

TOPIC – A
“CONTRADICTIONS AND OMISSIONS”

INTRODUCTION :-

Omissions and Contradictions relate to previous statement made by a witness. Omission means missing to state something from the earlier statement. Contradiction means stating something different from the earlier statement. Causes, and more particularly, effects of such 'something missing (omissions)' and 'something different (contradictions)' have to be dealt with by every judicial officer while waighing testimonies of witnesses.

2] There is no specific yardstick to decide the veracity of the versions of witnesses. Rather, there cannot be any, perhaps than the one, however subjective it may, that it should inspire confidence in the mind of a judge. Omissions and contradictions come in the way of inspiring confidence about evidence. Provisions and precedents have taken care of these issues. Section 145 of the Indian Evidence Act, 1872 (the Evidence Act) and Section 162 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) are the most relevant provisions in this regard.

3] Since in Indian Evidence Act the terms contradiction and omission are not defined but reference finds in section 155 as to impeach the credit of witness by adverse party. Section 155(3) provides as “by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted. Section 145 of the Indian Evidence Act provides the manner in which the witness can be cross examined as to previous statement in writing”. As per dictionary meaning the term “Contradiction” means “the act of saying something that is opposite or very different in meaning to something else.” Whereas the term omission as dictionary meaning as “something that has been left out or excluded.”

4] The contradiction means stating two versions by same persons at two different points of time. In the Criminal cases or trials the statement of witnesses are recorded by the Investigating officer. However, U/sec. 157 the former statement of witness may be proved to corroborate the later testimony as of the same fact. As such, only in statement made by a witness as substantive piece of evidence before the court can be corroborated with the former statement made by him but the question arises when it contradicts the earlier version. Then by conjointly reading section 155(3) its credit get impeached.

Meaning – Contradiction and Omission :-

5] If witness deposes in the court that certain fact existed but he has not stated accordingly in his statement before police, it is a case of conflict between the deposition in the court and statement before police. Therefore statement before police can be used to contradict his deposition before court.

Meaning of Omission :-

- i) Omitting or being omitted.
- ii) Thing omitted.

If witness has deposed in Chief examination the certain thing which he has omitted to state before police in his statement, it is called omission. The court will not take cognizance of omissions which are not relating to material point.

Meaning of contradiction :-

As per the Oxford dictionary, term 'contradict' (verb) means;

- i) Denies (a statement).
- ii) Deny a statement made by (a person).
- iii) be in opposition to or in conflict with. [contradiction noun].

6] If a witness deposes in the court that a certain fact existed, but he has not stated accordingly in his statement before the police, it is a case of conflict between the deposition in court

and statement before the police. Therefore statement before the police can be used to contradict his deposition before the court. 'Statement' in its Dictionary meaning is the act of stating or reciting. And 'contradict' according to Oxford Dictionary means to affirm to the contrary. If the statement before the police officer, and the statement in the evidence before the Court are so inconsistent or irreconcilable with each other, that both of them cannot co-exist, then it may be said that one contradicts the other. Further explanation to Section 162 of Code of Criminal Procedure, says that 'An omission to state a fact or circumstance, in the statement may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context, in which such omission occurs'. Whether any omission amounts to contradiction in the particular context shall be a question of fact.

Provisions relating to contradictions and omissions :-

7] According to Section 155 of The Indian Evidence Act, it has been enacted to “impeaching credit of a witness: The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him-

1. By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
2. By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt

inducement to give his evidence;

3. By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

4. When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character;

Explanation- “A witness declaring another witness to be unworthy of credit may not, upon his examination in-chief, give reason for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives can not be contradicted, though, if they are false, he may afterwards be charged with giving false evidence”.

8] A witness's previous statement is admissible in order to corroborate his evidence in the following conditions -

1. If the previous statement is relevant to the evidence given in the Court. In other words, the previous statement should be relevant to the same fact which are there in the enquiry.

2. It should be given then -

a) When the fact had happened; or

b) Before some officer who is competent of investigating that fact.

9] Thus, in order to corroborate the evidence of that witness, his previous statement can be proved. As per Section 154

and 155, the previous statement of the witness can be used to impeach his credit or reputation.

10] According to Section 157 of The Indian Evidence Act,
“Former statement of witness may be proved to corroborate later testimony as to same fact : In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact or about the time when the fact took place or before any authority legally competent to investigate the fact, may be proved.”

11] A provision regarding cross examination of a witness as to previous statements in writing has been embodied in Section 145 of the Indian Evidence Act. Section 154 of the Indian Evidence Act says that the Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. Sub-section (2) makes it clear that, the person may rely on any part of the evidence of such witness.

