

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.878 of 2018

Order Reserved on : 27.8.2018

Order Passed on : 13.11.2018

1. Vishal Agrawal, S/o Ashok Agrawal, aged about 31 years, permanent R/o Ward No.16, Mangal Bhawan Complex, Near Ashutosh Textiles, Main Road Raurkela, P.S. Udit Nagar, District Sundergarh (Orissa), presently R/o House No.98, Krishna Nagar Colony, Tilda, Newra, District Raipur, Chhattisgarh

2. Ashok Kumar Agrawal, S/o Vishwanath Agrawal, aged about 57 years,

3. Smt. Kusumlata Agrawal, W/o Shri Ashok Agrawal, aged about 45 years,

Applicants No.2 and 3 both permanent R/o Ward No.16, Mangal Bhawan Complex, Near Ashutosh Textiles, Main Road Raurkela, P.S. Udit Nagar, District Sundergarh, Orissa

4. Manoj Agrawal, S/o Vishwanath Agrawal, aged about 48 years, R/o Main Road, Near Rajgaangpur Railway Station, District Sundergarh, Orissa

5. Devashish Agrawal, S/o Ashok Agrawal, aged about 29 years,

6. Ku. Bhagyalaxmi @ Anulaxmi Agrawal, D/o Ashok Agrawal, aged about 22 years,

Applicants No.5 & 6 both R/o Ward No.16, Mangal Bhawan Complex, Near Ashutosh Textiles, Main Road Raurkela, P.S. Udit Nagar, District Sundergarh, Orissa

(Applicants No.4 to 6 wrongly mentioned as Absconding Accused in the cause title of Certified Copy of Order Sheets)

---- Applicants

versus

State of Chhattisgarh through P.S. Newra, District Raipur, Chhattisgarh

----- Respondent

For Applicants	:	Shri Maneesh Sharma, Advocate
For Respondent/State	:	Shri Anil Pandey, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision is directed against the order dated 25.7.2018 passed by the 1st Additional Sessions Judge, Raipur in Sessions Trial No.204 of 2017, whereby the Additional Sessions Judge has rejected the application filed by the Applicants for permitting them to confront the prosecution witnesses with their previous statements recorded during inquest proceeding for the purpose of contradictions and omissions amounting to contradictions as permitted by law under Section 145 of the Indian Evidence Act.
2. A criminal trial under Sections 498A, 304B, 304B/149 in the alternative under Sections 302, 302/149 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act is going on against the present Applicants before the 1st Additional Sessions Judge, Raipur. During the course of trial, the accused/Applicants moved an application under Section 91 of the Code of Criminal Procedure for providing them a copy of the statements of witnesses which were recorded during the inquest proceeding of the deceased. Thereafter, prosecution witness Sumitra was examined. On 25.7.2018, during her cross-examination, an application was filed by the Applicants for permitting them to confront prosecution witness Sumitra and other prosecution witnesses with their previous statements recorded during the inquest proceeding, which was rejected by the Trial Court on the ground that the statements which are recorded in inquest proceeding under Section 174 of the Code of Criminal Procedure cannot be used for confronting the witnesses.

3. Learned Counsel appearing for the Applicants submitted that as provided by Section 145 of the Indian Evidence Act, a witness may in cross-examination be contradicted by confronting him with his previous statement in writing or reduced into writing. He further submitted that when an inquest or inquiry is made by the prosecution into the cause of death and if certain statements are recorded during the course of the inquest proceeding then such statements being the previous statements of the witnesses are required to be filed in the Court. On the request of the Applicants, copies of the statements of witnesses, which were recorded during the course of inquest proceeding, were already provided by the Trial Court. It is settled law that the statements recorded during the inquest proceeding are previous statements and the accused has a right to confront the witnesses or contradict them with the same during their cross-examination. But, the Trial Court has failed to appreciate that not providing an opportunity to the Applicants to cross-examine the witnesses on the basis of their previous statements amounts to denial of fair opportunity to defend themselves.
4. Learned Counsel appearing for the Respondent/State opposed the above arguments and supported the impugned order.
5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. Section 161 of the Code of Criminal Procedure provides that any police officer making an investigation under Chapter 12 of the Code may examine orally any person supposed to be acquainted

with the facts and circumstances of the case. Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. The police officer may reduce into writing the statement of the witness. The statement may also be recorded by audio-video electronic means.

