

SUMMARY

OF

PAPERS OF CRIMINAL SIDE

FOR THE WORKSHOP TO BE HELD ON 27-08-2016

ON

(A) COMPENSATION TO VICTIMS OF CRIME

(B) HOW TO PROVE OMISSIONS AND CONTRADICTIONS WITH

REFERENCE TO TAHASILDAR SINGH CASE.

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COMPENSATION TO VICTIMS OF CRIME

INTRODUCTION:

“The role of victim in a criminal trial can never be lost sight of. He or she is an inseparable stakeholder in the adjudicating process. The protection is necessary so that there can be no miscarriage of justice; but protection is also necessary to restore in them, a sense of human dignity.” It is so laid down by Hon'ble Apex Court in National Human Right Commission V/S State of Gujarat [(2009) 6 SUPREME COURT CASES 342]

02] The term “VICTIM” is defined under section 2 (wa) of Code Of Criminal Procedure, 1973 as, “A person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir.”

03] The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the United Nations General Assembly in resolution 40/34 of 29th November 1985. According to the first paragraph of this declaration, victims of crime are described as “Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative in Member States, including those laws prescribing criminal abuse of power. It is they who need protection.

NECESSITY:

04] All victims have a right to seek help and protection from the State as their fundamental right provided by Article 21 guarantees to every person protection of life and personal liberty. In this respect directive principles are contained in Part IV, particularly Article 39(a)- Right to adequate means of livelihood, Article 39-A - Seeking free legal aid for justice. The authorities of the State in each district through Collector being the district administrative head, the Superintendent of Police, the Chief Medical and Health Officer, and the District Legal Services Authority are constitutionally and statutorily obliged to extend help and support to the victims. We should reassure the victim that he/she is not forgotten in the criminal justice system.

05] Section 357 of the CrPC is an important provision but Courts have seldom invoked it. This section of law empowers the Court to award compensation while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the victim who has suffered by the illegal act of the accused. This power to award compensation is not ancillary to other sentences but is in addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. It is therefore necessary to recommend all

the courts to exercise this power liberally so as to meet the ends of justice in a better way.

JUDICIAL DICTUMS:

06] In case of **Hari Singh -Vrs- Sukhbir Singh**, reported in **AIR 1988 SC 2127**, the Hon'ble Apex Court recommended that "*all Courts should exercise this power liberally so as to meet the ends of justice in a better way.*"

07] In the case of **Siby -Vrs- Vilasini, reported in 1998(4) Crimes-663**, 1995 Cri.L.J. 3217, the Hon'ble Apex Court has held;- "*that the power to award compensation under sub-section(3) is not in aid to other sentences but is independent and can be passed in addition to such sentence.*"

08] *In the case of **P.N. Patel -Vrs- State of Gujarat,** reported in **2001 Cri.L.J. 950**, the Hon'ble Apex Court held "Whenever a Magistrate feels that the complainant should be compensated, he can, after imposing a term of imprisonment, award compensation to the complainant for which **no limit is prescribed in Section 357 of the Code.**"*

09] *In **Railway Boards versus Chandrima Das** [AIR 2000 SC 988] compensation of `10,00,000/- was awarded to victim of rape at Rail Yatri Niwas.*

10] Similarly, *in case of **Kewal Patil versus State of Uttar Pradesh** [(1995) 3 SUPREME COURT CASES 600]: Honourable*

Supreme Court has awarded compensation to widow of a convict, who was killed by co-accused in jail while serving sentence.

11] *In case of **People's Union for Civil Liberties versus Union of India** [AIR 1997 SC 1203]:Honourable Supreme Court held that killing of two persons in fake encounter by police was clear violation of the right to life guaranteed in Article 21 of the Constitution of India and awarded `1,00,000/- as compensation to heirs of each deceased.*

12] *In **Suganthi Suresh Kumar versus Jagdeeshan**, [(2002) 2 SCC 420] it has been observed by Honourable Supreme Court that:*

“When the Supreme Court pronounced in Hari’s case that Court may enforce an order to pay compensation by imposing sentence in default, it is open to all the courts in India to follow the said course.”

