RECORDING AND PROOF OF CONTRADICTIONS AND OMISSIONS, THEIR EVIDENTIAL VALUE AND **APPRECIATION OF EVIDENCE OF HOSTILE WITNESSES**.

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 copies of all statements are also supplied to accused. And on the basis of these statements in charge-sheet court can frame charge and take cognizance against accused. While witness whose statement has been earlier recorded if examined in the court defence can question his truthfulness as it is provided u/s 145 of Evidence Act. Later portion of this section describes how to contradict witness.

In every criminal trial, whether it may be before the Magistrate or the Court of Sessions, prosecution has to examine its witness or witnesses in order to prove its case against the Accused. After examination of witnesses in the criminal trial, the prosecution submits before the court that the evidence of all prosecution witnesses should be believed and the case against Accused has been proved beyond reasonable doubt. Ultimately, prosecution is insisting for the conviction of the accused on the basis of the evidence adduced before the

court. It is the case of prosecution that the witnesses examined are reliable and the evidence of the witnesses is trustworthy. On the other hand, the defence counsel is submitting before the court that the prosecution witnesses are not worthy to be relied upon. The testimony and evidence of all the prosecution witnesses should be discarded in toto. The prosecution witnesses are not reliable. They are deposing falsely before the court. The aforesaid argument of the defence counsel is always based on the contradictions which are proved during the examination of each of the witnesses. Therefore, on the basis of proved contradictions, the defence counsel submits that there are several contradictions on material points. The prosecution witnesses have deposed something else for the first time in court which is not stated by them when statement was recorded by the police during course of investigation u/s 161 of Cr. P .C. There are several modes of impeaching the credit of the witnesses. Proving of contradictions is one of the mode to impeach the credibility of witnesses. The modes of impeaching credit of witness are laid down u/s 155 of Indian Evidence Act, 1872. As per sub section (3) of S. 155 of Indian Evidence act, the credit of a witness may be impeached by the adverse party or with the consent of the court by the party who calls him, by contradicting former statement which is inconsistent or any part of his evidence which is liable to be contradicted. Hence, proving the omissions and

contradictions in criminal trial is one of the modes to impeach the credibility of the witness. After hearing the defence counsel on the point of proof of contradictions, court has to scrutinize said contradictions. Proving of contradictions is a strong weapon in the hands of defence counsel to get acquittal of the Accused. Whenever there is no defence available in the prosecution case, the proof of the contradiction is certainly assisting the accused to get the acquittal of the charges. Hence, proof of the contradictions is very important for the defence in order to get the acquittal.

The Meaning of contradictions :

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.

Meaning of Omission

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 he has deposed before the court in the examination in chief and omitted to state in his statement before police.

Why omissions and contradictions are required to be proved ?

Even though the statements of witnesses are before the court and same witness deposed before the court; any material fact which is not stated by him before police, but still we cannot point out the contradiction to the court by reading the contents of his statement before the police. The court is also not empowered to read and rely upon the statement of said witness before police in evidence. Because there is bar to do so as per section 162 of Cr. P. C. As per section 162 of Cr. P .C. such statement or part of such statement may be used by the accused to contradict such witness in the manner provided u/s 145 of Evidence Act. Same is the case in respect of prosecution. However, prosecution has to seek the permission of the court. Hence as per the restrictions laid down in S 162 of Cr. P .C. the previous statement i.e. the statement of the witness recorded during course of investigation u/s 161 of Cr. P .C. cannot be straightway used before the court in order to point out the

omissions and contradictions and therefore, it is necessary to prove the omissions and contradictions as per procedure laid down in S. 145 and S. 137 of Indian Evidence Act. If the contradiction is not proved, it is of no use to argue before the court that this particular witness has stated something else before the court and something else or contradictory before the police. Therefore, every contradiction is required to be proved. Statement of a witness recorded under section 161 of Cr. P. C. is inadmissible in evidence.

