

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.435 OF 2022

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Sandip Dattu Sambre ... Applicant
V/s.
State of Maharashtra ... Respondents

Mr. Crusher A. David for Applicant.
Mr. R. M. Pethe, APP for Respondent (State).
Mr. M. T. Sable, PSI, Virar Police Station present.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 13th, 2022

PC.:

1. The applicant being aggrieved by an order refusing to record an answer to the question as under:

“Que: Witness Dnyanesh states that Rahul was hiding behind him and thereafter his intestine had protruded out (out of the body) and accused went to assault complainant Rahul. Has he stated so while recording his (Dnyanesh) stated?”

2. The learned Sessions Judge has refused to allow the applicant to put this question to the investigating officer as according to the learned Sessions Judge to the question put is not in relation to omission, contradiction or improvement and the investigating officer is not suppose to answer the witness, as the said fact is not within the personal knowledge.

3. According to the applicant, the question put is to prove omission or improvement in relation to statement of PW-2-Ganesh

Ramesh Sambre. The purport of the question is to get an answer from the investigating officer as to whether, this statement has recorded in the question was made by PW-2-Gnyanesh, while making statement under Section 161 of Code of Criminal Procedure, 1973.

4. It is well settled that if a witness has deposed to some facts in his evidence, which are not at all stated by him before the Investigating Officer, in his previous statement, but he gives such evidence before the Court which materially and significantly affect the case of the prosecution or the accused, such facts are called as omissions which in turn may amount to a material contradictions. This portion of the evidence also should be brought to the notice of the witness and elicited as to whether he has stated such portion of his evidence, before the investigating agency during the investigation. If he says no, then there is no question of proving it once again because of his admission. If he says that the witness has stated the same facts during the course of investigation, the said portion has to be put to the Investigating Officer to elicit whether such evidence given by the witness before the Court had been stated during the course of investigation. If the answer is no, by the Investigating Officer that will become an omission or an improvement before the Court. If this procedure is strictly followed in order to prove the contradictions and omissions, then only such portion will be available to the Court for appreciation in the case, to contradict or to test the veracity of such witness.

4. Having considered the statement of PW-2 and the examination-in-chief of PW-2 and Investigating Officer, in my opinion, the question needs to be taken on record. The Investigating Officer needs to answer the question as to whether the said statement was made by PW-2 while making statement under Section 161 of Code of Criminal Procedure, 1973.

5. Absence of such statement in a statement rerecorded under Section 161 of Code of Criminal Procedure, would amount to omission, improvement or contradiction would have to be decided by learned Sessions Court at the time of appreciating evidence on record. Value of such question and answer need not be commented upon, as it is for the learned Sessions Judge to consider its effect.

6. In that view of the matter, the question recorded above needs to be answered by the Investigating Officer and his answer shall be taken on record by the learned Sessions Court.

7. Revision Application shall stands disposed in the above terms. No costs.

(AMIT BORKAR, J.)