13] The question arises as to whether in default of payment of compensation ordered under section 357(3) of CrPC, a **default sentence** can be imposed or not. In the case of **Vijayan -Vrs- Sadanandan K. and Another**, reported in **2009 Cri.L.J.2957 (S.C.)**, the Hon'ble Apex Court held that ;- *“The provisions of Sections 357(4) and 431, when read with Section 64,IPC empower the Court, while making an order for payment of compensation, to include a **default sentence** in case of non-payment of the same and Court is within its jurisdiction to add default sentence of imprisonment.”*

14] Recently, in **K. A. Abbas H.S.A. versus Sabu Joseph and another** [2010 STPL(Web) 384 SC]: after considering all the relevant provisions and authorities on the point, Honourable Supreme Court has ruled that-

“Section 421 clearly provides that an order of compensation under section 357(3) will be recoverable in the same way as if it were a fine. Section 421 provides that the mode of recovery of a fine and the section clearly provides that a person can be imprisoned for non-payment of fine. Therefore, going by the provisions of the Code, the intention of the legislature is clearly to ensure that mode of recovery of a fine and compensation is on the same footing. In light of the aforesaid reasoning, the contention of the accused that there can be no sentence of imprisonment for default in payment of compensation under section 357(3) should fail.”

15] ***In Dilip Dahanukar versus Kotak Mahindra Company Limited [2008 (1) Mh. L.J.22 (SC)] it is held that:***

“There is no upper limit or cap to the amount of compensation to be awarded under section 357(3) of Code of Criminal Procedure. Moreover, to know paying capacity of the accused, a *small inquiry* is required to be held while quantifying the amount of compensation”.

16] Reasonable opportunity of hearing must be given to the accused on the question of quantum of compensation. In the case of ***Mangilal -Vrs- State of M.P.***, reported in ***AIR 2004 SC 1280***, the *Hon'ble Apex Court* held that;- “The power to award compensation can be exercised only on giving the accused an *opportunity of hearing* on question of quantum of compensation.”

17] ***In the case of Delhi Domestic Working Women's Forum versus Union of India and others [1995 SCC (1) 14]***, it has been directed to the National Commission for Women to evolve a “scheme so as to wipe out the tears of unfortunate victims of rape”. Honorable Supreme Court has observed that

"having regard to the Directive Principles contained in Article 38(1) of the Constitution, it is necessary to set up Criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment. It is further directed that, compensation for victims shall be awarded by Court on conviction of the offender and by the Criminal Injuries Compensation Board, whether or not conviction has taken place. The Board shall take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth, if this occurs as result of the rape."

18] The 152nd Report of the Law Commission had recommended the introduction of section 357-A prescribing inter alia that the compensation be awarded at the time of sentencing to the victims of the crime. The 154th Report of the Law Commission of India says that its earlier recommendation had still not been given effect to by the government. It went one step further and recommended that it was necessary to incorporate a new section 357-A in the Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the Courts. Heads of compensation are for (i) the injury, (ii) any loss or damage to the property of the claimant which occurred in the course of his/her sustaining the injury and (iii) in case of death from injury resulting in loss of support to dependants. Therefore, The Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009) now added provision in the form of the section 357-A in The Code of Criminal Procedure, 1973 on victim compensation.

VICTIM COMPENSATION SCHEME: (Section 357-A)

19] Section 357-A deal with victim compensation scheme. Section

357(a)(1) says that;- Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

As per Section(2) of Section 357-A “On recommendation made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, shall decide the quantum of compensation to be awarded under the scheme.

Sub-section (3) of Section 357-A empowers the court to make recommendation for compensation if it is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

Sub-section (4) of Section 357-A provides that even in a cases where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

As per Sub-section (5) of Section 357-A on receipt of such recommendations or on the application under sub-section(4), the State or the District Legal Services Authority shall make due inquiry and award adequate compensation by completing inquiry within two months.