12] The Police are empowered to examine and record statement of witnesses during investigation under Section 161 of Code of the Criminal Procedure. The use of Statements is governed by sec. 162 of Code of the Criminal Procedure.

How to record contradiction during trial ?

13] Para 29 of Chapter VI of the Criminal Manual describes the manner of Proof and statements, under Section 161, of the Code of Criminal Procedure,1973, as under;

29. (1) When a statement recorded under Section 161 of the code of Criminal Procedure,1973 is used in the manner indicated in Section 162 of the Code, the passage which has been specifically put to the witnesses in order to contradict him should first be marked for identification and exhibited after it is proved.

(2) The method of proving such a statement is to question Police Officer, who had recorded the statement whether the passage marked is a true extract from the statement recorded by him.

(3) When a statement recorded under section 161 of the Code is used to contradict a witness, the specific statement put to the witness should be set out accurately in the record of the deposition of the witness.

(4) Omissions in the statement recorded under Section 161 should, if denied by the witness, be proved by questioning the Police Officer whether the witness

had made the statement which he says he had.

14] To contradict witness exact passage occurring in his statement under sec 161 should be read out and put to the witness whether the witness admits having made such a statement before I.O. The exact statement which was read out to the witness should be incorporated verbatim in deposition within inverted commas. If the witness admits having made that statement there is no need to further proof of contradiction. If on the other hand the witness denies having made such a statement, thereupon it should be mentioned in the deposition itself in brackets. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when I.O who has recorded the statement is examined in the court, the passage marked for the purpose of contradiction should be read out to him and he should be asked if the witness had stated as mentioned in that exhibit. It is only when investigating officer answer in affirmative that the exhibit can be deemed to have been properly proved.

15] Ordinarily, accused persons are entitled to challenge the testimony of witnesses with reference to the statements said to have been made by them before the Investigating Officer. Statements made by prosecution witnesses before the Investigating Officer being earliest statements made by them with

reference to the facts of the occurrence, are valuable material for testing veracity of witnesses examined in Court, with particular reference to those statements, which happened to be at variance with their earlier statements. But the statements made during police investigation are not substantive evidence. Explanation to Sub-section (2) of sec. 162 of the code of Cr.P.C is added to resolve the conflict and recognize the validity of the majority decision of the Hon'ble Supreme Court in ***Tahsildar Singh V/s State of U.P. AIR 1959 1012.***

16] Now the explanation specifically provides that, an omission to state a fact or circumstance in the case may amount to contradiction if certain conditions as envisaged therein are fulfilled. A statement recorded by the police during the investigation is not at all admissible in evidence and the proper procedure is to confront the witnesses with the contradiction when they are examined and then ask the Investigating Officer regarding those contradiction. Following are well settled legal propositions:

- i) A statement in writing made by witness before a police officer in the course of investigation can be used only to contradict his statement in the witness box and for no other purpose.
- ii) Statements not reduced into writing by the Police officer cannot be used for contradictions.

iii) Though a particular statement is not recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradictions not because it is an omission strictly so called, but because it is deemed to form part of the recorded statement. Such a fiction is permissible by construction only in the following three cases:

a) when a recital is necessarily implied from the recital or recitals found in the statement.

Illustration :- In a statement before police the witness states that, he saw 'A' stabbing 'B' at a particular point of time, but in the witness box he says that he saw 'A' and 'C' stabbing 'B' at the same point of time; in the statement before the police the word 'only' can be implied .

b) a negative aspect of positive recital is found in statement.

Illustration :- In the recorded statement before the police the witness says that, a dark man stabbed 'B'. But in the witness box he says that a fair man stabbed 'B' the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion.

c) when the previous statement and statement before the court can not stand together.

Illustration :- The witness says in the recorded statement before the police that, A after stabbing B ran away by a northern lane, but in the Court he says that

immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing i.e., at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false.

17] Hon'ble Apex Court has narrated the procedure of bringing on record contradictions and omissions in simple words in recent verdict of **V. K. Mishra and another Vs. State of Uttarakhand and another (AIR 2015 S.C. 3043)**. Para-18 of the said citation reads as under :-

“ Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is to be drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of

contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot *suo moto* make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.”

More or less, the same procedure is laid down by the Hon'ble Bombay High Court long back in the year 1958, in the case of **Sayyad Hussain Sayyad Hussain Vs. The State, AIR 1958 Bom 225.**

18] If it is intended by an accused to contradict the evidence given by a prosecution witnesses at the trial with a

statement made by him before the police during the investigation, the correct thing to do is to draw the attention of the witness to that part of the contradictory statement, which he made before the police and question him whether he did in fact make that statement. If the witness does not admit having made the particular statement to the police, that admission will go into evidence and will be recorded as part of his evidence. If the witness does not admit having made the particular statement to the police, such a statement before the police i.e the particular portion of the statement recorded U/s.161 Cr.P.C should be provisionally marked for identification and when the Investigating Officer who had actually recorded the statement in question comes into the witness box he should be questioned as to whether that particular statement had been made to him during the investigation by the particular witness, and obviously after refreshing his memory from the police case diary the Investigating Officer would make his answer in the affirmative. The answer of the Investigating Officer would prove the statement which is then exhibited in the case and will go into evidence and may, thereafter, be relied on by the accused as a contradiction.

