(2024) 10 SHI CK 0028

High Court Of Himachal Pradesh

Case No: Criminal Appeals No. 50 and 51 Of 2010

Brikan Devi And Others	APPELLANT
Vs	
State Of H.P.	RESPONDENT

Date of Decision: Oct. 17, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 161, 162, 162(1), 164, 313
- Indian Penal Code, 1860 - Section 34, 302, 306, 392, 397, 498A
- Evidence Act, 1872 - Section 32(1), 67, 145, 155(3)

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Sheetal Vyas, Ajit Sharma

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present appeals are directed against the judgment dated 10.03.2010 and order dated 11.03.2010, vide which the appellants (accused before

learned Trial Court) were convicted of the commission of an offence punishable under Section 498-A read with Section 34 of Indian Penal Code

(hereinafter referred to as IPC) and sentenced to undergo three years rigorous imprisonment each and pay a fine of ₹2,000/- each and in default of

the payment of fine to further undergo one-month simple imprisonment each. (Parties shall hereinafter be referred to in the same manner as they

were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the appeals are that the police presented a challan against the accused for the commission of offences

punishable under Sections 498-A and 306 read with Section 34 of IPC. It was asserted that the police received an intimation from Prakash Chand

Pradhan of Gram Panchayat Hareta that Anita Devi had committed suicide by jumping into a well. HC Subhash Chand and HC Varyam Singh were

sent to the spot to verify the correctness of the information. SI Amar Singh (PW-11) was also told about the information and was asked visit to the

spot. Kamla Devi (PW-1) mother of the deceased made a statement that her husband had died six years before the date of the incident. Her son Raj

Kumar died four years before the incident. Her younger son Rakesh Kumar was mentally challenged. Her daughter Asha was married at the age of

30 years. Deceased Anita was married to Rajinder Kumar 10 years before the incident. Her youngest daughter Sonu was married at Galore at the

time of the incident. Anita Kumari had three sons Sushant aged 10 years, Nitin aged 5 years and Jatin aged 2 years. The deceased Anita was being

harassed with the demand of money by her husband and his relatives. They used to put pressure on Anita to marry her younger sister Sonu to Raj

Kumar, the brother of her husband Rajinder. Kamla Devi stated that she would not marry two daughters in one home. Chint Ram, father-in-law of

Anita Kumari, Raj Kumar her brother-in-law and Rajender Kumar used to beat her and turn her out of her matrimonial home. She had visited her

maternal home five months before the date of the incident. She was not being provided with proper food and clothing. She had also made a complaint

to Birbal Sharma Pradhan (PW-7) regarding the harassment, who also advised her to settle in her matrimonial home. Rajinder Kumar called Kamla

Devi on 20.12.2008 at 9:00 AM and told her that Anita Kumari had died. The informant Kamla Devi went to the matrimonial home of Anita with Tara

Chand, Vijay Agnihotri and two other persons. She found that Anita had committed suicide due to the harassment and demand of money by her

mother-in-law Brinka Devi, father-in-law Chint Ram, brother-in-law Raj Kumar and husband Rajinder Kumar. The statement (Ext. PW-1/A) was

reduced into writing and was sent to the Police Station where FIR (Ext. PW-9/A) was registered. SI Amar Singh (PW-11) conducted the

investigation. He directed LHC Raj Kumari to inspect the dead body of Anita. He prepared the reports (Ext. PW-11/B and Ext. PW-11/C). He filed

an application (Ext. PW-11/D) for conducting the postmortem examination of Anita. Dr K.S. Dogra (PW-12) conducted her postmortem examination

and found that she had died of Asphyxia due to drowning. He issued the report (Ext. PW-12/A). He preserved the viscera and handed them over to

the police official accompanying the dead body. SI Amar Singh (PW-11) took the photographs of Anita (Ext. PW-11/E-1 to Ext. PW-11/E-5) and the

photographs of the spot (Ext. PW-11/E-6 to Ext. PW-11/E-8). He prepared the site plans of the house of the accused (Ext. PW-11/F) and the well

(Ext. PW-11/G). He recorded the statements of the witnesses as per their version. The viscera were sent to SFSL and the report (Ext. PA) was

issued in which it was mentioned that no poison could be detected in the viscera. Further investigation was conducted by Bakshi Ram (PW-10) who

recorded statements of witnesses, prepared the challan and presented it before learned Judicial Magistrate First Class, Barsar who committed it for

trial to the Court of learned Sessions Judge, Hamirpur.

3. Learned Sessions Judge assigned the case to learned Additional Sessions Judge, Fast Track Court, Hamirpur (learned Trial Court). Learned Trial

Court framed the charges against the accused for the commission of offences punishable under Sections 306 and 498-A read with Section 34 of IPC.

The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 13 witnesses to prove its case. Kamla Devi (PW-1) informant is the mother of the victim. Asha (PW-2) and Kanta Devi

(PW-4) are the neighbours of the accused. Poonam Sharma (PW-3) and Birbal Sharma (PW-7) were Pradhan of Gram Panchayat to whom the

deceased complained about her harassment. Devi Dass Sharma (PW-5) is a Ward Member of Gram Panchayat Hareta. Ajit Singh (PW-6) collected

the postmortem report and the viscera. HC Prithi Chand (PW-8) was working as MHC with whom the case property was deposited. SI Sher Singh

(PW-9) signed the FIR. Bakshi Ram (PW-10) conducted the investigation partly. SI Amar Singh (PW-11) conducted the initial investigation. Dr. K.S.

Dogra (PW-12) conducted the postmortem examination. HHC Amarjit (PW-13) carried the viscera to SFSL.

5. The accused in their statements recorded under Section 313 of Cr.P.C. admitted that Anita Devi was married to Rajinder Kumar. They also

admitted their relationship with Anita. They admitted that three sons were born to Anita. They denied the rest of the prosecution case. They stated

that Anita was kept happily in her matrimonial home and she was not harassed by any person. They have a land dispute with Asha Sharma and

Kavita Devi and they were inimical with him. They framed the accused in this false case due to the enmity. The villagers had formed a group to

eliminate the accused from the society. Anita used to dump cow dung near the well. She slipped into the well due to the frost and she had not

committed any suicide. No defence was sought to be adduced by the accused.

6. The learned Trial Court held that the prosecution version that the accused had abetted the deceased to commit suicide was not proved beyond

reasonable doubt. However, it was duly proved that the accused used to harass Anita. This fact was supported by the neighbours of the accused and

other villagers. The defence version that the witnesses were inimical with the accused and made a false statements against them was not acceptable.

Therefore, the accused were acquitted of the commission of an offence punishable under Section 306 of IPC but they were convicted of the

commission of an offence punishable under Section 498 A read with Section 34 of IPC and were sentenced as aforesaid.

7. Being aggrieved from the judgment and order of sentence passed by the learned Trial Court, the accused have filed the present appeals asserting

that the learned Trial Court erred in convicting and sentencing them. There were major contradictions and improvements in the statement of the

prosecution witnesses which goes to the root of the case. Mere small household differences between mother-in-law and daughter-in-law cannot lead

to any inference of cruelty. The witnesses could not tell exactly when the deceased was harassed. The circumstances surrounding the death of Anita

were shrouded in suspicion but the accused cannot be held liable for the death of Anita. If Anita had serious problems with her husband and her

parents-in-law she would have filed a complaint before the police or the competent authority. The particular incidents were not referred to. The

allegations of harassment against the appellants were weak and not supported by evidence on record. Therefore, it was prayed that the present

appeals be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Ms. Sheetal Vyas, learned counsel for the appellants/accused and Mr. Ajit Sharma, learned Deputy Advocate General for the

respondent/State.

9. Ms. Sheetal Vyas, learned counsel for the appellants/accused submitted that the learned Courts below erred in convicting and sentencing the

accused. Learned Trial Court failed to appreciate that there was enmity between the villagers and the accused which is evident from the fact that the

villagers had formed an unlawful assembly and ransacked the house of the accused after the incident. They have boycotted the accused and do not

maintain any relationship with them. This shows the extent of the hostility of the villagers. The minor differences in the house cannot mean that the

deceased was harassed. There was normal wear and tear in daily life and could not have been used to convict the accused of the commission of an

offence punishable under Section 498-A of IPC. The prosecution's version that the accused were harassing the deceased to compel her to marry her

younger sister to the brother-in-law of the deceased is not established as it was admitted version that she was married before the incident. The

accused were well off and the informant's version that the deceased was being harassed for not transferring her ancestral land to the accused is not

believable. Hence, she prayed that the present appeals be allowed and the judgment and order passed by the learned Trial Court be set aside. She

relied upon the judgment of the Hon'ble Supreme Court in Girdhar Shankar Tawade vs. State of Maharashtra AIR 2002 Supreme Court 2078i n

support of her submission.