Section 162 of Code of Criminal Procedure, says that when any witness is called for the prosecution in the enquiry or trial and whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused and with the permission of the Court, by the prosecution to contradict such witness. '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. And whether any omission amounts to contradiction in the particular context shall be a question of fact. What is omitted to be stated is omission. A statement cannot include that, which is not stated. Omission amounting to contradiction can be used for the purpose of confrontation under Section 145 of the Evidence Act. Every omission is not contradiction. Very often to make a statement sensible or self consistent it becomes necessary to imply words which are not actually in the statement. Though something is not expressly stated, it is necessarily implied from what is directly or expressly stated. Sometimes a positive statement made has a negative aspect & negative one a positive aspect. If a witness states that a man is dark, it also means that he is not fair. Further, there are occasions when we come across two statements made by the same person at different times, and both of them cannot stand or co-exist. An omission amounting to contradiction can be proved either by bringing on record the whole of the statement confining its use to the actual absence of the statement in Court or the police officer may be asked to refer to the statement of the witness in the diary for refreshing his memory as asked whether such statement was made. It is laid down in the case of Tahsildar Singh Vs. State, AIR 1959, Supreme Court-1012, that ' relevant & material omissions amount to vital contradictions which can be established by cross- examination and confronting the witness with his

previous statement. Take an example ' in a murder case, the witness tells investigating officer that only one accused had fired his gun while in Court he states that both the accused had fired their guns. This kind of omission is very significant and relevant and shall amount to contradiction because the ballistic report says that the dead man received bullets fired from two different guns. Section 162 of Code of Criminal Procedure, casts a restriction about the use of statement made by any witness to a police officer in the course of an investigation which mandates that, such statement cannot be used for any purpose but any part of his statement, if duly proved may be used to contradict such witness in the manner prescribed by Section 145 of the Indian Evidence Act.

Section 145 cross-examination as to previous statements in writing.

Section 145 lays down that a witness may be cross-examined as to previous statements made by him in writing or recorded by him in writing. The rule laid down in it is applicable only, when a witness is sought to be contradicted by his previous statement. Where no statement is in existence, which could be contradicted by previous

statement, the rule does not apply. Statement recorded during investigation, though cannot be used as evidence, however, it can be utilized for contradicting the witness. Section 145 consists of two limbs. First limb of Section 145

provides that a witness may be cross- examined as to the previous statement made by him without such writing being shown to him. But, the second limb provides that, if it is intended to contradict 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 (**Binay Kumar Singh Vs. State of Bihar – AIR 1997 SC 322**). Section 145, of Indian Evidence Act, relates to cross-examination only and not to examination in chief. It is about cross-examination of a witness in respect of his previous statement in writing. According to this section, a witness may be cross-examined in respect of his previous statement. It is obvious from perusal of Section 145 that it applies only to cases where the same person, makes two contradictory statements either in different proceedings or in two stages of proceeding. This section does not apply if a witness made statement contradictory to another witness. How a contradiction is to be recorded is elaborately discussed in the authority of Tahsildar Singh.

Recording and proof of contradiction and omissions:

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 admits having made the particular statement to the police, such a statement before the police i.e. the particular portion of the statement recorded under Section 161 Criminal Procedure Code 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.

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 police officer. Statements made by the 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 the

veracity of the 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 Section 162 of the Code of Criminal Procedure is added to resolve the conflict and recognize the validity of the majority decision of the Supreme Court in **Tahsildar Singh ..Vrs..State of U.P. AIR 1959 1012 (1026)**. 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 contradictions. Following are well settled legal propositions.

1. 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.
2. Statements not reduced to writing by the Police Officer cannot be used for contradictions.
3. 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; - (i) when a recital is necessarily implied from the recital or recitals found in the statement, (ii) a negative aspect of a positive recital or recitals in a statement and (iii) when the statement before the police and before the court cannot stand together.

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 that made in the witness box, to give a ruling having regard to the aforesaid principles whether the recital intended to be used for contradiction satisfies the requirements of law.