¶ In **State of Maharashtra ..vs.. Madhav Vitthal Bansode [2016(2)BomCR(Cri)715]** it has been held that *“there is definitely loss to the family and the family needs to be rehabilitated for the injury and loss caused to it. I propose to invoke **Section 357-A** of Cr.P.C. for awarding necessary compensation by the District Legal*

*Services Authority, as the compensation I am awarding under **Section 357** of Cr.P.C. is really not adequate. The State must pay the compensation as may be decided by District Legal Services Authority as State is also responsible for letting exist the utter chaos in the street as seen above in which citizens are put to constant risks. Under **Section 357-A** of Cr.P.C., recommendation is made to the District Legal Services Authority, Jalgaon to provide compensation to injured. The District Legal Services Authority shall decide the quantum of compensation to be awarded under **Section 357-A** of Cr.P.C. and the State would be bound to pay the compensation as may be decided by the District Legal Services Authority."*

IMPLEMENTATION:

21] The legislature has fixed responsibility as to payment of compensation to the victim on the District Legal Services Authority or the State Legal Services Authority as the case may be on recommendations from the Court on making proper inquiry. In exercise of powers conferred by section 357 A of Cr.P.C the Government of Maharashtra in co-ordination with the Central Government has framed the scheme for the purpose of compensation to the victims or their dependents, who have suffered loss or injury as a result of a crime and who required rehabilitation which is called as the '**Maharashtra Victim Compensation Scheme, 2014**'. Under the said scheme 'dependents' means – wife, husband, father, mother, unmarried daughter, minor children and

includes other legal heirs of the victim who on providing sufficient proof, are found by the District Legal Services Authority fully dependent on the victim.

22] Under this scheme there is provision of constitution of "The Victim Compensation Fund from which amount of compensation under this scheme will be paid to the victim or their dependents". State Government has to allot separate budget for the purpose of the scheme every year. It is also provided that there should be other sources of Victim Compensation Fund i.e. the receipt of amount of fine imposed u/s 357 of the Code and ordered to be deposited by the Courts in the Victim Compensation Fund. As such, the Court can order the amount of fine imposed to be deposited with the victim Compensation Fund through District Legal Services Authority which is to be maintained by the Maharashtra State Legal Services Authority.

23] The Government of Maharashtra has also in the year 2013 introduced another victim compensation scheme as contemplated under section 357-A(1) of the Code. The scheme is called 'Manodhairya'. The scheme is implemented from 2nd October 2013. As part of the scheme, the State would give monetary compensation in the range of `2,00,000/- to ` 3,00,000/- to victims of crime especially of rape, child sex *abuse and acid attacks*. *Victims who suffer from complete disfigurement* of face or physical handicap in acid attack will get compensation of `3,00,000/- while in case of minor injuries ` 50,000/-. There is also a provision to help women and child victims to meet emergency expenses up to 50,000/- apart from

a host of support services to victims such as housing, counseling medical and legal aid, education and vocational training that the scheme offers.

24] A district level criminal injuries' relief and rehabilitation boards, headed by the district collector, will implement the scheme and it will be funded by the state government till the time the central government introduces a bigger scheme.

25] It is also worth to mention about recent verdict that compensation payable under section 357-A of Cr.P.C. by the State Government shall be in addition to payment of fine to victim under section 326-A or 376-D of IPC. It is so laid down in **Suo Motu Writ Petition (Criminal) No. 24 of 2014** [AIR 2014 SC 2816].

26] In **Iaxmi..vs..Union of India & ors** reported in **AIR 2015 SC 3662**, *the Hon'ble Apex Court* observed that a meeting was convened by the Secretary in the Ministry of Home Affairs, Government of India and the Secretary in the Ministry of Health and Family Welfare, Government of India with all the Chief Secretaries/their counterparts in the States/Union Territories on 14.03.2015. From the affidavit, the provisional figures for 2014 indicate that there were 282 acid attacks in all the States. The majority of acid attacks were in the States of Uttar Pradesh (185), Madhya Pradesh (53) and Gujarat (11).

