

Contradictions and Corroborations (Sections 145, 154 and 157)

The rules of evidence laid down in Sections 145, 154 and 157 are of paramount importance to practitioners. Contradictions in the previous statements in writing of a witness is a very powerful weapon in the hands of the adverse party. A contradiction may be such as to demolish the case made out in the examination-in-chief. In a criminal trial, statements of witnesses are recorded by the Police under Section 161 of the Cr. P. Code, copies of which are supplied to the accused. These statements can be used by the accused for proving contradictions as laid down in Sec. 162 Cr. P. C.

The expression, "Contradiction" was a subject of great legal controversy. The question was whether it refers only to direct contradiction or whether it includes "Omissions" also.

In *Tahsildar Singh Vs. State, 1959, Cri. L. J. 1231 : A 1959 S.C. 1012*, a Bench of six judges of the Supreme Court discussed the problem at considerable length. Inter alia, the Court held that the statement of a witness under Section 161 of the Criminal Procedure Code cannot be used for corroboration of a prosecution or defence witness or even a court witness. The court gave a very long judgment on the question whether the expression contradiction includes omissions also.

It is not necessary to dilate upon this controversy, as the Code of Criminal Procedure 1973, in the explanation to Section 162, lays down that an omission may amount to a contradiction, whether it is so or not being a question of fact. The controversy is thus set at rest.

Contradictions : Proof of

Contradictions play a vital role in criminal trials. They may be direct contradictions or contradictions by omissions. Sometimes the term 'improvements' is used to denote the effect of contradictions and omissions. A witness may improve his version about an incident in order to support the prosecution case. It is to meet this contingency that Section 162 of the Criminal Procedure Code read with Section 145 of the Evidence Act provides for proof of contradictions and omissions, hereinafter referred to as 'contradictions' only. The proof is in two stages. In the first stage, the contradiction as brought on record in the manner laid down in Section 162 of the Criminal Procedure Code and Section 145 of Evidence Act. This is not enough. The contradiction is to be proved. Except when the witness has admitted the contradiction, this is done by cross examining the Police Officer who has recorded the statements under Section 162 of the Criminal Procedure Code. If this is not done, the contradictions brought on record have no effect at all.

Nice questions arise in cross-examining a witness on contradictions. It is of paramount importance to know what to ask and what not to ask. It has to be remembered that a contradiction is not substantive evidence. Substantive evidence is evidence given on oath in the Court, on which the Court may act. The evidence must be given at the trial.

The contradictions arise between the evidence given on oath at the trial and the statements recorded by the Police during investigation under Section 161 of the Criminal Procedure Code. The contradiction proved from the Police Statements is not substantive evidence as it is a part of the Police Statement which can be used for proving contradiction only. The effect of the proof of a contradiction is to discredit the witness as being unreliable, as his substantive evidence in the Court is contrary to what he told the Police. In such a case the Court will hold the substantive evidence of the witness in the Court as unreliable. It is well to remember that no part of Police statement is substantive evidence.

The manner of proving a contradiction is best brought out by an illustration. In a case of murder a witness who claims to have witnessed the actual commission of murder deposes in Court at follows : "When I reached the scene of offence, I saw X and Y, and I saw that X stabbed the victim V with a sword-stick. This substantive evidence. Before the Police the witness had stated that when he reached the scene of offence, he saw X and Y and saw that Y stabbed V. This is a case of clear contradiction. He has not stated before the Police that he saw X stabbing V. This contradiction must be brought on record to prove that the substantive evidence of witness that he saw X stab V is false.

The contradiction should be brought on record by cross-examination of the witness as follows :

Q. Did it happen that you did not see X stab V ?

(This question should not be put to the witness by asking "It it true that you did not see X stab V ? as such a question may imply that the accused admits the presence of the witness at the murder).

A. No. I did see X stab V.

Q. It is true that the Police recorded your statement during investigation, on?

A. Yes.

Q. You did not tell the Police that you saw X stab V ?

A. No. I did tell Police that I saw that X stabbed V.

Q. It is seen from your statement before the Police that you did not tell the Police that you saw X stab V ?

(At this stage the attention of the witness should be drawn to the omission by requesting the Court to verify this fact from the Police statement and to note in writing that the attention of the witness is drawn to the omission. It may be noted that the entire statement of the witness before the Police cannot be brought on record to prove omission).

A. I did tell the Police.

Q. Can you explain why the said statement is not to be found in your statement before the Police ?

A. I can't explain.

The next question is important, and must be asked without fail.

Q. I suggest that your statement in Court that you saw X stab V is false ?

A. The suggestion is false.

The advocate may be tempted to ask the further question.

Q. You told the Police in your statement that you saw Y stab V ?

The question is inadmissible as the Police statement can be used only to contradict.

The effect of the cross-examination as suggested above is that the evidence of witness that he saw X stab V is not trustworthy and if there is no other evidence, X may well claim acquittal. Furthermore, as witness has not deposed in Court that he saw Y stab V, is also entitled to the same benefit.

It is worth remembering that when witness says that he saw X stab V, it is implied that he did not see Y stab V.

The cross-examination suggested above does not prove the contradiction brought on record. For that purpose, the Investigating Officer who recorded the statement should be cross-examined thus :

Q. Witness did not tell in his statement recorded by you that he saw X stab V ?

A. No, he did not say so.

Without this questioning the contradiction cannot be held to be proved.

An illustration of direct contradiction would show how such a contradiction is proved. Witness says in Court that he saw Y stab V with a dagger. However, before the Police he has stated that he saw Y hit V with a stick. This is a clear contradiction and it must be proved by putting proper questions in the manner suggested above.

The statement of Y in Court that he saw Y stab V with a dagger is a composite statement. It implies (1) that he saw Y assault V and (2) further that the weapon used was dagger. The statement before the Police says that the witness saw Y assault V but says that the weapon used was a stick. Thus the contradiction is only with respect to the weapon used. Hence the proper question to witness would be that he did not state before the Police that the weapon used was a dagger. If he answers in the negative, the portion of his statement that the weapon used was a stick can be brought to his notice. The effect of the cross-examination is to falsify the statement of witness in Court that he say Y stab V with a stick will not prove that Y hit V with a stick, as the statement before the Police is not substantive evidence. It may well be noted that the cross-examination is neither directed to show that Y did not hit V at all, nor will it prove that Y did not hit V at all. In such cases, Judges often make a note that the contradiction is in respect of the weapon only.