

In Re: Ponnusami Chetty

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Court : Chennai

Decided On : Jan-16-1933

Reported in : (1933)64MLJ519

Appellant : In Re: Ponnusami Chetty

Judgement :

ORDER

Burn, J.

1. The point raised in this case is whether a statement made by a witness to the Police in an investigation under Section 162, Criminal Procedure Code, can be filed, or exhibited, or, in short, used, when the witness is under examination in an inquiry under Chapter XVIII of the Criminal Procedure Code in order to show that while giving evidence the witness has made assertions which he did not make when he was examined by the Police.

2. Statements recorded under S'. 162, Criminal Procedure Code, can be used at a subsequent inquiry or trial for one purpose only, to contradict the witness. If they are to be used for this purpose the statements made under Section 162 must be duly proved, and used in the manner laid down in Section 145 of the Evidence Act. It follows, of course, that unless there is a contradiction between the statement recorded under Section 162 and the statement made by the witness in the course of his deposition, the statement recorded under Section 162 cannot be used at all.

It is therefore obvious that the question raised in this must be answered in the negative, unless an omission from a statement under Section 162 can be said to be a contradiction of a statement made in the witness-box. Reduced to these terms the matter appears to be too simple to admit of any argument. Whether it is considered as a question of logic or of 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'.

3. It is clear therefore that a statement under Section 162, Criminal Procedure Code, cannot be used during an inquiry or trial in order to show that a witness is making statements in the witness-box which he did not make to the Police.

4. The same conclusion follows from a consideration of Section 145 of the Evidence Act. If it is intended to contradict the witness by the writing, his attention must be called to those parts of the writing which are to be used to contradict him. 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' [Mohinder Singh v. Emperor A.I.R. 1932 Lah. 103 .

5. In the case cited, it was held by Coldstream, J, that the view of the learned Sessions Judge was not correct. Reference was made to the judgment of Dalip Singh, J., in Hasara Singh v. The Crown I.L.R. (1927) Lah. 389, but in neither of these cases was it explained how an omission could amount to a contradiction. The instance given by Dalip Singh, J., was that of a witness who should state under Section 162, Criminal Procedure Code, that three persons were beating a man, and should later allege that four persons were beating the same man. I would say with all respect that such statement would be in fact contradictory. It is impossible to state a case in which an omission amounts to a contradiction.

6. There is apparently no decided case in this High Court but I cannot see that there is any real difficulty in the matter. There is some apparent divergence of view in the Patna High Court. Mr. K.S. Jayarama Aiyar for the petitioner relies on the case of *Iltaf Khan v. King-Emperor* I.L.R. (1925) Pat. 346, whereas the learned Public Prosecutor relies on the observations of Macpherson, J., in *Badri Chaudhry v. King-Emperor* : AIR1926 Pat20 . In the former case it appears to me (with all respect) that there is a slight confusion of thought. A witness named Mahabir Dubey, who during the trial had given evidence against the accused, had stated in cross-examination that when examined by the Police he had said that he had seen the accused that evening. This statement was contradicted by the Sub-Inspector of Police who apparently referred to his record of the statement made by the witness under Section 162, Criminal Procedure Code, and found therein no record of any statement by Mahabir Dubey of the fact that he has seen the accused that evening. In such a case as that, the statement of Mahabir Dubey in the witness-box, that he had seen the accused, was not contradicted either by the record of his statement under Section 162 or by the evidence of the Sub-Inspector. What the Sub-Inspector contradicted (refreshing his memory no doubt by reading the record he had made under Section 162) was the statement of the witness that he had told the Police so and so. It was a contradiction not of his evidence against the accused but of what he had said to the Sub-Inspector. And moreover it was a contradiction not between two statements made by the witness, but between a statement made by the witness and a statement made by the Sub-Inspector. For such a purpose as this, the statement under Section 162, Criminal Procedure Code, cannot be used; it can only be used in order to show that the witness in the box is contradicting something he has said before. It appears to me, with respect that the reasoning of Macpherson, J., in the case cited (*Badri Chaudhry v. King-Emperor* Pat. 20) is entirely correct.

7. The evidence in the case now in question is not before me. Mr. K. S. Jayarama Aiyar tells me that certain witnesses appear to have stated to the Police merely that all the accused beat some one. In the witness-box these witnesses, I am told, have added allegations against particular accused of particular acts. The defence wants to file their statement under Section 162, Criminal Procedure Code, in order to show that when examined by the Police they did not attribute any particular acts

to any particular accused- As the learned Public Prosecutor points out, the defence thus wants to use the statement under Section 162, Criminal Procedure Code, for a purpose not sanctioned by the Code. It is not permissible to use such statements in order to show 'development' of the prosecution case; it is only permissible to use them to prove contradictions. In the present case there are no contradictions.

8. Mr. Jayarama Aiyar then asks how he is to contradict the witnesses when they say that they told the Police exactly what they are telling the Court. The answer is simply that he must contradict the witnesses on this point by adducing counter-evidence, exactly in the same way as he would contradict on any other point. He can put questions to the Police Officer to whom they made the statements under Section 162, Criminal Procedure Code, or he can cite witnesses, if any, who were present when those statements were recorded. He cannot, however, use the statements themselves.

9. It is not difficult to understand why the legislature has restricted the use of such statements to a single purpose. Some of the reasons have been enunciated by Knox, J, so long ago as 1894, and most of the language is still appropriate even after the changes introduced into Section 162, Criminal Procedure Code, in 1923. See *Queen-Empress v. Nasir-ud-din* I.L.R. (1894) All. 207.

Still more extraordinary is a permission given before the case came on for trial by which the accused were granted copies of statements recorded by the Police during the investigation. Such statements are recorded by Police Officers in the most haphazard manner. Officers conducting an investigation not unnaturally record what seems in their opinion material to the case at that stage and omit many matters equally material, and, it may be, of supreme importance as the case develops. Besides that, in most cases they are not experts of what is and what is not evidence. The statements are recorded often hurriedly in the midst of a crowd and confusion, subject to frequent interruption and suggestions from bystanders. Over and above all, they cannot be in any sense termed depositions, for they are not prepared in the way of a deposition, they are not read over to, nor are they signed by, the deponents. There is no guarantee that they do not contain much

more or much less than what the witness has said. The law has safeguarded the use of them, and it never can have been the intention of the Legislature that, as in this case, copies of them should have been without question and as a matter of course made over to the accused or their counsel.

10. The learned Sub-Magistrate's view of the provisions of Section 162, Criminal Procedure Code, is substantially correct His actual order is not quite accurately worded. It is impossible to 'read over' portions alleged to have been omitted; but the learned Sub-Magistrate only means that the witnesses are to be particularly questioned about the statements in their depositions which according to the defence were not made when the Police questioned them under Section 162, Criminal Procedure Code.

11. There is no ground for interference in revision.

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