19] It is for the trial judge to decide in each case, after comparing the part or parts of the statement recorded by the police with the one made in the witness box, to give a ruling

having regard to the aforesaid principals whether the recital intended to be used for contradiction satisfies the requirements of law.

How to judge contradictions and omissions? How far they are material?

20] The duty of court is to discover the truth and to find out whether the accused is guilty or not. Facts comes before the court by way of oral testimony of witness and other documents. As human being is not free from certain error, moreover with different perception power of senses and different intellect i.e. analytical reasoning, mental status etc., therefore it is not possible to lay down strict rule or straight jacket formula in appreciation of all contradictions and omissions. So every contradiction or omission must therefore be judged by reference to various factors.

Evidential Value Of Contradictions And Omissions:

21] Merely because there is 'inconsistency in evidence, it is not sufficient to impair the credit of the witness. No doubt section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. A former statement though seemingly inconsistent with the

evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be contradicted would affect the the credit of the witness.

22] In the past, great importance was being given to minor contradictions and omissions. The accused were getting benefit of hyper sensitivity of Judges who were giving importance to minor contradictions and omissions. Lawyers were also attempting to compare word for word and they were searching for every opportunity to bring on record contradictions and omissions. All this exercise has made cross-examination of witnesses a kind of mockery. But in recent past Hon'ble Supreme Court has criticized this tendency which was resulting in giving undue advantage to the defence side and it was paralyzing the prosecution case. It was also causing injustice to the victims of crime due to acquittal of the accused on the strength of minor contradictions and omissions came on record. Such sort of change can be pointed out by quoting observations of Hon'ble Supreme court in following cases :-

i) Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be annexed with undue importance. More so, when the all important “probabilities-factor” echoes in favour of the version narrated by the witnesses. - **Bhoginbhai Hirjibhai Vs. State of Gujarat (AIR 1983 SC 753).**

ii) In appreciation of evidence, the approach must be whether the evidence of the witness read as a whole, appears to have a ring of truth. Once that impression is formed, the Court should scrutinise the evidence keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by him and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. - **State of U.P. Vs. M. K. Anthony (AIR 1985 SC 48)**.

iii) In **Appabhai Vs. State of Gujrat AIR 1988 S.C. 694 [1988 Cri.L.J. 848]**, The Hon'ble Apex Court has observed as under:-

"The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in

different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses now a days go on adding embellishment to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy."

iv) The core of the evidence has to be seen and not any borderline's aspect. Minor variations which do not have any effect on the credibility of the evidence, cannot be the basis to discard intrinsic value of the evidence. - **Shamsuddin Vs. State of M.P. (2003 (12) SCC 693)**.

v) As observed by this Court in **State of Rajasthan Vs. Smt. Kalki (AIR 1981 SC 1390)**, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal

discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects are highlighted recently in **Sucha Singh Vs. State of Punjab (AIR 2003 SC 3617)**.

vi) Unless discrepancies, contradictions and inconsistencies affect the core of the prosecution case, they cannot be basis to reject their evidence. Normal discrepancies are bound to occur in the depositions of witnesses due to errors of observations, errors of memory due to mental disposition at the time of the occurrence. - **State of U.P. Vs. Nagesh (2011 Cr.L.J. 2162 (SC))**.

vii) Contradictions minor in nature and not related to major overt act attributed to each accused would not discredit their testimony, more so when all the prosecution witnesses hail from agricultural family and are villagers, cannot be expected to state minute details in their earlier statements before Court. - **Waman Vs. State of Maharashtra (AIR 2011 SC 3327)**.

viii) Inconsistencies or contradictions in oral evidence do not rule out when medical evidence is in consonance with the principal part of oral/ocular evidence. - **Kathi Bharat Vijaur Vs. State of Gujarat (AIR 2012 SC 2163)**.