10. Mr. Ajit Sharma, learned Deputy Advocate General for the respondent/State submitted that the learned Trial Court has meticulously examined the

evidence. All the prosecution witnesses supported the prosecution case. The defence version that there is enmity between the neighbours of the

accused and the accused is not believable and was rightly discarded by the learned Trial Court. The deceased had made complaints to various persons

during her lifetime about her harassment in her matrimonial home. However, no action was taken based on her complaints and she cannot be faulted

for it. There is no infirmity in the judgment and order passed by the learned Trial Court; therefore, he prayed that the present appeal be dismissed.

11. I have considered the submissions made at the bar and have gone through the records carefully.

12. The informant Kamla Devi (PW-1) stated that the deceased was her daughter and she was married to Rajinder. Chint Ram, Brinkan Devi and Raj

Kumar were her father-in-law, mother-in-law and brother-in-law respectively. Anita used to reside in her matrimonial home in village Hareta. Three

sons were born to her. Her son-in-law was a motor mechanic by profession in District Solan. Anita used to live happily in the house of the accused for

4-5 years after her marriage. The accused started harassing Anita 4-5 years after her marriage. They used to ask her to transfer the land to them.

They also used to put pressure on Anita to marry Naresh, the younger sister of Anita to Raj Kumar. They intended to grab the informantâ€™s entire

property. Anita refused this proposal as she was not happy in her matrimonial home. This proposal was also not acceptable to the informant as Naresh

was educated up to M.A. whereas Raj Kumar was educated up to 3rd-4th standard. Rajinder Kumar and the other accused did not pay any heed to

the request to treat Anita properly. Anita used to complain about her harassment to villagers of village Hareta. They also used to narrate the incidents

of harassment to the informant. Anita used to visit her paternal home and narrate these incidents. The accused were not providing the articles of daily

needs to Anita and the informant used to provide those articles to her. She received a call regarding the death of Anita after which she went to the

spot.

13. She stated in her cross-examination that she had told the police that the accused intended to grab her property, her younger daughter Naresh was

educated up to MA standard and Raj Kumar was educated up to third, her son-in-law connived with the remaining accused to grab her property and

the villagers used to tell her about the harassment of Anita. She had told everything to the police including the fact that she used to maintain her

daughter Anita. She had also told the police that Anita had visited her maternal home a week before the incident. She was confronted with the

previous statement where these facts were not recorded. She owns 25 Kanals of land in village Pansai which was bequeathed by her husband to her.

She was not aware that the accused Chint Ram was the owner of 150-175 Kanals of land in village Hareta. She volunteered to say that she had

verified before the marriage of Anita that the accused belonged to a well-to-do family. She had told Pradhan of Gram Panchayat of the accused

regarding the harassment of Anita. She did not make any written complaint because she was advised by Anita not to do so. Anita told her that she had

to live with the accused persons. Asha was not related to her. She denied that she and the villagers had beaten the accused and ransacked their

house. She admitted that FIR No. 197 of 2007 dated 20.12.2008 was registered regarding this fact in Police Station Barsar, District Hamirpur. Raj

Kumar was married to Raksha 5-6 months before her death. She had visited the house of the accused 1-2 times before the death of her daughter

Anita. She did not know that the population of the village of the accused was 250-300. Her daughter Naresh was married three years before the date

of deposition. She noticed that Anita was not being provided with a cot and her son-in-law used to be away in District Solan. The accused used to

harass the deceased and not provide her with bedding and other necessities of life.

14. It was submitted that the credit of this witness has been impeached as she had narrated many facts in the Court which were not narrated by her to

the police. This submission will not help the accused. The witness has not been properly cross-examined. She was asked about what was told by her

to the police. In this regard, it is to be noticed that the statement recorded under Section 161 of Cr.PC is not a substantive piece of evidence and the

statement made to the police cannot be used for any purpose except to contradict the prosecution witness as per Section 162 of Cr. PC. Therefore, it

is not permissible to ask a witness as to what was told by him to the police and prove the statement recorded by the police. In Tahsildar Singh v.

State of U.P., 1959 Supp (2) SCR 875: AIR 1959 SC 1012: 1959 Cri LJ 1231 (six-judges bench l)earned counsel for the defence asked the

following questions from the witness during his cross-examination:

Â 1. â€œDid you state to the investigating officer that the gang rolled the dead bodies of Nathi, Saktu and Bharat Singh, and scrutinise them and did you tell him

that

the face of Asa Ram resembled that of the deceased Bharat Singh?â€

2. â€œDid you state to the investigating officer about the presence of the gas lantern?â€

15. Learned Sessions Judge disallowed the questions holding that omission does not amount to contradiction and cannot be put under Section 161 of

Cr.P.C. He held:

â€œTherefore, if there is no contradiction between his evidence in court and his recorded statement in the diary, the latter cannot be used at all. If a witness deposes

in court that a certain fact existed but had stated under Section 161 CrPC either that that fact had not existed or that the reverse and irreconcilable fact had existed, it is

a case of conflict between the deposition in the court and the statement under Section 161 CrPC and the latter can be used to contradict the former. But if he had not

stated under Section 161 anything about the fact, there is no conflict and the statement cannot be used to contradict him. In some cases, an omission in the statement

under Section 161 may amount to contradiction of the deposition in court; they are the cases where what is actually stated is irreconcilable with what is omitted and

impliedly negatives its existence.â€

16. A question arose before the Honâ€™ble Supreme Court whether the questions were wrongly disallowed. It was held that the form of the

questions was defective as they elicited from the witness what he had told the police and were properly disallowed. It was observed:

13.. â€¦â€¦ The procedure prescribed is that, if it is intended to contradict a witness 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. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to

make use of such a statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the

proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence

Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant

questions under the first part thereof. The difficulty is more imaginary than real. 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 it, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by

the learned counsel may be illustrated thus: If the witness is asked â€œDid you say before the police officer that you saw a gas light?â€ and he answers

â€œYesâ€, then the statement which does not contain such recital is put to him as a contradiction. This 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 not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the

witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is

that by the illustration given by the learned counsel for the appellants, 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. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore,

not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure.

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51. It must not be overlooked that the cross-examination must be directed to bringing out a contradiction between the statements and must not subserve any other

purpose. If the cross-examination does anything else, it will be barred under Section 162 which permits the use of the earlier statement for contradicting a witness and

nothing else. Taking the example given above, we do not see why cross-examination may not be like this:

Q. I put it to you that when you arrived on the scene X was already running away and you did not actually see him stab D as you have deposed today?

A. No. I saw both events.

Q. If that is so, why is your statement to the police silent as to stabbing?

A. 1 stated both the facts to the police.

The witness can then be contradicted with his previous statement. We need hardly point out that in the illustration given by us, the evidence of the witness in court

is direct evidence as opposed to testimony to a fact suggesting guilt. The statement before the police can only be called circumstantial evidence of complicity and

not direct evidence in the strict sense. Of course, if the questions framed were:

Q. What did you state to the police? or

Q. Did you state to the police that D stabbed X?

they may be ruled out as infringing Section 162 of the Code of Criminal Procedure because they do not set up a contradiction but attempt to get a fresh version

from the witnesses with a view to contradicting him. How the cross-examination can be made must obviously vary from case to case, counsel to counsel and

statement to statement. No single rule can be laid down and the propriety of the question in the light of the two sections can be found only when the facts and

questions are before the court. But we are of the opinion that relevant and material omissions amount to vital contradictions, which can be established by cross-

examination and confronting the witness with his previous statement.

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59. This brings us to the consideration of the questions, which were asked and disallowed. These were put during the cross-examination of Bankey, PW 30. They are:

Q. Did you state to the investigating officer that the gang rolled the dead bodies of Nathi, Saktu and Bharat Singh and scrutinized them, and did you tell him that the

face of Asa Ram resembled that of the deceased Bharat Singh?

Q. Did you state to the investigating officer about the presence of the gas lantern?

These questions were defective, to start with. They did not set up a contradiction but attempted to obtain from the witness a version of what he stated to the police,

which is then contradicted. What is needed is to take the statement of the police as it is, and establish a contradiction between that statement and the evidence in

court. To do otherwise is to transgress the bounds set by Section 162 which, by its absolute prohibition, limits even cross-examination to contradictions and no

more. The cross-examination cannot even indirectly subserve any other purpose. In the questions with which we illustrated our meaning, the witness was not

asked what he stated to the police but was told what he had stated to the police and asked to explain the omission. It is to be borne in mind that the statement

made to the police is â€œduly provedâ€ either earlier or even later to establish what the witness had then stated.â€

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60. In our opinion, the two questions were defective for the reasons given here and were properly ruled out, even though all the reasons given by the court may

not stand scrutiny. The matter was not followed up with proper questions, and it seems that similar questions on these and other points were not put to the witness

out of deference (as it is now suggested) to the ruling of the court. The accused can only blame themselves if they did not.â€ (Emphasis supplied)

17. Thus, no advantage can be derived by the defence from the cross-examination of the informant.

18. Proviso to section 162 of Cr.P.C. permits the use of the statement recorded by the police to contradict a witness. It reads:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, 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, 1872 (1 of 1872) and when any part of such statement is so used, any part thereof may also be used in the re-examination

of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

19. Thus, it is apparent that the defence can use the statement to contradict a witness if the statement is proved. It was laid down by the Honâ€™ble

