

**Harchanda Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/762344](http://sooperkanoon.com/762344)

**Court :** Rajasthan

**Decided On :** Jul-14-2003

**Reported in :** RLW2004(1)Raj98; 2003(3)WLC798

**Judge :** A.C. Goyal, J.

**Acts :** Evidence Act - Sections 159 and 160; Indian Penal Code (IPC) - Sections 34, 302, 341 and 447

**Appeal No. :** S.B. Cr. Misc. Petition No. 684 of 2003

**Appellant :** Harchanda

**Respondent :** State of Rajasthan

**Advocate for Def. :** R. Alvi, Public Prosecutor

**Advocate for Pet/Ap. :** Suresh Sahni, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Goyal, J.**

1. The facts giving rise to this petition under Section 482 Cr.P.C, are that the accused petitioner alongwith others is facing trial for offences under Sections 302, 341, 447, read with Section 34 IPC in Sessions Case No. 79/2001. The statement

of P.W. 15 Richpal Singh, the then S.H.O., who investigated this case was being recorded on 13.5.03. During the examination-in-Chief, an objection was raised on behalf of the accused persons that this witness was deposing after perusing the case file of the Court which is not permissible. This objection was disallowed by the learned Additional Sessions Judge (Fast Track), Jaipur District, Jaipur, by holding that the witness being the Investigation Officer, permission is granted to refresh his memory. This order has been challenged vide this petition by the accused petitioner with a prayer to recall the entire statement of this witness.

2. Learned counsel for the accused referred the Provisions of Sections 159 and 160 of the Indian Evidence Act, which are reproduced as under: -

159. Refreshing memory.--A witness may while under examination, refresh his memory by time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the it witness within the time aforesaid, if when he read it he know it to be correct.

When witness may use copy of document to refresh memory- Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document;

Provided the Court be satisfied that there is sufficient reach for the non production of the original.

An expert may refresh his memory by reference to professional treatises.

160. Testimony to facts stated in document mentioned in Section 159.--A witness may also testify to facts mentioned in any such document as is mentioned in Section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

3. He also placed reliance upon a Division Bench judgment of this Court reported in *Dharma v. State* (1). Learned Public Prosecutor supported the impugned order.

4. I have considered the rival submissions, In *Dharma's* case (*supra*) learned counsel in appeals raised an objection that the recovery of the dead body at the instance of accused vide Ex.P. 26, had not been proved in accordance with law and therefore, could not be read as evidence. Learned counsel for the accused stressed that before Ex.P. 26 could be taken into consideration, the Police Officer who prepared it, should have himself reproduced its contents in evidence either orally, or, if he was not able to remember the contents thereof, then he should have reproduced the contents by refreshing his memory after reference to Ex.P. 26. Dealing with this objection, it was held tat it is correct that statements and reports prepared out side the court can not by themselves be accepted as primary or substantive evidence of the facts stated therein. It was further observed that Section 159 of the Evidence act permits a witness while under examination to refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in the memory. Section 160 then provides for cases where the witness has no independent recollection say, from lapse of memory, of the transaction to which he wants to testify by looking at the documents and states that although he has no such recollection he is sure that the contents of the document were correctly recorded at the time they were. It was further observed that though the witness should ordinarily affirm on oath that the does not recollect the facts mentioned in the document, the mere omission to say so will not make the document inadmissible provided the witness swears that the is sure that the facts are correctly recorded in the documents itself. In para 21 of that judgment, it was observed that even when the witness does not positively say so, but it is reasonably established from the surrounding circumstances that it could hardly be expected in the natural course of human conduct that he could or would have a precise or dependable recollection of the same, then under Section 160 of the Evidence Act, it would be open to the witness to rely on the document itself and swear that the contents thereof are correct.

5. Thus, the point raised in Dharma's case (supra) was as to whether Ex.P. 26 had been proved in accordance with law or not and the point raised before this Court is as to whether P.W.15, Shri Richpal Singh, I.O. should have deposed without referring to documents contained in the case file? The incident took place in January 200 and the statement of this witness was being recorded on 13.5.03, i.e. after a period of more than three years and it would be extremely difficulty to expect that any one of the police offices having regard to nature of their duties from day to day during the investigation period could positively remember orally the precise contents of the documents prepared by them during the investigation. Thus the statement of the I.O. by refreshing the memory in no way is found contrary to the provisions of law and the learned trial Judge rightly granted the permission to refresh the memory. Consequently, this petition with stay application is hereby dismissed.