness 14 are the neighbours who stated that they had seen Harish jumping from one roof to another at about the time the incident took place, Om Parkash runs a betel leaf shop in Teliwara. He has various convictions under the Gambling Act to his credit. He had also been tried in excise cases but was acquitted. He states to have seen Harish coming downstairs from the roof of his room and had found him upset. After about half an hour he came to know that a woman had been killed. Admittedly many persons live as tenants in the house in which Om Parkash lives. But the prosecution chose to produce Om Parkash who does not possess a clean record. Dalip Singh Public Witness 14 is a Halvai, who is related to Rattan Lal. He has a shop at Ajmere Gate and goes there at about 10 or 10.30 a.m. and comes back by 5.30 p.m. The only reason given by him for his presence in the house on the day of the incident is that he was suffering from diarrhoea. He states to have seen Harish going towards the roof of Om Parkash and had found him upset. The learned Additional Sessions Judge was justified in not believing these two witnesses and holding that they were not present in their houses and had seen nothing. Even assuming that they had seen Harish Kumar going from one roof to the other and being upset, it does not in any way connect him with the murder of Sharda Devi.

(21) In order to prove that pants Exhibit P. 10 and bushirt Exhibit P. 11 belong to Harish Kumar, the prosecution produced tailor Prem Kumar Public Witness 5 and Dhobi Umrao Singh Public Witness 6. The clothes bear the label of 'Kumar Tailors', 276, Teliwara, Delhi. Prem Kumar admitted that these clothes were tailored by him but he denied that these were stitched for Harish Kumar. Similarly, he denied that Exhibits P. 12 and P. 13 were stitched for Harish Kumar though he

admitted tailoring them. He was confronted by the prosecution with his statement Exhibit Public Witness 5/A made to the police under section 161 of the Code of Criminal Procedure, 1898, and he denied making any such statement to the police that he had stitched the clothes for Harish. Umrao Singh, aged 80 years, is the Dhobi. He admitted that pants Exhibit P. 10 used to be washed by him. He also admitted that pants Exhibits P. 12 and P. 13 used to be washed by him. He, however, denied that these clothes belonged to Harish. He was also declared hostile and cross-examined and confronted with his statement Exhibit Public Witness 6/A made to the police. He denied making any such statement to the police that these clothes belonged to Harish Kumar.

(22) Mr. D. R. Sethi contends that we can act on the statements made by these witnesses to the police with which they were confronted and hold that these clothes belong to Harish Kumar. He supports his contention by three unreported judgments of this Court by P. S. Safer J' in *Sat Paul v. The State*, Criminal Appeal No. 151; 1970, decided on March 9, 1971(1), *Major Tara Chand Rampal v. The State*, Criminal Appeal No. 93 of 1972,(2), decided February 15, 1974, and *Hazari Lal v. The State*, Criminal Appeal No. 186 of 1972, decided on April 19, 1974, (3), in *Sat Paul's(I) case (supra)*, the learned Judge, after referring to the provisions of section 145 of the Evidence Act, and section 161 of the Code of Criminal Procedure, 1898, observed that the statement recorded under section 161(3) of the Code of Criminal Procedure, 1898, could be used to confront the witness with his earlier version if he made a contradictory statement in Court and proceeded to hold :

'THAT can be done in order to raise an argument later on as to which is the version which has in it a greater ring of truth. So long as the statement of a witness is admissible in evidence and I may observe that whatever is adduced from the witness within the terms of the proviso in section 162 of the Code of Criminal Procedure, is admissible in evidence, the witness's statement is evidence in the case. It is the entire deposition which has to be scrutinised in order to conclude as to what has been established in a particular case.'

In Major Tara Chand Rampal's case (supra),(2), the learned Judge, after referring to section 154 of the Evidence Act and sections 161 and 162 of the Code of Criminal Procedure, 1898, observed :

'It must be remembered that whether he is cross-examined by obtaining permission under section 154 of the Indian Evidence Act or after invoking the proviso the witness is in the witness-box and is on oath making the statement in the course of a trial being held in accordance with the Code. The entire evidence so obtained would be substantive evidence and it cannot be accepted that the proviso in section 162 of the Code allows merely the contradicting of the witness so as to impeach his credit. If that meaning is given to the proviso then it would remain confined to what it was before the amendment in 1923. The interpretation urged is repugnant to the proviso in section 162 as in vogue.'

(23) In Hazari Lal's case (supra),(3), the learned Judge, after referring to his previous judgment in Major Tara Chand Rampal's (2) case regarding the history of section 162 of the Code of Criminal Procedure, 1898, went on to observe thus :

'It would be sufficient to observe that there is no postulation in the proviso that it may be utilized only to impeach the credit of the witness'. In that case., after discussing the statements of the hostile witnesses, who had been confronted with their statements made to the police and who had denied making them, held that the portions of the earlier statements confronted to the witness 'to the extent being contradictions became evidence within the proviso contained in section 162'.