Bombay High Court about a century ago in Emperor vs. Vithu Balu Kharat (1924) 26 Bom. L.R. 965 that the previous statement has to be proved

before it can be used. It was observed:

â€œThe words ""if duly proved"" in my opinion, clearly show that the record of the statement cannot be admitted in evidence straightaway but that the officer before

whom the statement was made should ordinarily be examined as to any alleged statement or omitted statement that is relied upon by the accused for the purpose of

contradicting the witness; and the provisions of Section 67 of the Indian Evidence Act apply to this case, as well as to any other similar ease. Of course, I do not

mean to say that, if the particular police officer who recorded the statement is not available, other means of proving the statement may not be availed of, e.g.,

evidence that the statement is in the handwriting of that particular officer.â€

20. It was laid down by Honâ€™ble Supreme Court in Muthu Naicker and Others etc Versus State of T.N. (1978) 4 SCC 385, that if the witness

affirms the previous statement, no proof is necessary, but if the witness denies or says that he did not remember the previous statement, the

investigating officer should be asked about the same. It was observed: -

â€œ52. This is the most objectionable manner of using the police statement and we must record our emphatic disapproval of the same. The question should have

been framed in a manner to point out that from amongst those accused mentioned in examination-in-chief there were some whose names were not mentioned in the

police statement and if the witness affirms this no further proof is necessary and if the witness denies or says that she does not remember, the investigation officer

should have been questioned about it.â€

21. The Gauhati High Court held in Md.Â Badaruddin Ahmed v. State of Assam, 1989 SCC OnLine Gau 35: 1989 Cri LJ 187t6h at if the

witness denies having made the statement, the portion marked by the defence should be put to the investigating officer and his version should be

elicited regarding the same. It was observed at page 1880: -

â€œ13. The learned defence counsel has drawn our attention to the above statement of the Investigating Officer and submits that P.W. 4 never made his above

statement before the police and that the same being his improved version cannot be relied upon. With the utmost respect to the learned defence counsel, we are

unable to accept his above contention. Because, unless the particular matter or point in the previous statement sought to be contradicted is placed before the witness

for explanation, the previous statement cannot be used in evidence. In other words, drawing the attention of the witness to his previous statement sought to be

contradicted and giving all opportunities to him for explanation are compulsory. If any authority is to be cited on this point, we may conveniently refer to the case of

Pangi Jogi Naik v. State reported in AIR 1965 Orissa 205: (1965 (2) Cri LJ 661). Further in the case of Tahsildar Singh v. State of U.P., reported in AIR 1959 SC

1012: (1959 Cri LJ 1231) it was also held that the statement not reduced to writing cannot be contradicted and, therefore, in order to show that the statement

sought to be contradicted: was recorded by the police, it should be marked and exhibited. However, in the case at hand, there is nothing on the record to show that

the previous statement of the witness was placed before him and that the witness was given the chance for explanation. Again, his previous statement was not

marked and exhibited. Therefore, his previous statement before the police cannot be used, Hence, his evidence that when he turned back, he saw the accused

Badaruddin lowering, the gun from the chest is to be taken as his correct version.

14. The learned defence counsel has attempted to persuade us not to rely on the evidence of this witness on the ground that his evidence before the trial Court is

contradicted by his previous statement made before the police. However, in view of the decisions made in the said cases we have been persuaded irresistibly to hold

that the correct procedure to be followed which would be in conformity with S. 145 of the Evidence Act to contradict the evidence given by the prosecution witness

at the trial with a statement made by him before the police during the investigation will be to draw the attention of the witness to that part of the contradictory

statement which he made before the police, and questioned him whether he did, in fact, make that statement. If the witness admits having made the particular

statement to the police, that admission will go into evidence and will be recorded as part of the evidence of the witness and can be relied on by the accused as

establishing the contradiction. However, if, on the other hand, the witness denies to have made such a statement before the police, the particular portions of the

statement recorded should be provisionally marked for identification as B-1 to B-1, B-2 to B-2 etc. (any identification mark) and when the investigating officer who

had actually recorded the statements in question comes into the witness box, he should be questioned as to whether these particular statements had been made to

him during the investigation by the particular witness, and obviously after refreshing his memory from the case diary the investigating officer would make his answer

in the affirmative. The answer of the Investigating Officer would prove the statements B-1 to B-1, B-2 to B-2 which are then exhibited as Ext. D. 1, Ext. D. 2 etc.

(exhibition mark) in the case and will go into evidence, and may, thereafter, be relied on by the accused as contradictions. In the case in hand, as was discussed in

above, the above procedure was not followed while cross-examining the witness to his previous statements, and, therefore, we have no alternative but to accept the

statement given by this witness before the trial Court that he saw the accused Badaruddin lowering the gun from his chest to be his correct version.

22. Andhra Pradesh High Court held in Shaik Subhani v. State of A.P., 1999 SCC OnLine AP 413: (1999) 5 ALD 284: 2000 Cri LJ 321: (1999)

2 ALT (Cri) 208 that putting a suggestion to the witness and the witness denying the same does not amount to putting the contradiction to the witness.

The attention of the witness has to be drawn to the previous statement and if he denies the same, the same is to be got proved by the investigating

officer. It was observed at page 290: -

Â â€œ24â€¦ As far as contradictions put by the defence is concerned, we would like to say that the defence Counsel did not put the contradictions in the manner in

which it ought to have been put. By putting suggestions to the witness and the witness denying the same will not amount to putting contradiction to the witness.

The contradiction has to be put to the witness as contemplated under Section 145 of the Evidence Act. If a contradiction is put to the witness and it is denied by him,

then his attention has to be drawn to the statement made by such witness before the Police or any other previous statement and he must be given a reasonable

opportunity to explain as to why such contradiction appears and he may give any answer if the statement made by him is shown to him and if he confronted with

such a statement and thereafter the said contradiction must be proved through the Investigation Officer. Then only it amounts to putting the contradiction to the

witness and getting it proved through the Investigation Officer.â€

23. The Calcutta High Court took a similar view in Anjan Ganguly v. State of West Bengal, 2013 SCC OnLine Cal 22948: (2013) 2 Cal LJ 144:

(2013) 3 Cal LT 193: (2013) 128 AIC 546: (2014) 2 RCR (Cri) 970: (2013) 3 DMC 760 and held at page 151: -

â€œ21. It was held in State of Karnataka v. Bhaskar Kushali Kothakar, reported as (2004) 7 SCC 487 that if any statement of the witness is contrary to the

previous statement recorded under Section 161, Cr.P.C. or suffers from omission of certain material particulars, then the previous statement can be proved by

examining the Investigating Officer who had recorded the same. Thus, there is no doubt that for proving the previous statement Investigating Officer ought to be

examined, and the statement of the witness recorded by him, can only be proved by him and he has to depose to the extent that he had correctly recorded the

statement, without adding or omitting, as to what was stated by the witness.

23. Proviso to Section 162(1), Cr.P.C. states in clear terms that the statement of the witness ought to be duly proved. The words if duly proved, cast a duty upon the

accused who wants to highlight the contradictions by confronting the witness to prove the previous statement of a witness through the police officer who has

recorded the same in the ordinary way. If the witness in the cross-examination admits contradictions, then there is no need to prove the statement. But if the witness

denies a contradiction and the police officer who had recorded the statement is called by the prosecution, the previous statement of the witness on this point may be

proved by the police officer. In case the prosecution fails to call the police officer in a given situation Court can call this witness or the accused can call the police

officer to give evidence in defence. There is no doubt that unless the statement as per proviso to sub-section (1) of Section 162, Cr.P.C. is duly proved, the

contradiction in terms of Section 145 of the Indian Evidence Act cannot be taken into consideration by the Court.

24. To elaborate on this further, it will be necessary to reproduce Section 145 of the Indian Evidence Act.

â€œS. 145. 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 proved; but, if it 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.â€

25. Therefore, it is appropriate that before the previous statement or statement under Section, 161, Cr.P.C. is proved, the attention of the witness must be drawn to the

portion in the statement recorded by the Investigating Officer to bring to light the contradiction, a process called confrontation.

26. Let us first understand what is proper procedure. A witness may have stated in the statement under Section 161, Cr.P.C. that â€˜X murdered Yâ€™. In Court

witness state â€˜Z murdered Yâ€™. This is a contradiction. Defence Counsel or Court and even prosecution if the witness is declared hostile having resiled from

previous statement, is to be confronted to bring contradiction on record. The attention of the witness must be drawn to the previous statement or statement under

Section 161, Cr.P.C. where it was stated that â€˜X murdered Yâ€™. Since Section 145 of the Indian Evidence Act uses the word being proved, therefore, in the course

of examination of the witness, previous statement or statement under Section 161, Cr.P.C. will not be exhibited but shall be assigned a mark, and the portion

contradicted will be specified. The trial Court in the event of contradiction has to record as under.

