

APHC010030012025



IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)

[3396]

FRIDAY, THE SEVENTH DAY OF MARCH  
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**CRIMINAL APPEAL No. 41 OF 2025**

**Between:**

RUTHALA RAMANA ALIAS RAMANA MASTER, S/O PARADESI, RETD. TEACHER, 65 YEARS. K. VELAMA, BURUGUPALEM VILLAGE, MAKAVARAPALEM MANDAL, (ADDED AS CO-ACCUSED IN THE ABOVE CASE AS PER THE ORDER OF THE HONOURABLE COURT VIDE DT. 11-09-2024)

**...APPELLANT**

**AND**

1. THE STATE OF ANDHRA PRADESH, REP, BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH, HIGH COURT BUILDINGS AT AMARAVATHI.
2. OBBALAREDDY CHINNABBAI, S/O NOOKARAJU 59 YEARS K VELAMA, BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.
3. YADAGIRI MALIAYA, S/O NAGULU 76 YEARS, SC BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.
4. MARRA PENTAMMA, W/O VEERANNA 63 YEARS SC BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.

**...RESPONDENT(S):**

**Counsel for the Appellant:**

1. P A K KISHORE

**Counsel for the Respondent(S):**

1. PUBLIC PROSECUTOR

**The Court made the following:**

**JUDGMENT:**

Instant Appeal has been preferred by the Accused No.9, (newly added accused) challenging the validity and correctness of the Order dated 11.09.2024, in S.C.No.10 of 2015 on the file of the Court of Special Sessions Judge for SC & ST Cases-cum-XI Additional District and Sessions Judge, Visakahapatnam, by invoking the power under Section 319 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.').

2. For the sake of convenience, the Appellant herein will be referred as 'Proposed Accused'.

**Facts leading to filing of the present Appeal:**

3. Initially a case in Crime No.79 of 2008 on the file of Makaravapalem Police Station for the offences under Sections 147, 148, 302, 307 and 324 read with 149 IPC and Section 3(1) (x) of SCs & STs (PoA) Act was registered against the proposed Accused along with 18 named accused and 10 unnamed accused. However, after due investigation, the Police filed report on the file of the Court of Judicial Magistrate of First Class, Narsipatnam by deleting the names of the proposed Accused and Accused Nos.10 to 19 due to lack of evidence against them. Learned Magistrate had taken cognizance of the alleged offences against Accused Nos.1 to 8 in PRC No.23 of 2009 and subsequently the case was committed to the Trial Court and numbered as S.C.No.10 of 2015. After conclusion of trial and after hearing both sides, the matter was posted for judgment on 11.09.2024. On the said date, the

impugned order was passed by adding the name of the proposed Accused by exercising the power under Section 319 Cr.P.C.

4. Heard Sri P.A.K.Kishore, learned counsel for the Appellant and Ms.K.Priyanka Lakshmi, learned Assistant Public Prosecutor for Respondent No.1/State. Notice was served on the *de facto* complainant through Police as reported by learned Assistant Public Prosecutor.

**Arguments advanced at the Bar:**

**On behalf of Proposed Accused**

5. Learned counsel for the proposed Accused would submit that the evidence of P.Ws.4, 7 and 9 does not disclose the involvement of the proposed Accused in the alleged crime. Learned counsel would further submit that, P.Ws.7 and 9 are not even eye-witnesses to the occurrence of the alleged incident. It is submitted that Ex.P.8 does not disclose specific overtacts attributed against the proposed Accused. Learned counsel further submits that invoking of power under Section 319 Cr.P.C arose after the cross examination of P.Ws.4, 7, 9, 18 and 19 and when the matter was posted for judgment. Without considering the cross examination of the said witnesses, Learned Trial Judge passed the impugned order. Learned counsel would finally pray for setting aside the impugned order.

**On behalf of the Respondents / State:**

6. *Per contra*, learned Assistant Public Prosecutor would submit that the prosecution elicited from the evidence of P.W.4 about the involvement of the

proposed Accused in the alleged crime. It is submitted that there are specific allegations against the proposed Accused in the commission of the alleged offences. As such, Learned Trial Judge has rightly ordered to add the name of the proposed Accused in the present case. Learned Assistant Public Prosecutor would finally submit that there are no grounds to interfere in the Appeal.

7. Having heard the submissions, the points that would emerge for determination are:

- 1) **Whether the evidence of P.Ws.4, 7 and 9 coupled with Ex.P8 is suffice to proceed against the proposed accused by invoking the power under Section 319 Cr.P.C.?**
- 2) **If so, whether the impugned Order is sustainable in law?**

**Point Nos.(1) and (2):**

8. For ready reference, the relevant part of the impugned order is extracted hereunder:

*“Judgment not dictated and case suo-moto reopened as the evidence of P.Ws.4, 7 and 9 available in record shows the involvement of R.Ramana @ Ramana Master in the alleged attack on the deceased as well as on the injured on the alleged date of offence and the statement of defacto complainant i.e., Ex.P.8 also shows his involvement in the alleged offence. Hence, invoking the power conferred under Sec.319 Cr.P.C this Court is of the opinion that such person also could be tried together with A1 to A8. As such prosecution is directed to take necessary steps against said R.Ramana to add him as accused No.9 and ordered to issue summons to him upon adding.”*

9. A cursory look at the impugned order would show that the same was passed by relying on Ex.P.8 and the evidence of P.Ws.4, 7 and 9. Ex.P.8 is

the information submitted to the Police by the *de facto* complainant / P.W.1 at the earliest point of time after the incident. It is interesting to note that, Ex.P.8 was not marked through P.W.1 in his evidence, since the witness failed to identify his statement when the same was confronted to him. Then, Ex.P.8 was marked through P.W.16, who registered the crime. The value attached to the statement of the defacto complainant presented to the Police in writing to set the criminal law into motion, is for the sake of contradiction to the defence and for the benefit of corroboration to the Prosecution, when the maker of such statement is examined as a witness before the Court. Ex.P.8 is not a substantive piece of evidence.