27] In above case *the Hon'ble Apex Court* further observed that *we also direct the Member Secretary of the State Legal Services Authority to*

obtain a copy of the Victim Compensation Scheme from the concerned State/Union Territory and to give it wide and adequate publicity in the State/Union Territory so that each acid attack victim in the States/Union Territories can take the benefit of the Victim Compensation Scheme. State Governments should take up the matter with the private hospitals so that they are also required to provide free medical treatment to the victims of acid attack. No hospital/clinic should refuse treatment citing lack of specialized facilities. The final issue is with regard to the setting up of a Criminal Injuries Compensation Board. Since the District Legal Services Authority is already constituted in every district and is involved in providing appropriate assistance relating to acid attack victims, perhaps it may not be necessary to set up a separate Criminal Injuries Compensation Board. Therefore, in case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes.

CONCLUSION:

28] It must be kept in mind that punishing accused and caring for victim are two sides of same coin. Criminal justice system must not lose its sight to imposition of appropriate sentence to culprit and also to physical, psychological, economic, social rehabilitation of victims. Award of proportionate compensation to victims enhances level of Justice System from Criminal Justice System to Curative Justice System. Compassionate treatment of Victims under the criminal justice system itself leads to belief in the system which is enhanced by way of compensation programs, independent of conviction of offenders. The summary of this topic may be concluded

with reference to observations of Honourable Apex Court in the case of **State of Karnataka V/S Krishnappa** [2000 CriLJ 1793], in paragraph No. 15 that

“A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.”

**HOW TO PROVE OMISSIONS AND CONTRADICTIONS WITH
REFERENCE TO TAHASILDAR SINGH'S CASE**

INTRODUCTION:

01] The rules of evidence laid down in Sections 145, 154 and 157 are of paramount importance. Contradictions in the previous statements in writing of a witness is 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 investigation, statements of witnesses are recorded by the police under Section 161 of the Cr. P. Code and 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. Whether it refers only to direct contradiction or it includes "Omissions" also.

02] According to Oxford dictionary 'contradiction' means to offer the contrary. 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. If a witness has deposed in the examination in chief a certain thing which he has omitted to state before the police in his statement it is called **omission**. If the said omission is on minor points, it is not contradiction and court will not take cognizance of those omissions. Court will take cognizance of those omissions which are on material

point and which are called contradictions by way of omissions. In order to prove the omissions, it is necessary to find out as to what witness has deposed before the court in the examination in chief and omitted to state in his statement before police. So, if we take plain meaning of words 'contradiction' and 'omission' as per dictionary meaning with reference to our concern of prosecution evidence, contradiction means 'Person who turn over from his previous statement and submits differently which effects his truthfulness and trustworthiness of testimony. While 'Omission' means person skip something in statement he has previously made.

What amounts to contradiction?

03] Here with reference to law of evidence we have to understand word 'contradiction' and 'omission'. To simply comprehend contradiction we should consider Sections 161, 162 Cr. P. C. and sec.145, 154 of Evidence Act together. During investigation police record statements of witnesses which are either called 161 statements or case diary statements. Purpose of recording statements is to gather evidence against accused. While police submits charge-sheet u/s 173 Cr. P. C., copy of all statements as well charge-sheet are supplied to accused. On the basis of these statements court frame charge against accused. While witness whose statement has been earlier recorded is examined in the court, defence can question his truthfulness as it is provided u/s 145 of Evidence Act.

04] Latter portion of section 145 of Evidence Act describe

how to contradict witness. A witness may be cross-examined as to previous statement made by him in writing or reduced in to writing, and relevant to matters in question, without such writing being shown to him, or being proved; But, if it is intended to contradicting him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

EVIDENTIARY VALUE OF CONTRADICTIONS AND OMISSIONS:

05] Various 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 is to be remembered that a contradiction is not a substantive evidence.** Substantive evidence is evidence given on oath in the Court, on which the Court may act. 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.

06] 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 to be remembered that no part of police statement is substantive evidence.

HOW TO PROVE OMISSION AND CONTRADICTIONS:

07] There 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. The proof is in two stages. In the first stage, the contradiction is 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 will have no effect at all.