27. The attention of the witness has been drawn to portions A to A of statement marked as 1, and confronted with the portion where it is recorded that â€˜X murdered

Yâ€™. In this manner by way of confrontation contradiction is brought on record. Later, when the Investigating Officer is examined, the prosecution or defence may

prove the statement, after the Investigating Officer testifies that the statement assigned mark was correctly recorded by him at that stage statement will be exhibited

by the Court. Then contradiction will be proved by the Investigating Officer by stating that the witness had informed or told him that â€˜X murdered Yâ€™ and he

had correctly recorded this fact.

28. Now a reference to the explanation to Section 162, Cr.P.C. which says that an omission to state a fact or circumstance may amount to contradiction. Say for

instance if a witness omits to state in Court that â€˜X murdered Yâ€™, what he had stated in a statement under Section 161, Cr.P.C. will be materia? contradiction, for

the Public Prosecutor, as the witness has resiled from the previous statement, or if he has been sent for trial for the charge of murder, omission to state â€˜X murdered

Yâ€™ will be a material omission, and amount to contradiction so far defence of â€˜W is concerned. At that stage also attention of the witness will also be drawn to a

significant portion of the statement recorded under Section 161, Cr.P.C. which the witness had omitted to state and note shall be given that attention of the witness

was drawn to the portion A to A wherein it is recorded that â€˜X murdered Yâ€™. In this way, the omission is brought on record. The rest of the procedure stated

earlier qua confrontation shall be followed to prove the statement of the witness and the fact stated by the witness.

29. Therefore, to prove the statement for the purpose of contradiction it is necessary that the contradiction or omission must be brought to the notice of the witness.

His or her attention must be drawn to the portion of the previous statement (in the present case statement under Section 161, Cr.P.C.)

24. A similar view was taken in Alauddin v. State of Assam, 2024 SCC OnLine SC 760 wherein it was observed:

â€œ7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court

which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under

Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section

161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the

Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is

significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under

Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for

contradicting witnesses in the cross-examination.

8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act.

Section 145 reads thus:

â€œ145. Cross-examination as to previous statements in writing.â€"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 proved; 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.â€

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing

being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a

witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction

between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to

specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing

being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement

is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on

record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the

end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was

shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness

admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is

confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the

witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically

shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the

witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in

Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the

contradiction. Therefore, this is a rule of fairness.

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in

accordance with clause (3) of Section 155 of the Evidence Act, which reads thus:

â€œ155. Impeaching credit of witness. â€" 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 himâ€

(1) â€¦.â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦

(2) â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦â€¦

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.â€

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or

contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve

the witness's version either fully or partially. What is a material contradiction or omission depending upon the facts of each case? Whether an omission is a

contradiction also depends on the facts of each individual case.

10. We are tempted to quote what is held in a landmark decision of this Court in the case of Tahsildar Singh v. State of U.P.1959 Supp (2) SCR 875 Paragraph 13 of

the said decision reads thus:

â€œ13. The learned counsel's first argument is based upon the words â€œin the manner provided by Section 145 of the Indian Evidence Act, 1872â€ found in Section

162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention

is called to those parts of the writing with a view to contradict him. In support of this contention, reliance is placed upon the judgment of this Court in Shyam Singh v.

State of Punjab [(1952) 1 SCC 514: 1952 SCR 812]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act

thus at p. 819:

Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and

if the former statement was reduced to writing, then Section 145 requires that his attention must be drawn to these parts which are to be used for contradiction. But

that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further

proof is necessary because of the admission that it was made.â€

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said

decision of this Court and similar decisions were not considering the procedure in a case where the statement in writing was intended to be used for contradiction

under Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness

as to a previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where

the cross-examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other

than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict

a witness 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. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such a statement to contradict a witness in the manner

provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose

of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be

possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more

imaginary than real. 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 it, the practice generally

followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the

witness is asked â€œDid you say before the police officer that you saw a gas light?â€ and he answers â€œyesâ€, then the statement which does not contain such

recital is put to him as a contradiction. This 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 not be used for any purpose,

whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure,

therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants,

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. This argument of the

learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of

Criminal Procedure.â€

(emphasis added)

This decision is a locus classicus, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the

witnesses' prior statements based on which they were sought to be contradicted in the cross-examination.â€

25. It was laid down by the Honâ€™ble Supreme Court in Matadin v. State of U.P., 1980 Supp SCC 157: 1979 SCC (Cri) 62 7that the statement

under Section 161 Cr.PC is not detailed and is meant to be brief. It does not contain all the details. It was observed at page 158:

â€œ3. The learned Sessions Judge had rejected the evidence of the eyewitnesses on wrong, unconvincing and unsound reasons. The Sessions Judge appears to

have been swayed by some insignificant omissions made by some of the witnesses in their statement before the police and on the basis of these omissions dubbed

the witnesses as liars. The Sessions Judge did not realise that the statements given by the witnesses before the police were meant to be brief statements and could

not take the place of evidence in the Court. Where the omissions are vital, they merit consideration, but mere small omissions will not justify a finding by a court that

the witnesses concerned are self-contained liars. We have carefully perused the judgment of the Sessions Judge and we are unable to agree that the reasons that he

has given for disbelieving the witnesses are good or sound reasons. The High Court was, therefore, fully justified in reversing the judgment passed by the trial court.

We are satisfied that this is a case where the judgment of the Sessions Judge was manifestly wrong and perverse and was rightly set aside by the High Court. It was

urged by Mr Mehta that as other appellants except Matadin and Dulare do not appear to have assaulted the deceased, so they should be acquitted of the charge

under Section 149. We, however, find that all the appellants were members of the unlawful assembly. Their names find a place in the FIR. For these reasons, we are

unable to find any ground to distinguish the case of those appellants from that of Matadin and Dulare. The argument of the learned counsel is overruled. The result

is that the appeal fails and is accordingly dismissed. The appellants who are on bail, will now surrender to serve out the remaining portion of their sentence.â€

26. Similar is the judgment in Esher Singh v. State of A.P., (2004) 11 SCC 585: 2004 SCC OnLine SC 320 wherein it was held at page 601:

â€œ23. So far as the appeal filed by accused Esher Singh is concerned, the basic question is that even if the confessional statement purported to have been made by

A-5 is kept out of consideration, whether residuary material is sufficient to find him guilty. Though it is true as contended by learned counsel for the accused-

appellant Esher Singh that some statements were made for the first time in court and not during the investigation, it has to be seen as to what extent they diluted the

testimony of Balbeer Singh and Dayal Singh (PWs 16 and 32) used to bring home the accusations. A mere elaboration cannot be termed as a discrepancy. When the

basic features are stated, unless the elaboration is of such a nature that it creates a different contour or colour of the evidence, the same cannot be said to have

totally changed the complexion of the case. It is to be noted that in addition to the evidence of PWs 16 and 32, the evidence of S. Narayan Singh (PW 21) provides

the necessary links and strengthens the prosecution version. We also find substance in the plea taken by learned counsel for the State that evidence of Amar Singh

Bungai (PW 24) was not tainted in any way, and should not have been discarded and disbelieved only on surmises. Balbir Singh (PW 3), the son of the deceased has

also stated about the provocative statements in his evidence. Darshan Singh (PW 14) has spoken about the speeches of the accused Esher Singh highlighting the

Khalistan movement. We find that the trial court had not given importance to the evidence of some of the witnesses on the ground that they were relatives of the

deceased. The approach is wrong. The mere relationship does not discredit the testimony of a witness. What is required is careful scrutiny of the evidence. If after

careful scrutiny the evidence is found to be credible and cogent, it can be acted upon. In the instant case, the trial court did not indicate any specific reason to cast

doubt on the veracity of the evidence of the witnesses whom it had described to be the relatives of the deceased. PW 24 has categorically stated about the

provocative speeches by A-1. No definite cross-examination on the provocative nature of speech regarding the Khalistan movement was made, so far as this witness

is concerned.â€

27. This position was reiterated in Shamim v. State (NCT of Delhi), (2018) 10 SCC 509: (2019) 1 SCC (Cri) 319: 2018 SCC OnLine SC 1559

where it was held at page 513:

â€œ12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that

impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly 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 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, a hypertechnical approach by taking

sentences torn out of context here or there from the evidence, and attaching importance to some technical error without going to the root of the matter would not

ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the

witnesses before the police are meant to be brief statements and could not take the place of evidence in the court. Small/trivial omissions would not justify a finding

by the court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming

from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof.