Rule 29 of Chapter VI of Criminal Manual states about 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 witness 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 the 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 statements 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.

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 – Y. K. Sabharwal & 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 jealousness of some of near relations to ensure that everyone even remotely connected with the crime be also convicted. Everyone's 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. .. .. ".

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. Sometimes due to this very nature of human intellect and perception of senses contradictions and omission occurs. Real and truthful eye witness may sometime make genuine mistake in statement before police and court. At that time it must be remembered that contradictions and discrepancies are natural and inevitable in the testimony of even truthful witnesses. So then when the evidence is discrepant or exaggerated allowance has to be made for the idiosyncrasies of the class from which the witnesses are drawn, their powers of observation, strength of memory and facility of description with a discount for possible bias or prejudice.

A previous statement used to contradict a witness does not become a substantive evidence & merely serves the purpose of throwing doubt on the veracity of the 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. An omission in statement of witnesses attracts its reliability and not admissibility. Material omissions in testimony of prosecution witness if not explained in cross-examination, such omissions of witness raise various doubts to convict the accused. The credibility of a witness will not stand impeached by merely bringing on record the contradiction. It will have further to be shown that the statement made by the witness before the Court is not only contradictory to that made by him in his police statement but also that it is a deliberate attempt to change or improve on the original statement to the prejudice of the accused. This would naturally require the witness to be given an opportunity to explain the contradiction. In any event, the 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. Minor discrepancies by themselves are not enough to throw overboard the evidence of these witnesses.

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.

EVIDENTIAL VALUE OF CONTRADICTIONS AND OMISSIONS:

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.

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."

In case of – **Arjun and others ..Vs.. State of Rajsthan, AIR 1994 SC 2507,** The Hon'ble 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.

HOSTILE WITNESS:

In Oxford dictionary the word Hostile is defined as "very unfriendly or aggressive and ready to argue or fight" This is a Latin origin word derived from "hostlis", from "hostis", means enemy. And while in Wikipedia "A hostile witness is a witness in a trial who testifies for the opposing party or a witness who offers adverse testimony to the calling party during direct examination".

A witness who is un-favourable is not necessarily hostile; a hostile witness is one who from the manner in which he gives his evidence shows that he is not desirous of telling the truth. A careful and close reading of Section 154 of the Evidence Act would indicate that firstly, it is in the discretion of the Court to permit a person who calls a witness to put any question which might be put in cross examination by the adverse party; and secondly, before such questions in cross examination are put by the party calling the witness, permission of the Court must be obtained. The Section does not use the word 'Cross examination' but says that the "Court may permit to put any questions to him which might be put in cross examination", the reasons apparently being that cross examination being examination by the adverse party, the use of any such terms would have been contradictory. The Section does not also use the expression " hostile witness". It is true that there is nothing in Section 154 as to declaring a witness hostile, but it provides that the Court may

in its discretion permit a person who calls a witness to put any question to him which might be put in cross examination. It is, however abundantly plain that unless during the course of the examination of witness, the witness demonstrates hostility to the person who called him as a witness and the Court is satisfied that the witness is hostile to the person who called him as a witness, it will not grant permission to the party who has called the witness to cross-examine him. No hard and fast rule can be laid down as to when a witness can be called an adverse or hostile witness. The section, it must be noted, does not require a particular form of application to seek permission of the Court to cross-examine one's own witness. What all it says is that granting of permission is in the discretion of the Court. Such permission is normally granted during the course of the examination on formal request made by the party who has called that witness or on his behalf by the advocate.