7. Section 162 of the Code of Criminal Procedure provides that the statements recorded under Section 161 of the Code of Criminal Procedure are not required to be signed by the persons giving such statements. Proviso appended to sub-section (1) of Section 162 of the Code of Criminal Procedure provides that when any witness is called for the prosecution in such inquiry or trial 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 in the manner provided by Section 145 of the Indian Evidence Act. Section 145 of the Indian Evidence Act reads as under:

“145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being provided; but, 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.”

8. A conjoint reading of Sections 161 and 162 of the Code of Criminal

Procedure makes it clear that during the course of investigation a police officer is entitled to record the oral statement of a witness and if such witness is summoned by the prosecution in support of its case then the accused would be entitled to use the previous statement of said witness for the purposes of proving contradictions or to prove such omissions which amounts to contradictions.

9. In (1999) 4 SCC 621 (**State of Kerala v. Babu**), the Supreme Court has observed as follows:

“11. The High Court in the impugned judgment proceeded on the basis that a statement recorded by an investigating officer in any case which was under investigation, being a statement made under Section 161 of the Code, the same can be used for the limited purpose provided under Section 162 of the Code read with Section 145 of the Evidence Act. There can be no quarrel with this approach of the High Court in regard to the use of the previous statements of a witness made in the course of another investigation being used in the course of another criminal trial. This is because as seen from the observations of this Court in the case of *Tahsildar Singh v. State of U.P.*, AIR 1959 SC 1012 the very object of enactment of Section 161 of the Code and Section 145 of the Evidence Act is to create a right in the accused to make use of the previous statements of the witnesses for the purpose of contradiction and for impeaching the merit of the witness. This right has not been taken away by Section 172 of the Code and, as noticed above, there is no prohibition in regard to this right of the accused either under the Code or under the Evidence Act. But the question for consideration is, how does the accused exercise this right with reference to a previous statement of a witness made in another case which is recorded by the investigating officer in that case under the provisions of Section 161 of the Code? In our opinion, this right certainly does not flow under Section 172 of the Code nor is the accused entitled to these previous statements under Section 207 of the Code. But, this does not mean that the accused is denied of his limited benefit of using

the said previous statements recorded during the course of another investigation. The answer to this question, in our considered view, lies in Section 91(1) of the Code which reads thus:

“91. *Summons to produce document or other thing.*—(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, enquiry, trial or other proceeding under this Code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

10. In **2001 LawSuit (Chh) 86 (Santosh v. State of Chhattisgarh)**, this Court has observed thus:

“**11.** Section 174 of the Code of Criminal Procedure when authorises a police officer to prepare

the Panchanama and record the statements of the witnesses then it does not put embargo on the powers of the police officer from obtaining the signatures of the witnesses on their respective statements but the said statements recorded during the course of the inquest continue to remain the previous statements of such witnesses.

12. In a given case if the witnesses do speak against the accused then it provides a foundation in favour of the prosecution but if in the first statements the witnesses do not say even a single word against the accused and in their subsequent statements they start levelling allegations against the accused then the accused would be entitled to confront the witnesses or contradict them with their earlier statements.

13. True, it is that proceedings under Section 174 of the Code of Criminal Procedure have a very limited scope but that does not mean that the statements recorded during the proceedings under Section 174 of the Code of Criminal Procedure cannot be used for the purposes of proving the contradictions. The statements recorded during the inquest report, as those are the previous statements recorded by the police would be covered under Section 162 and certainly can be used for the purposes of proving contradictions. The inquest report is not a piece of substantive evidence but can be utilised for contradicting the witnesses of the inquest. In the matter of *Suresh Rai v. State of Bihar* (AIR 2000 SC 2207) the Supreme Court has observed that such statements can always be used for contradicting the witness of the inquest.”

11. Thus, in the light of above observations, it is clear that the earlier statements recorded during inquest proceeding are the previous statements recorded by the police and would be covered under Section 162 of the Code of Criminal Procedure and certainly can be used for the purposes of proving the contradictions.

12. In the premises of aforesaid, I find that the impugned order dated 25.7.2018 passed by the Trial Court is contrary to law and is,

therefore, set aside. The instant revision is allowed. The Trial Court is directed to permit the defence/Applicants to confront the prosecution witnesses with their previous statements recorded during the inquest proceeding for the purpose of contradictions and omissions amounting to contradictions as permitted by law under Section 145 of the Indian Evidence Act.

Sd/-

(Arvind Singh Chandel)
JUDGE