In the former case, the defence may be justified in seeking advantage of incongruities obtained in the evidence. In the latter, however, no such benefit may be

available to it.â€

28. SimilarÂ isÂ theÂ judgmentÂ inÂ K alabhaiÂ Hamirbhai Kachhot v. State of Gujarat, (2021) 19 SCC 555: 2021 SCC OnLine SC 347

wherein it was observed at page 564:

â€œ22. We also do not find any substance in the argument of the learned counsel that there are major contradictions in the deposition of PWs 18 and 19. The

contradictions which are sought to be projected are minor contradictions which cannot be the basis for discarding their evidence. The judgment of this Court in

Mohar [Mohar v. State of U.P.,(2002) 7 SCC 606: 2003 SCC (Cri) 121] relied on by the learned counsel for the respondent State supports the case of the

prosecution. In the aforesaid judgment, this Court has held that convincing evidence is required, to discredit an injured witness. Para 11 of the judgment reads as

under: (SCC p. 611)

â€œ11. The testimony of an injured witness has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was

present at the place of occurrence and had seen the occurrence by himself. Convincing evidence would be required to discredit an injured witness. Similarly, every

discrepancy in the statement of a witness cannot be treated as fatal. A discrepancy which does not affect the prosecution case materially cannot create any infirmity.

In the instant case, the discrepancy in the name of PW 4 appearing in the FIR and the cross-examination of PW 1 has been amply clarified. In cross-examination, PW 1

clarified that his brother Ram Awadh had three sons: (1) Jagdish, PW 4, (2) Jagarnath, and (3) Suresh. This witness, however, stated that Jagarjit had only one name.

PW 2 Vibhuti, however, stated that at the time of occurrence, the son of Ram Awadh, Jagjit alias Jagarjit was milching a cow and he was also called as Jagdish. Balli

(PW 3) mentioned his name as Jagjit and Jagdish. PW 4 also gave his name as Jagdish.â€

23. The learned counsel for the respondent State has also relied on the judgment of this Court in Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324: (2011) 2 SCC

(Cri) 216]. In the aforesaid judgment, this Court has held that the evidence of injured witnesses cannot be brushed aside without assigning cogent reasons. Paras 27

and 30 of the judgment which are relevant, read as under: (SCC pp. 333-34)

â€œ27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally

considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness

has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during

the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go

unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there

are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide Jarnail Singh v. State of Punjab [Jarnail Singh v.

State of Punjab, (2009) 9 SCC 719 :Â (2010)Â 1Â SCCÂ (Cri)Â 107], Balraje v. StateÂ of Maharashtra [Balraje v. State of Maharashtra, (2010) 6 SCC 673 :

(2010) 3 SCC (Cri) 211] and Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262])

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30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to

lapse of time or due to mental dispositions such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating serious

doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely

upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case,

should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record

afinding as to whether his deposition inspires confidence.

â€˜9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version when the entire

evidence is put in a crucible for being tested on the touchstone of credibility.â€™ [Ed.: As observed in Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC

186, p. 192, para 9: 2004 SCC (Cri) 1435]

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the

witness earlier. The 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's case, render the testimony of the witness liable to be discredited. (Vide State v. Saravanan [State v. Saravanan, (2008) 17 SCC 587 : (2010) 4 SCC

(Cri) 580], Arumugam v. State [Arumugam v. State, (2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], Mahendra Pratap Singh v. State of U.P. [Mahendra Pratap

Singh v. State of U.P., (2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352] and Sunil Kumar Sambhudayal Gupta v. State of Maharashtra [Sunil Kumar Sambhudayal

Gupta v. State of Maharashtra, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375]â€

24. Further, in Narayan Chetanram Chaudhary v. State of Maharashtra [Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457: 2000 SCC

(Cri) 1546], this Court has considered the effect of the minor contradictions in the depositions of witnesses while appreciating the evidence in a criminal trial. In the

aforesaid judgment, it is held that only contradictions in material particulars and not minor contradictions can be grounds to discredit the testimony of the witnesses.

The relevant portion of para 42 of the judgment reads as under: (SCC p. 483)

â€œ42. Only such omissions which amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police

statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material

particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in

the statements of truthful witnesses as memory sometimes plays false and the sense of observation differs from person to person. The omissions in the earlier

statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is a contradiction of

statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.â€

29. It was laid down by the Honâ€™ble Supreme Court in Achchar Singh vs. State of H.P. AIR 2021 SC 3426 that the testimony of a witness

cannot be discarded due to exaggeration alone. It was observed:

â€œ24. It is vehemently contended that the evidence of the prosecution witnesses is exaggerated and thus false. Cambridge Dictionary defines ""exaggeration"" as

the fact of making something larger, more important, better or worse than it is"". Merriam-Webster defines the term ""exaggerate"" as to ""enlarge beyond bounds or the

truth"". The Concise Oxford Dictionary defines it as ""enlarged or altered beyond normal proportions"". These expressions unambiguously suggest that the genesis of

an 'exaggerated statement' lies in a fact, to which fictitious additions are made to make it more penetrative. Every exaggeration, therefore, has the ingredients of 'truth'.

No exaggerated statement is possible without an element of truth. On the other hand, the Advance Law Lexicon defines ""false"" as ""erroneous, untrue; opposite of

correct, or true"". Oxford Concise Dictionary states that ""false"" is ""wrong; not correct or true"". Similar is the explanation in other dictionaries as well. There is, thus, a

marked differential between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no

grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being

mindful of such distinction is duty bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the

grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded. [Sucha Singh v. State

of Punjab, (2003) 7 SCC 643, 18.]

25. Learned State counsel has rightly relied on Gangadhar Behera (Supra) to contend that even in cases where a major portion of the evidence is found deficient if the

residue is sufficient to prove the guilt of the accused, a conviction can be based on it. This Court in Hari Chand v. State of Delhi, (1996) 9 SCC 112 held that:

24. ...So far as this contention is concerned it must be kept in view that while appreciating the evidence of witnesses in a criminal trial, especially in a case of

eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a

witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found

acceptable the remaining part of the evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets

corroborated from other evidence on record so that the acceptable part can be safely relied upon...

26. There is no gainsaid that homicidal deaths cannot be left to judicium dei. The Court in their quest to reach the truth ought to make earnest efforts to extract gold

out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the

benefit of the doubt is extended.

27. An eye-witness is always preferred to others. The statements of P.W.1, P.W.11 and P.W.12 are, therefore, to be analysed accordingly, while being mindful of the

difference between exaggeration and falsity. We find that the truth can be effortlessly extracted from their statements. The trial Court fell in grave error and

overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eyewitnesses belie their

version.â€

30. It was laid down by the Honâ€™ble Supreme Court in Arvind Kumar @ Nemichand and others Versus State of Rajasthan, 2022 Cri. L.J.

374, that the testimony of a witness cannot be discarded because he had made a wrong statement regarding some aspect. The principle that when a

witness deposes falsehood his entire statement is to be discarded does not apply to India. It was observed: -

â€œ48. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have a strict application to the criminal

jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an

attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not

assumed the status of law but continues only as a rule of caution. One has to see the nature of the discrepancy in a given case. When the discrepancies are very

material shaking the very credibility of the witness leading to a conclusion in the mind of the court that it is neither possible to separate it nor to rely upon, it is for the

said court to either accept or reject.

31. In the present case the improvements brought out in the cross-examination are minor in nature. They are elucidations of the facts already stated

by the informant to the police and will not fall within the definition of an improvement. Therefore, the testimony of the informant cannot be discarded

because she was confronted with her previous statement recorded by the police.

32. It was submitted that the prosecution version that the deceased was being harassed because the accused wanted the deceased to marry her

younger sister to her brother-in-law is not believable because of the admission made by the informant that the younger sister of the deceased was

married three years before the date of deposition and younger brother of the accused was also married before the date of deposition. This submission

cannot be accepted. The informant was making the statement in the Court on 18.01.2010. The deceased died on 20.12.2008, which means that the

marriage of the younger brother-in-law of the deceased had taken place after the death of the deceased. Further, the informant stated in her cross-

examination that her youngest daughter was married three years before the date of deposition which means that she was married somewhere in the

year 2007. As per the informant, the deceased was married 11 years before the date of the incident and she was harassed after 4-5 years which

means the harassment commenced when the younger sister of the deceased was unmarried. Therefore, no advantage can be derived by the defence

from the statements of the informant in her cross-examination.

33. Asha Sharma (PW-2) stated that she was a Member of BDC Nadaun. She knew the accused as they were neighbours. Her house is located at a

distance of 100 meters from the house of the accused. Anita used to tell her after 4-5 years of her marriage about her harassment by the accused.

Anita was also being pressurised to propose the marriage between accused No. 4 and her younger sister. However, Anita used to say that this

proposal was not acceptable to her as she was being harassed by the accused and she did not wish that her younger sister should face the same

consequences. The deceased came to her house on 01.01.2007 at about 7-8 AM. She found that blood was oozing out of her forehead. She revealed

that she was beaten by accused No.4 Raju. She was weeping. She went to the house of the accused and enquired from Raju about the incident. Raju

challenged her authority to interfere in this matter and asked her to leave the place. Anita also came to her house four days before her death and she

told that her husband and her mother-in-law had brought something and gave it to her forcibly. She did not feel well after consuming it. Asha's

husband told Anita that she should go to her home as the accused used to abuse her on her intervention. Subsequently, Anita died.

