**State Vs. Mohan Hira**

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**SooperKanoon Citation** : sooperkanoon.com/733175

**Court** : Gujarat

**Decided On :** Jul-08-1960

**Reported in** : AIR1960Guj9; 1960CriLJ1330; (1960)GLR64

**Judge** : Raju, J.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 162(1); Evidence Act, 1872 - Sections 145 and 154

**Appeal No.** : Criminal Ref. No. 3 of 1960 (Bombay Criminal Ref. No. 26 of 1959)

**Appellant** : State

**Respondent** : Mohan Hira

**Advocate for Def.** : D.U. Shah, Adv.

**Advocate for Pet/Ap.** : B.R. Sompura, Asst. Government Pleader

**Judgement** :
ORDER

(1) This is a reference by the learned Additional Sessions Judge, Gondal, recommending that the order dated 18-7-59 passed by the First Class Magistrate, Gondal, in Criminal Case No. 190 of 1959 holding that he would not allow the prosecution to contradict the evidence given by its witness under the proviso to S. 162(1), Criminal Procedure Code 'without declaring him hostile and save in his

cross-examination' be set aside, as it is wrong.

(2) Section 137 of the Evidence Act provides that the examination of a witness by the party who calls him shall be called him examination-in-chief and the examination of a witness by the adverse party shall be called him cross-examination. Section 142 of the Evidence Act provides; 'leading questions must not, if objected to by the adverse party be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court'. Section 143 of the Evidence Act provides that leading questions may be asked in cross-examination. Section 154 of the Evidence Act provides: 'The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.' The procedure of examining a witness as to previous statements made by him in writing is found in S. 145 of the Evidence Act. Section 146 of the Evidence Act enumerates the questions which are lawful in cross-examination.

(3) As provided in S. 154 of the Evidence Act, the Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. When the Court exercises such a discretion, the party who calls a witness may put questions in the nature of cross-examination, although the witness is under examination by the party who calls him. But, there is nothing in S. 154 of the Evidence Act to require that before the Court exercises its discretion to permit the person who calls a witness to put questions in the nature of cross-examination, the witness should be declared as hostile by the party calling him. But, although the party calling a witness need not declare the witness to be hostile, he should give sufficient reasons to satisfy the Court that it is proper in the circumstances to exercise its discretion and permit the person who calls a witness to put questions to him in the nature off cross-examination. The learned Magistrate was therefore wrong in laying down a requirement, which is not found in the Evidence Act He was therefore wrong in ordering that unless the prosecution declares its witness hostile it would not be permitted to contradict him under the proviso to S. 162(1), Cr. P.C.

(4) Moreover, when permission is given under S. 154 of the Evidence Act, the party calling a witness is permitted to put questions which might be put in cross-examination by the adverse party; but that does not alter the nature of examination and the party who calls a witness can contradict him only in the manner as provided in S. 145 of the Evidence Act. Merely because permission is given under S. 154 of the Evidence Act, the nature of the examination of a witness by the party who calls him is not changed from examination-in-chief to cross examination. It is true that in the proviso to S. 162(1) it is provided:

'When any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if dully proved, may be used by the accused any with the permission of the Court by the prosecution to contradict such witness in the manner provided by S. 145 of the Indian Evidence Act 1872 and when any part off 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.'

Ordinarily, the statements of a person taken in the course of investigation by the police are used by the accused to contradict the evidence given by the witness in his chief. They could also be used, with the permission of the Court, by the prosecution to contradict its witnesses. The contradiction must be in the manner provided in S. 145 of the Evidence Act, which requires that the attention of the witness should be drawn to those parts of his statement in writing which are to be used for the purpose of contradicting him. When an accused person uses the police statement off a witness to contradict his evidence, the prosecution can in the re-examination of such witness use any part thereof for explaining any matter referred to in the cross-examination of a witness by the accused. The word 'cross-examination' found at the end of the proviso to S. 162(1) Cr. P.C. refers to the cross-examination of a witness by the accused and not to the questions put under S. 154 of the Evidence Act. If a party who calls a witness is permitted under S. 154 of the evidence Act to put questions to him in the nature of cross-examination, the examination of the witness in which such questions are asked and answered still remains the examination-in-chief, and it would be open to the adverse party in cross examination to explain any matter referred to in the answers given to

questions put under S. 154 of the Evidence Act. it is therefore clear that the answer to questions putt to a witness after permission is obtained by the party who calls him, are answers given in the examination-in-chief, although they are in the nature of cross-examination. The proviso to S. 162(1) Cr. P.C. does not militate against this view. The learned Magistrate was therefore wrong in holding that except in the cross-examination the prosecution would not be entitled to contradict the statement of its witness under the proviso to S. 162(1) of the Cr. P.C. For these reasons, the order of the leaned Magistrate is erroneous.

(5) I therefore set aside the order of the Magistrate. But before permission is granted by the Magistrate under S. 154 of the Evidence Act, there must be good grounds for doing so, and the prosecution must satisfy the Court that there are good grounds for doing so.

(6) Order Set aside.