(24) Chapter X of the Evidence Act relates to the examination of witnesses. Sections 135 to 166 fall under this chapter. Section 145 provides for the cross-examination of a witness with reference to his previous written statement, without the writing being shown to him, or being proved. However, if the intention is to contradict the witness by the writing then the section requires that the attention of the witness must be drawn to those portions of the statement which are to be used for the purpose of contradicting him. Section 155 lays down the manner in which the credit of a witness may be impeached. One of the methods of impeaching his credit is by proving former statements of the witness which are inconsistent with any part of his evidence given in court, [sub-section (3)]. Section 157 permits a

party to corroborate the testimony of a witness by his former statement. Now, a previous statement of a witness can only be used if it is not inadmissible in evidence under any law. Sub-section (3) of section 161 of the Code of Criminal Procedure enables a police officer investigating a case under Chapter XIV of the Code of Criminal Procedure, 1898, to reduce into writing any statement made to him under this section by any person. However, section 162(1) prohibits the use of this statement for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statements are made except to contradict such person in the manner provided by section 145 of the Indian [Evidence Act, 1872](#), by the accused, and with the permission of the Court, by prosecution. The reason for this prohibition is not far to seek. The legislature appears to have been conscious of the fact that statements made to the police are not recorded, under circumstances inspiring confidence. The only purpose for which such a statement was allowed to be used by the legislature was to contradict under section 145 of the Indian Evidence Act. The purpose of contradicting a witness is only to attack the veracity of a witness. The duty of the Court is to find out if a witness, who had made a contradictory statement earlier, is telling the truth in court. It is not the duty of the Court to find out whether the previous statement made by the witness was true or not. In *Sahdeo Gosain and another v. Emperor*, , it was observed: 'under the provisions of S. 162, Criminal P.C., a statement made to the police during the course of the investigation can be used only for the purpose of contradicting a prosecution witness and except in that connection cannot be used for any other purpose.'

(25) In *Tahsildar Singh and another v. State of U.P.*, : 1959 CriLJ1231 Subba Rao, J. (as he then was), speaking for the majority, after tracing the history of legislation of section 162, Criminal Procedure Code, proceeded to describe the object of the legislature thus :

'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 provision 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.'

His Lordship also observed :

'As the words in the section declare the intention of the legislature, we shall now proceed to construe the section given the words used therein their natural and ordinary sense. At the same time, it being the earliest record of the statement of witness seen 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 S. 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 defense witness or even a Court witness. Nor can it be used for contradicting a defense 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'

(26) In *Bharat Singh and others v. Mst. Bhagirathi*, : [1966]1SCR606 it was held that 'the purpose of contradicting the witness under section 145 of the Evidence Act is quite different from the purpose of proving the admission. Admission is

substantive evidence of the fact admitted while the previous statement used to contradict a witness does not become substantive evidence and only serves the purpose of throwing doubt on the veracity of the witness'. In *Baladin and others v. State of Uttar Pradesh*, : 1956 CriLJ345 , it was observed thus :

'STATEMENT made by prosecution witnesses before the investigating police-officer being the earliest statements made by them with reference to the facts of the occurrence are valuable material for testing the veracity of the witnesses examined in court, with particular reference to those statements which happen to be at variance with their earlier statements; but the statement made during police investigation are not substantive evidence.'

(27) Again, in *Kanu Ambu Vish v. The State of Maharashtra*, : 1971 CriLJ1547 the same view was reiterated by observing: 'where a witness is confronted by his previous statement and given an opportunity to explain, that part of the statement that is put to him does not constitute substantive evidence'. Somewhat similar were the observations by the Supreme Court in *Major Som Nath v. Union of India and another*, : 1971 CriLJ1422 .

IT is thus well-settled that the object of the proviso to sub-section (1) of section 162, Criminal Procedure Code, is to allow the use of the statement recorded under section 161 for the purpose of only contradicting the witness and nothing else. The principle underlying this proviso is that a witness who makes inconsistent statements is not reliable. With all respects to the learned Single Judge, it is not correct to say that the duty of the Court is to find out if the statement made to the police is true and then to act on the same. It is only when a witness after being confronted with his earlier statement to the police, admits making that statement that a Court may act on the same if found to be truthful. The Court then acts on that statement not because it was made to the police but because the witness corrects himself after being confronted and deposes in Court what he had already stated to the police. However, in case the witness after being confronted with his previous statement to the police, denies making such statements, then the latter statement cannot be used as substantive evidence. A reference to section 288 of the Code of Criminal Procedure will show that even a statement made by a

witness on oath before a Court in the presence of the accused under Chapter xviii of the Code does not, on the witness being confronted with the same in terms of section 145 of the Evidence Act, automatically become substantive evidence. In my opinion, the judgments relied upon by Mr. Sethi do not lay down the correct law.

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