34. She stated in her cross-examination that her statement was recorded by the police on the day of the death of Anita. She had replied to only those

questions which were asked of her. She did not tell the police that Anita had revealed that she was not happy in her matrimonial home and did not

want the marriage between her younger sister and accused No. 4. She had told the police that she had seen the blood oozing out of the forehead of

Anita and she had enquired accused No.4 about the incident. She had also told the police that she had telephoned her regarding the harassment given

to Anita by the accused and she had telephoned Kamla Devi on the date of the incident. She admitted that the community of village Hareta boycotted

the accused persons after the incident. She denied that she had beaten the accused and had ransacked their house on the date of the incident. She

admitted that a quarrel had taken place but stated that she was standing and watching the quarrel. She denied that the accused were the owners of

150-200 Kanals. She volunteered to say that the accused were the owners of 10 Kanals. She denied that she had a land dispute with the accused

persons. She denied that she had not seen any blood on the forehead of the accused and she was deposing falsely.

35. She is the relative of the accused being their collateral. It was suggested to her in her cross-examination that she was on inimical terms with the

accused. However, she denied this fact. A denied suggestion does not amount to any proof and her testimony cannot be rejected due to the enmity.

36. It was submitted that this witness has improved upon her earlier version and she was duly confronted with her previous statement recorded by the

police. This submission will not help the accused as the witness was not contradicted with her previous statement by following the proper procedure as

mentioned above. Further, there is no material improvement and she only elaborated the facts narrated in her statement recorded under Section 161 of

CrPC and her testimony cannot be discarded due to the elaboration. She is a Member of the BDC and a political figure in the village. Therefore, it

was natural for Anita to visit her and narrate her woes to her. She was the neighbour of Anita and being collateral of the accused was the best person

in whom Anita could have reposed confidence. Therefore, her testimony is natural and was rightly accepted by the learned Trial Court.

37. Punam Sharma (PW-3) was Pradhan of village Hareta. She stated that 10 months before her death, Anita came to her and told her that the

accused were harassing her. She also said that the accused were pressurizing her that the land should be transferred by the informant in favour of the

accused. She also revealed that the accused were pressurizing her to get her younger sister Naresh married to Raj Kumar. When she returned after

the marriage of her younger sister Naresh, she was harassed by accused No.2 by saying why she had not taken the gold chain from her mother.

Mahila Mandal wanted to intervene but the accused told them that they had no business to meddle in their personal affairs.

38. She stated in her cross-examination that she had not told the police that Anita had revealed to her that she was being harassed to get her parental

property. She volunteered to say that she was not asked about this fact by the police. She had told the Court for the first time about the harassment of

Anita. She had not talked to any person regarding the harassment given by the accused to deceased Anita. She admitted that the accused and Asha

were the adjoining owners. She denied the Asha had a land dispute with the accused persons. She admitted that Asha and the accused are collaterals.

She denied that Anita had removed the coriander from the field of the accused. She was not aware that Asha and the accused had quarrelled over the

removal of the coriander. She admitted that Mahila Mandal and the villagers did not invite the accused to any function after the death of Anita. She

admitted that this was done to teach a lesson to the accused. She admitted that the accused had not beaten Anita in her presence. She denied that

Anita was weak like her brother. She admitted that Anita and Kamla have not complained to her in writing. The accused had sufficient land which is

being cultivated through a tractor. The accused have 10-12 fields adjacent to the field where the dead body of Anita was found.

39. She is Pradhan of Mahila Mandal and an influential figure in the village. Being a Pradhan of Mahila Mandal, it was natural for Anita to visit her

and narrate the incidents of her harassment to her. She stated that she had also tried to intervene in the matter but she was told by the accused that

she had no authority to interfere in the personal affairs of the accused. This is in accordance with the statement of Asha who had narrated the same

fact. These statements show that she and Asha had tried to intervene but were pushed off by the accused. Her testimony is natural and there is

nothing inherently improbable in it and the learned Trial Court had rightly accepted the same.

40. Kanta Devi (PW-4) is another neighbour. She stated that Anita told her that she was being harassed by the accused because she had brought less

dowry and the property of her mother should be transferred in the name of the accused. She tried to persuade the accused persons but they asked her

to leave their house. Anita was lying on the second floor of the veranda. Chint Ram caught her by her hair and dragged her inside the room. He was

insisting Anita inhale smoke (Dhuni). Anita refused to do so. She was beaten. She was present in the Verandha of her house at the time of the

incident.

41. She stated in her cross-examination that she was not questioned by the police on the point of dowry. She had replied to the questions asked by the

police. The police had not questioned her as to why the beatings were being given to the deceased. She resided with her husband for 18 years. Anita

resided in the village for about 10 years. Mahila Mandal in the village was headed by Punam Sharma. She admitted that she had a boundary dispute

with the accused person. She denied that she had encroached upon the land of the accused but volunteered to say that the accused had encroached

upon her land. She was not aware that Dhuni was given to treat the evil spirit. She had not reported the matter to the police but informed Asha Devi.

She admitted that she and the villagers were not on talking terms with the accused person after the death of Anita.

42. It was submitted that she admitted a boundary dispute with the accused and she is an interested witness. This submission will not assist the

accused. Learned Trial Court had rightly pointed out that the dispute over the boundary in the village is common, but they do not furnish any reason to

the witnesses to depose falsely against each other.

43. Devi Dass Sharma (PW-5) was the Panch of Ward No.4 of Gram Panchayat Herata. He stated that the house of the accused fell in his ward.

The accused Vikram told him on 20.12.2009 that Anita was missing, subsequently, her dead body was found in the well. Anita had complained to him

regarding the harassment 4-5 days before her death. He went to the house of the accused and advised them not to harass Anita. The accused told

him that these were natural wear and tears in the family. He stated in his cross-examination that he had not told the police about the complaint made

by Anita 4-5 days before the death because this fact was not asked of him. The accused were the owners of 25-30 kanals of land. Asha and Kanta

Devi had a boundary dispute with the accused person. They had stacked stones and wood on the land of the accused. The accused had quarrelled

with Asha regarding the removal of coriander from the field of the accused. All the villagers and Mahila Mandal used to snub the accused. He

admitted that he had formed an opinion that accused persons should be convicted in the case. He volunteered to say that they should only be convicted

if they have committed any offence. He had himself not witnessed the harassment of Anita. He volunteered to say that he had heard about the same.

44. This witness admitted in his cross-examination that he had not told the police about the complaint made by Anita to him and he wanted the

conviction of the accused. These admissions would make it difficult to place reliance upon his testimony and his testimony cannot be considered

against the accused.

45. Birbal Sharma (PW-7) stated that he was Pradhan of Gram Panchayat Pansai where the informant was residing. He knew Anita who was

married to the elder son of Chint Ram. Kamla complained to him four months before the death of Anita that Anita was not being treated properly by

her in-laws. He advised Kamla to persuade Anita to adjust in her matrimonial home as she had to spend her life with the accused. Kamla Devi had

told him about the harassment of Anita by her in-laws for getting the property transferred in their name. He stated in his cross-examination that about

ten members of the Mahila Mandal of the village had visited village Hareta on 20.12.2008. He was not aware that a criminal case was registered at

the instance of Raksha Devi. He had not told the police about the complaint of harassment made by the informant for transferring the property in the

name of the accused. He had also not told the police about the social boycott of the accused by the villagers because he was not in possession of

complete facts and he had not verified those facts. He subsequently came to know that the allegations against the accused person were true. He

denied that he did not know what happened and that he was making a false complaint. He had seen Anita 3-4 times in her parental home but he could

not tell the date.

46. The statement of this witness is based upon what was told to him by the informant. The informant had herself not seen the incident and the

incident was revealed to her by Anita. Therefore, the statement of this witness is hearsay and will not help the prosecution.

47. Thus, the testimony of the informant regarding the harassment is duly corroborated by Asha Devi (PW-2) Member of BDC, Punam Sharma (PW-

3) Pradhan of Mahila Mandal, and Kanta Devi (PW-4) neighbour of the accused.

48. It was submitted that the villagers had socially boycotted the accused which shows their prejudice against the accused. This submission cannot be

accepted. Learned Trial Court had rightly held that this showed the anger of the villagers who were aware of the harassment of the deceased by the

accused. The complaint of harassment was made by Anita during her lifetime to her neighbours and respectable persons in society. They had tried to

intervene but were asked by the accused not to interfere in their matter. Subsequently, Anita lost her life. Therefore, the villagers cannot be blamed

for boycotting the accused persons for their perceived injustice to Anita who had lost her life in their village. It was a natural reaction and cannot lead

to an inference that they were bent upon deposing falsely against the accused.

49. It was suggested to Kanta Devi in her cross-examination that â€˜Dhuniâ€™ is given to treat the evil spirit which shows that her testimony

regarding dragging Anita from her hair and forcibly administering the smoke to her was accepted by the accused. Similarly, it was suggested to Devi

Dass Sharma (PW-5) that the dispute was normal wear and tear of the family which means that the strained relationship between the accused and

the deceased was not disputed. Thus, the learned Trial Court was justified in accepting the testimonies of the prosecution witnesses to hold that the

deceased was being harassed by the accused.