APPRECIATION OF EVIDENCE OF HOSTILE WITNESSES

A ' hostile witness' is one who from the manner in which he gives evidence shows that he is not desirous of telling the truth to the Court. A hostile witness is not necessarily a false witness. Merely because one part of the statement of a witness was not favourable to the party calling him, the Court should not readily conclude that he was

suppressing the truth or that his testimony was adverse to that party. Hostility of a witness is to be judged from the answers given by him. A witness who is gained over by the opposite party is a hostile witness. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence. In **Gulshan Kumar V. State, 1993 Cri. L. J. 1525,** it was held that the 'Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto'. Thus, the statement of the hostile witness can be relied upon partly. It is now well settled that the portion of evidence being advantageous to the parties may be taken advantage of, but in such a situation, the Court shall have to be extremely cautious and circumspect in such acceptance. The testimony of the witness who has turned hostile is not to be excluded entirely or rendered unworthy of consideration. His testimony remained admissible. A conviction can be based on it, if it finds corroboration.

In **State of U.P. -vrs- Ramesh Prasad Misra and another (1996) 10 SCC 360,** the Hon'ble Apex Court opined that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that

portion of the evidence which is consistent with the case of the prosecution or defence may be accepted ....."**AIR 2002 SC 3137 Balu Sonba Shinde -Vrs- State of Maharashtra**, 'While it is true declaration of a witness to be hostile does not ipso facto amount to rejection of his evidence – and it is now well settled that the portion of evidence being advantageous to the parties may be taken advantage of – but the court before whom such a reliance is placed shall have to be extremely cautious and circumspect in such reliance.'

A witness is considered to be hostile witness when in the opinion of the Court the witness is saying against the party which have invited him and the witness adopts an adverse attitude to the party that has invited him. A hostile witness is that who gives evidence in his own way but he shows that he does not intend to speak truth. The hostility of the witness and his adverse attitude can only be inferred from his statement and his conduct. The Court should exercise its discretion very judiciously because the witness wants to conceal the truth or who has been won over by the adverse party. Therefore it is necessary that if witness did not disclose the fact even though he knows the fact the court should declare the witness hostile and permit to cross-examination to the party who has called such witness to adduce evidence.

Section 137 gives only the three stages in the examination of a witness, namely examination-in-chief, cross- examination and re-examination. This is a routine sequence in the examination of a witness. Section 154 does not in terms, or by necessary implication, confine the exercise of the power by the Court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in- chief is to make it ineffective in practice. A clever witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing court, but in the cross- examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious the Court can during the course of his re-examination permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party. It cannot also be said that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness on the answers elicited by putting such questions. In such an event the Court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the

answers elicited by such questions. The Court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination-in-chief.

The mere fact that the court gave the permission to the Public Prosecutor to cross-examine his own witness by declaring him hostile does not completely affect the evidence of such witness. The evidence remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence.

Conclusion -

Thus, under Section 161 of Code of Criminal Procedure, a police officer, making an investigation can examine the person acquainted with the facts of the case and reduce the statement made by such person into writing. Then as per Section 162 of Cr. P. C., statement made to the police which is reduced into writing may be used by the accused, or by the prosecution to contradict such witness in the manner provided by S. 145 of the Indian Evidence Act, and when it is so used, any part thereof, may also be used in the re-examination of such witness, but only for explaining any matter, referred to in his cross-examination. Such a

statement given to police, during investigation cannot be used as substantive evidence. It can only be used for raising suspicion against credibility of the witness. Section 145 of Indian Evidence Act, indicates one of the modes in which the credit of the witness, may be impeached. As per Sub-Section (3) of Section 155 of Indian Evidence Act, the credit of a witness may be impeached by the adverse party; who calls him, by contradicting him. And, so far as the testimony of the hostile witness is concerned, it is not to be excluded entirely or

rendered unworthy of consideration. But the Court while appreciating the evidence of Hostile Witness and before keeping reliance on it shall be extremely cautious and circumspect.

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List of cases for Workshop.

(Criminal Side)

1] AIR 2002 SC 3137 Balu Sonba Shinde Vs. State of Mah.

Section – 154 – Hostile witness, ' His evidence need not be rejected ipso facto on that count. Parties can take advantage of the advantaageous portion therein. However, Court has to be extremely cautious and circumspect in such acceptance."