08] How a contradiction is to be recorded is elaborately discussed in the case of ***Tahsildar Singh Vs. State, [1959, Cri. L. J. 1231 =A 1959 S.C. 1012]***. We will discuss the propositions laid down by the Hon'ble Apex Court as follows :

1. *The portion of the statement recorded under section 161 which is supposed to be used for contradicting the witness should first of all be brought to his notice and he should be questioned about it.*

2. *To contradict witness exact passage occurring in his statement under sec 161 should be read out and question shall be 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.

3. 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 yet to be proved.

4. 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.

09] The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate; A says in the witness-box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness-box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, if the witness is asked "did you say before the police officer that you saw a gas light" and he answers "yes" and then the statement which does not contain such recital is put to him as contradiction, the procedure involves two fallacies; one is, it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could

be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that there is no self contradiction of the primary statement made in the witness-box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all; only questions to contradict can be put and the question here posed does not contradict, it leads to an answer which is contradicted by the police statement.

10] It is further held in the landmark judgment of **Tahsildar Singh** that; it cannot be broadly contended that a statement includes all omissions which are material and are such as a witness is expected to say in the normal course. Unrecorded statement is completely excluded. But recorded one is used for a specified purpose.

11] Omissions unless by necessary implication be deemed to be part of the statement, cannot be used to contradict the statement made in the witness-box; and the view that they must be in regard to important features of the incident which are expected to be included in the statement made before the police is not tenable.

12] Thus, in landmark judgment of **Tahsildar Singh**'case,

the Hon'ble Apex Court has held that;-

(a) A statement in writing made by a 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;

(b) Statements not reduced to writing by the police officer cannot be used for contradiction;

(c) Though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement and;

(d) Such a fiction is permissible by construction only in the following three cases;

(i) when a recital is necessarily implied from the recital or recitals found in the statement;

(ii) A negative aspect of a positive recital in a statement and;

(iii) When the statement before the police and that before the Court cannot stand together.

EFFECT OF PROVED CONTRADICTION OR OMISSION:

13] 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 nowadays 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."

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

14] The duty of court is to discover the truth and to find out whether the accused is guilty or not. Facts come 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.

15] On the point of appreciation of evidence the Hon'ble Supreme Court has observed in **Ganesh K. Gulve etc. v/s. State of Maharashtra** [*Decided on 21.08.2002 in appeal (Cri) 501 of 1999 and others by Division Bench of JJ – Hon'ble Shri Y. K. Sabharwal & Hon'ble Shri H. K. Sema*] as under:-

" In order to appreciate the evidence, the Court is required to bear in mind the set up and environment in which the crime is committed, the level of understanding of the witnesses, the over jealousy of some of near relations to ensure that everyone, even remotely connected with the crime be also convicted. Everyone has different way of narration of same facts. These are only illustrative instances. Bearing in mind these broad principles, the evidence is required to be appreciated to find out what part out of the evidence represents the true and

correct state of affairs. It is for the courts to separate the grain from the chaff. ... "

Conclusion

16] Contradiction and omission are very important part of actual cross examination during criminal trial. Proved contradictions and omissions if relevant and material, definitely affect veracity and trustworthiness of witness. Contradiction if properly proved, as contemplated by law, to that extent the credit of the witness is shaken, then it is for the Court to consider whether the contradictions are sufficient to discredit the evidence of witnesses. Where the contradictions are not material, and the witness is neither shown to be having animus, with the deceased, nor highly interested in the family of the accused, the witness could not be branded as liar for such discrepancy. Small omissions in statements given by witness before the police do not justify a finding that the witnesses concerned are liars. To take contradiction and omission on record defence counsel or Public Prosecutor as the case may be, ought to carefully study statements of concerned witness recorded during investigation. What the Court has to see is if because of discrepancies, contradictions & omissions, the veracity of the witness is affected. If the Court finds that despite the discrepancies, omissions and contradictions, the witness emerges as a truthful witness whose evidence has a ring of truth, the Court can accept the testimonies of such a witness. Merely because graphic account is given by the witnesses, is no ground to discard their evidence.

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