50. In Girdhar Shankar Tawade (supra) the Hon'nle Supreme Court held that the acquittal under Section 306 of IPC does not lead to the acquittal

under Section 498-A of IPC. However, sufficient material should be available on record to constitute harassment consisting of a series of acts. In the

present case, the witnesses have deposed about the series of acts of harassment of Anita. First, she was being compelled to marry her younger sister

to her brother-in-law. Thereafter she was being coerced to transfer the property of the informant in the names of the accused. She had made

complaints to different persons at different points of time which show that the deceased was not harassed once but multiple times. Hence, this

judgment will not assist the accused.

51. It was submitted that the learned Trial Court erred in relying upon the statement made by the deceased after acquitting the accused of the

commission of an offence punishable under Section 306 of IPC because such a statement will fall within the definition of hearsay. This submission is

not acceptable. It was laid down by the Honâ€™ble Supreme Court in Surendran v. State of Kerala, (2022) 15 SCC 273: 2022 SCC OnLine SC

621 that the statement made by the deceased is admissible while adjudicating the commission of an offence punishable under Section 498A where the

death of the deceased falls for determination. It was observed at page 280:

15. It may bear mentioning that the phrase â€œcases in which the cause of that person's death comes into questionâ€ is broader than merely referring only to cases

where there is a charge of murder, suicide, or dowry death. There have been instances where courts have used Section 32(1) of the Evidence Act to admit statements

in a case where the charge is different or even in a civil action. This is abundantly clear from the second part of Section 32(1) of the Evidence Act which specifies that

such statements are relevant â€œwhatever may be the nature of the proceeding in which the cause of his death comes into questionâ€. Illustration (a) to Section 32 of

the Evidence Act refers to a statement made by a deceased in a rape case which may be admitted under the section, which was the position in India even prior to the

enactment of the Evidence Act, as held by the Court in R. v. Bissorunjun Mookerjee [R. v. Bissorunjun Mookerjee, (1866) 6 WR (Cri)75].

16. In Lalji Dusadh v. King-Emperor [Lalji Dusadh v. King-Emperor, 1927 SCC OnLine Pat 130: AIR 1928 Pat 162], the Patna High Court upheld the admissibility

of statements made by the deceased in a case concerning charges under Sections 302, 392 and 397IPC. In that case, the deceased victim was robbed and killed as a

part of the same transaction. The submission of the learned counsel for the accused in that case, inter alia, was that the dying declaration of the deceased could not

be admitted under Section 32(1) of the Evidence Act with respect to the charges under Sections 392 and 397IPC. Negativing this contention, the High Court observed

as follows : (SCC OnLine Pat)

â€œA further legal point is taken with regard to the dying declarations.

It is contended that so far as the charges for the offences under Sections 392 and 397 are concerned the dying declarations are not admissible under Section 32(1) of

the Indian Evidence Act inasmuch as the cause of the deceased's death does not come in question in the trial of those charges. It is contended that on this point the

Indian law is the same as the English law and that a dying declaration as to the cause of the death is only admissible when the cause of the death is the subject of the

charge. I cannot agree with this view. The words of Section 32 are very wide and it is not necessary that the charge should be one of homicide. The evidence as to

the cause of death was relevant to the charge of robbery and consequently, the cause of death that is to say the assault committed by the appellant came into

question in the trial. Before the Indian Evidence Act was enacted it was held in R. v. Bissorunjun Mookerjee [R. v. Bissorunjun Mookerjee, (1866) 6 WR (Cri) 75] that

there was no necessity in India for following the very narrow rule of English law and that a dying declaration could be used as evidence in a charge of rape. One of

the illustrations to Section 32 of the present Indian Evidence Act expressly provides for such evidence where the charge is not culpable homicide but rape.â€

(emphasis supplied)

17. Further, in a proceeding with multiple charges, where one directly relates to the death of a declarant and the other does not, the Court has admitted the evidence

of the declarant even if the prosecution failed to prove the charge relating to death. For instance, in Parmanand Ganga Prasad v. Emperor [Parmanand Ganga

Prasad v. Emperor, 1940 SCC OnLine MP 106: AIR 1940 Nag 340], the High Court of Nagpur held as follows: (SCC OnLine MP paras 7-8)

â€œ7. â€¦ The prosecution story as narrated by us shows that throughout the enquiry the cause of the death of Munde was material. That being so, the mere fact that

a charge of murder failed and was not brought home to the accused would not make the statement inadmissible for the purposes of other offences which were

committed in the course of the same transaction and with which the accused were charged.

8. We may also observe that in all cases regarding the admissibility of a particular piece of evidence, the material time when the admissibility has got to be decided is

the time when the Court received the evidence and not the eventual result. In this case, when the statements were filed by the prosecution and proved in the case it

could under no circumstances be argued that the cause of death of the deceased was not in question. The cause of death of Munde was in question as there was

also a charge under Section 302, and this charge was joined with other charges in the case under Section 239(d) as forming part of the same transaction. So, at the

stage at which these statements were put up by the prosecution before the Court as admissible, it could not be argued that they were not admissible and a document

once admitted in evidence remains admissible for all purposes in the case. The subsequent result of the case viz. failure of the charge of murder should not make any

difference whatsoever to the admissibility of the document. Just as their Lordships of the Privy Council in Babulal Choukhani v. King-Emperor [Babulal

Choukhani v. King-Emperor, 1938 SCC OnLine PC 10 : (1937-38) 65 IA 158: AIR 1938 PC 130: 174 IC 1: ILR (1938) 2 Cal 295] stated that the relevant point of

time in the proceedings at which the condition as to sameness of transaction must be fulfilled is the time of accusation and not that of the eventual result we think we

would be justified in stating the same with respect to the admissibility of a document.â€ (emphasis supplied)

18. From the above pronouncements, and the wordings of Section 32(1) of the Evidence Act, it appears that the test for admissibility under the said section is not that

the evidence to be admitted should directly relate to a charge pertaining to the death of the individual, or that the charge relating to death could not be proved.

Rather, the test appears to be that the cause of death must come into question in that case, regardless of the nature of the proceeding, and that the purpose for

which

such evidence is being sought to be admitted should be a part of the â€œcircumstances of the transactionâ€ relating to the death.

19. The phrase â€œcircumstances of the transactionâ€, as occurring in the section, has been interpreted by the Privy Council in the judgment that is considered the

locus classicus on the admissibility of evidence under Section 32(1) of the Evidence Act, Pakala Narayana Swami v. King- Emperor [Pakala Narayana Swami v.

King-Emperor, 1939 SCC OnLine PC 1: AIR 1939 PC 47]. In that case, the Privy Council was dealing with a case of murder wherein one of the main pieces of

evidence against the accused was the statement made by the deceased to his wife. The defence argued that such evidence had to be excluded due to the hearsay

rule. However, the said evidence was admitted under Section 32(1) of the Evidence Act and the accused was convicted.

20. In appeal, one of the questions the Privy Council had to answer related to whether the deceased's statement was properly admitted or not. In that context, the

Privy Council observed as under : (Pakala Narayana Swami case [Pakala Narayana Swami v. King-Emperor, 1939 SCC OnLine PC 1: AIR 1939 PC 47], SCC

OnLine PC)

Â â€œA variety of questions has been mooted in the Indian courts as to the effect of this section. It has been suggested that the statement must be made after the

transaction has taken place, that the person making it must be at any rate near death, and that the â€œcircumstancesâ€ can only include the acts done when and

where the death was caused. Their Lordships are of the opinion that the natural meaning of the words used does not convey any of these limitations. The statement

may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the

transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will

not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that

he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would

be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. â€œCircumstances of

the transactionâ€ is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in â€œcircumstantial evidenceâ€ which includes

evidence of all relevant facts. It is on the other hand narrower than â€œres gestaeâ€. Circumstances must have some proximate relation to the actual occurrence:

though, as for instance in a case of prolonged poisoning, they may be related to dates at a considerable distance from the date of the actual fatal dose.

It will be observed that â€œthe circumstancesâ€ are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known

transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that â€˜the cause of [the

declarant's] death comes into questionâ€™. In the present case, the cause of the deceased's death comes into question. The transaction is one in which the deceased

was murdered on March 21 or 22: and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on March

20 or 21 that he was setting out to the place where the accused lived, and to meet a person, the wife of the accused, who lived in the accused's house, appears clearly

to be a statement as to some of the circumstances of the transaction which resulted in his death. The statement was rightly admitted.â€ (emphasis supplied)

21. This principle of law has been upheld by this Court on various occasions. In Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v.