2] **Cril. L. J. (1) 317 Dharyshil Vs. State of Mah**.

Hostile Witness : Merely because a witness turns hostile, his entire testimony cannot be thrown out.

3] **AIR 2009 (3) SC 2959 Mallapa Siddappa Alakanaur Vs. State of Karnataka.**,

Hostile witness : ' in FIR witness stated that when he went near land in question, accused persons attacked boy and committed his murder. During his evidence, however, he stated that accused persons had already assaulted and murdered deceased before he and his son reached spot. He had also very specifically stated that he had not seen accused persons cutting neck of deceased. There was no reason to declare him hostile. Fact that during his narration person taking down report may have committed this mistake. It would not fatal to his evidence.

4] **AIR 2010 SC 2914 G. Parshwnath Vs. State of Karnataka**.

Hostile Witness : His testimony need not be rejected in entirety. It is settled law that just because a witness turns hostile his entire evidence need not be rejected by court. His evidence can be relied upon to the extent to which it supports the prosecution version.

5] **(Meena Gopalkrishna Mudiliar Vs. State of Mah. 1993 Cr. L. J. 3624**)

Where the party calling a witness declared him hostile and allowed to be cross-examined, it was held that he was not necessarily an unreliable witness and his evidence, if corroborated by other reliable evidence, can sustain conviction.

6] **(State of U. P. Vs. Ramesh Mishra AIR 1996 SC 2766**)

It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

7] **(Gurasingh vs. State of Rajasthan 2001 Cr. L. J. 487 (SC) (Anil Rai Vs. State of Bihar 2001 Cr. L.J.3969 (SC)**

The testimony of witness who has turned hostile

is not to be excluded entirely or rendered unworthy of consideration. His testimony remains admissible. A conviction can be based on it if it finds some corroboration.

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ON CONTRADICTION AND OMISSION

1) **Tahsildar Singh & Another Vs. The State of Uttar Pradesh reported in AIR 1959 S.C 1012 – 1959 SCR Supl. (2) 875**.

For contradiction what is needed is to take the statement of the police as it is, and to establish a contradiction between that, statement and the evidence in Court.

2) **Shri Cruz Pedro Pacheco Vs. State of Maharashtra, reported in 1998 (5) Bom. C. R. 521 – 1998 Cri. L. J .- 4628**.

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.

3) **Sayyed Husan Sayyed Husen And Ors. Vs. The State**, reported in AIR 1958 Bom 225.

Unless the police officer who had taken down the witness's statement during investigation is examined and unless he says in his evidence that the witness had not made a particular statement in his police statement, it would be wholly irregular and unfair to the witness to attempt to establish contradictions or omissions in between his evidence and the police statement. The correct way and the proper way of proving a contradiction or omission is to ask a Sub-Inspector about it in his evidence as to whether a certain statement was made before him by a witness. If such a procedure is not adopted, as it invariably ought to be, then, in any event, that the witness's police statement was read over out to him and his attention was drawn to the non-existence of a certain, statement therein, it could not be s aid that there was proof that in fact the statement concerned was made by the witness.

4) **State of Tamil Nadu Vs. Karuppusamy And**

Others,
reported in 1993 SCR (2) 415 – 1993 SCC Supl. (1) 78

Only a tutored witness can depose in a parrot-like fashion. On the contrary, a natural witness is bound to commit mistakes.

Evidence of Hostile Witness

1) Bhagwan Dass Vs. State (NCT) of Delhi
AIR 2011 SC 1863 – 2011 (6) JT 345 – 2011 (5) Scale 498

2) Himanshu @ Chintu V. State (NCT of Delhi)
(2011) 2 SCC 36

3). Govindappa/State of Karnataka
(2010) 6 SCC – 533

4) Govindaraju @ Govinda Vs. State
(2012) 4 SCC – 722

5. C. Muniappan Vs. State of Tamil Nadu,
(2010) 9 SCC – 567.

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