23] **Important Citations on contradiction and omission :-**

i) **Bharat Singh vs State of U.P., AIR 1972 SC 2478**

The contention was that there were serious contradictions in the evidence of the prosecution witnesses which had not been considered by the High Court. Whereas one witness said that the appellant was carrying a weapon like a hockey stick, another witness said that the appellant was armed with a pistol. The Supreme Court held that it is common experience that in the confusion of the moment witnesses are prone to make errors especially if seized by sudden fear. Besides, those who are determined to be lawless do not always stick to their weapons.

ii) Omission in the statement of witnesses (**Bhinya Ram vs State of Rajasthan, 1979 Raj Cr.C 308 (314, 315)**)

The statement of the witness to the effect that the accused used to tell him that he would kill the rich and distribute their wealth amongst the poor and this mission he would start with the assassination of His Highness Kishangarh. The witness failed to make such an important statement before the police. The explanation of the witness that he did not narrate this fact to the police as he was not asked about it, does not satisfactorily explain this material omission. If the accused told him prior to the date of the occurrence that he would commit the murder of His Highness Kishangarh he would not have kept quiet and would not have also remained silent before the Investigating Officer at the time of

recording his statement.

iii) In case of – **Arjun and others .Vs.. State of Rajsthan, AIR 1994 SC 2507**, The Hon'ble Apex Court has held that - A little bit of discrepancies or improvement do not necessarily demolish the testimony. Trivial discrepancy, as is well known, should be ignored. Under circumstantial variety the usual character of human testimony is substantially true.

Similarly, innocuous omission is inconsequential.

iv) In case of **Cruz Pedro Pacheco Vs. State of Maharashtra, reported in 1998 (5) Bom. C. R. 521**, Hon'ble Bombay High Court held as under :-

“ Credibility of the witness can be impeached only after obtaining his explanation for the contradictory statement and by pointing out that the explanation given by him is not true or satisfactory. Then only the Court will be in a position to consider whether and how far the credibility of that witness is affected on that count. Therefore, in my opinion, it is absolutely necessary to give the witness an opportunity of explaining the alleged contradiction. It must be borne in mind that the trial has to be fair not only to the accused but also to the witness who may be the aggrieved party himself. ”

v) **Vikram Vs. State of Maharashtra, AIR 2007, SC 1893.**

Witnesses were examined in Court after two and half years, if there occurred some contradictions or even assuming they had omitted to state the incident in great details, the same by itself would not lead to conclude that accused are falsely implicated in the case.

vi) Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (*Vide* : **State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106.**)

vii) **State Rep. by Inspector of Police v. Saravanan and anr., AIR 2009 SC 152:** The contradictions/omissions must be of such nature which materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements which do not affect the core of the prosecution case should not be made a ground to reject the evidence of the witness in entirety.

viii) **Sunil Kumar Sambhudayal Gupta (Dr.) and others v. State of Maharashtra, (2010) 13 SCC 657:** Omissions which amount to contradictions in material particulars, i.e., go to the root of the case/materially affect the trial or core of the prosecution case,

render the testimony of the witness liable to be discredited.

ix) **C. Muniappan Vs. State of Tamilnadu, AIR 2010, SC 3718.**

Even if there are some contradictions and omissions and discrepancies the entire evidence cannot be disregarded. After exercising care and caution and sifting through evidence to separate truth from untruth, exaggeration and improvements the court can come to a conclusion as to whether residuary evidence is sufficient to convict the accused. Thus undue importance should not be attached to them which do not go to the heart of the matter. Minor discrepancies are bound to occur in the statement of witnesses.

x) **Shamal Ghosh Vs. State of West Bengal 2012 All. S. C. R, 1921**

Omission to state a fact whether it is material contradiction or not is a question of fact. The discretion is left with the Court to determine whether it is a contradiction or material contradiction which renders the entire evidence of the witness untrustworthy and affects the case of prosecution materially.

24] **Conclusion :**

It is duty of the court to discover truth and find out whether accused is guilty or innocent. The facts set out by prosecution may not be accurate or even they can be twisted. In this back ground

the tool of contradiction and omission is very effective to shake or shatter the credibility of prosecution evidence. Proof of contradiction and omissions though is very useful in criminal trial, it has to be used with circumspection and within legal frame work. The credibility of witness does not stand impeached merely by proving contradictions on record. It is required for defence side to show that prosecution witness may deliberately depose change or improve there original statement in order to cause prejudice to accused. Similarly minor omission or discrepancy in evidence is not enough to hold accused not guilty. Thus by striking out balance and by evaluating evidence in proper perspective justice can be done.

Submitted with respects.

Compiled summary paper prepared by

1. V. P. Kadam,
A.C.M.M., 31st Court, Vikhroli

4. S. G. Baokar
M.M., 50th Court, Vikhroli.

2. S. S. Pallod,
M.M., 34th Court, Vikhroli.

5. C. R. Balwani
M.M., 72nd Court, Vikhroli.

3. R. R. Bhagwat,
M.M., 49th Court, Vikhroli.

6. V. V. Patil
M.M., 73rd Court, Vikhroli.