State of Maharashtra, (1984) 4 SCC 116: 1984 SCC (Cri) 487], this Court summarised the principles of Section 32(1) of the Evidence Act, including relating to

â€œcircumstances of the transactionâ€ : (SCC pp. 138-39, para 21)

â€œ21. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:

(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided

the statement relates to the cause of death or exhibits circumstances leading to the death. In this respect, as indicated above, the Evidence Act, in view of the peculiar

conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

Â (2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a

straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama

long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible

because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an

immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the

deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more

than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or

given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of

oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was

secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to

prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal

a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases

would not make the statement irrelevant.â€ (emphasis supplied)

Â 22. A reading of the above pronouncements makes it clear that, in some circumstances, the evidence of a deceased wife with respect to cruelty could be admissible

in a trial for a charge under Section 498-AIPC under Section 32(1) of the Evidence Act. There are, however, certain necessary preconditions that must be met before

the evidence is admitted.

22.1. The first condition is that her cause of death must come into question in the matter. This would include, for instance, matters where along with the charge under

Section 498-AIPC, the prosecution has also charged the accused under Sections 302, 306 or 304-BIPC. It must be noted however that as long as the cause of her

death has come into question, whether the charge relating to death is proved or not is immaterial with respect to admissibility.

22.2. The second condition is that the prosecution will have to show that the evidence that is sought to be admitted with respect to Section 498-AIPC must also relate

to the circumstances of the transaction of the death. How far back the evidence can be, and how connected the evidence is to the cause of death of the deceased

would necessarily depend on the facts and circumstances of each case. No specific straitjacket formula or rule can be given with respect to this.

23. To the above extent therefore, the judgments of this Court in Gananath Pattnaik [Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619: 2002 SCC (Cri) 461],

Inderpal [Inderpal v. State of M.P., (2001) 10 SCC 736: 2003 SCC (Cri) 1049 (Ed. : two-Judge Bench)], Bhairon Singh [Bhairon Singh v. State of M.P., (2009)

13 SCC 80 : (2009) 5 SCC (Civ) 19 : (2010) 1 SCC (Cri) 955 (Ed. : two-Judge Bench)] and Kantilal Martaji Pandor [Kantilal Martaji Pandor v. State of

Gujarat, (2013) 8 SCC 781 : (2013) 4 SCC (Cri) 448 (Ed. : two-Judge Bench)], wherein it has been held that the evidence of the deceased cannot be admitted

under Section 32(1) of the Evidence Act to prove the charge under Section 498-AIPC only because the accused stands acquitted of the charge relating to the death of

the deceased, may not be correct. These judgments stand overruled to that limited extent.â€

52. In the present case, the death of Anita was in question and the accused were facing trial for committing an offence punishable under Section 306

of IPC; hence, the statements made by Anita during her lifetime were admissible.

53. It was laid down by the Honâ€™ble Supreme Court in Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619: 2002 SCC (Cri) 461: 2002

SCC OnLine SC 189 that cruelty within the meaning of Section 498A need not be physical but can be mental as well. It was observed at page 622:

â€œ6. We do not agree with the argument of the learned counsel for the appellant that even on proof of the aforesaid circumstances, as noticed by the trial court, no

case was made out against the appellant as, according to him, those facts even proved do not constitute cruelty for the purposes of attracting the provisions of

Section 498-A of the Penal Code, 1860. Cruelty for the purposes of the aforesaid section has been defined under the Explanation of the section to mean:

â€œ(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether

mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or

valuable security or is on account of failure by her or any person related to her to meet such demand.â€

7. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such a person belongs.

â€œCrueltyâ€ for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount

to cruelty and harassment in a given case.â€

54. TheÂ Honâ€™bleÂ SupremeÂ Court Â explainedÂ theÂ term cruelty i nUndavalli Narayana Rao v. State of A.P., (2009) 14 SCC 588:

(2010) 1 SCC (Cri) 1466: 2009 SCC OnLine SC 1350 and observed at page 592 as under:

â€œ15. â€œCrueltyâ€ has been defined by the Explanation added to the section itself. The basic ingredients of Section 498-A IPC are cruelty and harassment. The

elements of cruelty so far as clause (a) is concerned, have been classified as follows:

(i) any â€œwilfulâ€ conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any â€œwilfulâ€ conduct which is likely to cause grave injury to the woman; or

(iii) any â€œwilfulâ€ act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

For the purpose of clause (b) the essential ingredients are as under:

(i) the harassment of a married woman

(ii) with a view to coercing her or any person related to her to meet the unlawful demand of dowry or for any property or valuable security or on account of her failure

or failure of any person related to her to meet such a demand.

Therefore, it is evident that the charge under Section 498-A can be brought home if the essential ingredients either in clause (a) or (b) or both are found duly

established.

16. In S. Hanumantha Rao v. S. Ramani [(1999) 3 SCC 620: AIR 1999 SC 1318] this Court considered the meaning of cruelty in the context of the provisions under

Section 13 of the Hindu Marriage Act, 1955 and observed that : (SCC p. 624, para 8)

â€œ8. â€¦ Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and

the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed

wrong is not expected to live with the other party.â€

17. In V. Bhagat v. D. Bhagat [(1994) 1 SCC 337: AIR 1994 SC 710] this Court, while dealing with the issue of cruelty in the context of Section 13 of the Hindu

Marriage Act, observed as under: (SCC pp. 347 & 349, paras 16-17)

â€œ16. â€¦ It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such a conclusion, regard

must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they

are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case

may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of

accusations and allegations, regard must also be had to the context in which they were made.

17. â€¦ The context and the set-up in which the word â€˜crueltyâ€™ has been used in the section, seems to us, that intention is not a necessary element in cruelty.

That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the

conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case if, by ordinary sense

in human affairs, the act complained of could otherwise be regarded as cruelty.â€

18. In Mohd. Hoshan v. State of A.P. [(2002) 7 SCC 414: 2002 SCC (Cri) 1765] this Court while dealing with a similar issue held that mental or physical torture

should be â€œcontinuouslyâ€ practised by the accused on the wife. The Court further observed as under: (SCC p. 418, para 6)

â€œ6. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person

amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education, etc.

Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental

cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not.â€

19. In Raj Rani v. State (Delhi Admn.) [(2000) 10 SCC 662: 2001 SCC (Cri) 1518: AIR 2000 SC 3559] this Court held that while considering the case of cruelty in

the context of the provisions of Section 498-A IPC, the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond

reasonable doubt.

20. In Sushil Kumar Sharma v. Union of India [(2005) 6 SCC 281: 2005 SCC (Cri) 1473: AIR 2005 SC 3100] this Court explained the distinction of cruelty as

provided under Sections 306 and 498-A IPC observing that under Section 498-A cruelty committed by the husband or his relation drive woman to commit suicide, etc.

while under Section 306 IPC, suicide is abetted and intended. Therefore, there is a basic difference of the intention in the application of the said provisions.

21. In Girdhar Shankar Tawade v. State of Maharashtra [(2002) 5 SCC 177: 2002 SCC (Cri) 971: AIR 2002 SC 2078] this Court held that â€œcrueltyâ€ has to be

understood as having a specific statutory meaning provided in Section 498-A IPC and there should be a case of continuous state of affairs of torture by one to

another.

22. In Explanation (b) there is the absence of physical injury but it includes coercive harassment for demand of dowry, etc. Therefore, the aforesaid provisions deal

with the patent and latent acts of the husband or his family members. But both are equally serious in terms of the provisions of the statute. The provisions of Section

498-A IPC were introduced by an amendment to curb the harassment of a woman by her husband and/or his family members, for the demand of dowry, etc. under the

garb of the fulfilment of the customary obligations.

55. It was held in Wasim v. State (NCT of Delhi), (2019) 7 SCC 435: (2019) 3 SCC (Cri) 69: 2019 SCC OnLine SC 874 that the accused can be

convicted for the commission of an offence punishable under Section 498A of IPC for the demand of dowry and harassment to derive the woman to

commit suicide. It was observed at page 439:

â€œ12. Conviction under Section 498-A IPC is for subjecting a woman to cruelty. Cruelty is explained as any wilful conduct which is likely to drive a woman to

commit suicide or to cause grave injury or danger to life, limb or health. Harassment of a woman by unlawful demand of dowry also partakes the character of

â€œcrueltyâ€. It is clear from a plain reading of Section 498-A that conviction for an offence under Section 498-A IPC can be for wilful conduct which is likely to drive

a woman to commit suicide OR for dowry demand...â€

56. In the present case, the statements of the witnesses proved on record that the accused were harassing the deceased for meeting the demand to

transfer the property of the informant in her name. Hence, the case would fall within the purview of Section 498A(b) of IPC and the learned Trial

Court had rightly convicted the accused.

57. The learned Trial Court had sentenced each accused to undergo rigorous imprisonment for three years and pay a fine of ₹2000/-. The sentence is

adequate considering that the deceased was being harassed in her matrimonial home by the persons who were supposed to protect her. Hence, the

sentence of three years cannot be said to be excessive and no interference is required with the same.

58. No other point was urged.

59. Consequently, the present appeals fail and the same are dismissed.

60. The record of the learned Courts below be returned forthwith.

61. Pending application(s), if any, also stand(s) disposed of.