**10.** Before delving into the points in issue, it is apposite to understand what is 'Evidence', under Section 3 of the Indian Evidence Act, 1872 (for short 'Evidence Act'). For ready reference Section 3 of the Evidence Act, is extracted hereunder:

***“3. Evidence. —“Evidence” means and includes —***

*(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;*

*(2) [all documents including electronic records produced for the inspection of the Court;] such documents are called documentary evidence.”*

**11.** The language employed in Section 3 would go to show that, the 'Evidence' is the testimony of a witness whether oral or documentary presented before the Court on oath, in order to prove or disprove any facts in

issue regarding that particular case. Needless to say that, the statement of a witness before the Court, on oath, is a substantive piece of evidence. It is apt to mention that, soon after the registration of a criminal case by the Police, the Police during the course of investigation may orally examine and record the statements of any persons, who are acquainted with the facts of the case, which means by the time the witness depose before the Court, there is every possibility to the defence to have the previous statements of such witness. Now, it is beneficial to extract Section 161(1) & (3) of Cr.P.C.

**“161. Examination of witnesses by police.—**

*(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

*(2) .....*

*(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.*

*Provided .....*

*Provided .....*”

**12.** The use of the statement recorded under Section 161(3) Cr.P.C in a criminal trial is well described under Section 162(1) Cr.P.C., which reads as under:

**“162. Statements to police not to be signed: Use of statements in evidence.—***(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of*

*such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*

*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.*

*(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.*

*Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”*

**13.** It is worthy to note that the statement made to the Police Officer during the course of investigation is hit by Section 162(1) Cr.P.C., *proviso*, which is used only to contradict a witness under Section 145 of the Evidence Act. However, exceptions are Sections 32(1) and 27 of the Evidence Act. The one and only purpose of recording the statement of a witness under Section 161 Cr.P.C is for the benefit of the Accused to contradict such witness in the manner provided by Section 145 of the Evidence Act. Sometimes, it may be used by the Prosecution to contradict its own witness by obtaining the permission of the Court as per Section 154 of the Evidence Act. It is significant

to note that the evidence of prosecution witness, who turned unfriendly to the prosecution, still be believed with regard to the testimony on other aspects. The statements recorded under Section 161(3) Cr.P.C. cannot be used for corroboration of the evidence of a witness in Court. Such statements also cannot be used to contradict the statement of another witness. The restricted use of such a statement is to contradict the maker of it. Sub Section (1) of Section 162 of Cr.P.C. enables the Court to look into that part of statement which is used by the Accused to contradict such witness in the manner provided by Section 145 of the Evidence Act. The only condition to use such part of the Statement, which is turned to be a contradiction to the effect that it must be duly proved.

**Contradiction:**

**14.** Now, it is necessary to understand what is a 'Contradiction', which is mentioned under Section 145 of the Evidence Act as follows:

***“145. Cross-examination as to previous statements in writing. — A witness may be crossexamined 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.”***

**15.** In general sense, contradiction means, same person making two different statements at different stages. It is not uncommon to observe that the prosecution witness whose statement has been recorded under Section 161(1), Section 164, and Section 154 of Cr.P.C. states before the Court

regarding the factual aspects which are relevant and material to the facts in issue, which were not there in their previous statements, then it is a case of omission. In case, the witness stated before the Court which is quite *contra* to his statement before the Police, then it is a direct case of contradiction. In case, the omission which is proved in the examination of a Police Officer, before the Court and it is a material one, which is capable of creating a doubt to believe the veracity of the witness, it is an omission amounting to contradiction. Obviously, the witness has to be contradicted in the manner provided under Section 145 of the Indian Evidence Act. It has two parts. The first part is relating to the cross-examination of a witness regarding his previous statements made in writing without confronting such writings to the witness. Whereas, the second part of the Section is to contradict a witness by confronting that part of the previous statement in case the witness deposes before the Court diametrically opposite to his version before the Police during the course of investigation. Such being the case, the witness' attention must be drawn to specific parts of his prior statement, which is being used to contradict him.

**16.** The definition of 'contradiction' is not available either under Cr.P.C. or under the Evidence Act like-wise under the new enactments, BNSS,2023 and BSA, 2023. The second limb of Section 145 explains the contradiction is relating to previous statement of a witness in writing. The very purpose of contradicting a witness before the Court in cross-examination with reference

to their previous statements in writing or reduced into writing, is to discredit the testimony of the witness. The credibility of a witness depends upon several factors. One of such factors is, consistency with the previous statement made to the Police at the earliest point of time. Needless to say that, every contradiction is not capable of destructing the substantive piece of evidence in its entirety.

**17.** In a celebrated judgment in **Tahsildar Singh and Another v. The State Of Uttar Pradesh and another**<sup>1</sup>, the Hon'ble Supreme Court had authentically explained regarding 'contradiction'. Paragraph -19 reads as under:

*“19. If the previous statement of the witness before the Police Officer during the stage of investigation and the later statement of the witness in his evidence before the Court are so inconsistent or irreconcilable with each other that both of them cannot co-exist, then it may be said that one statement contradicts the other.”*

In the judgment referred to *supra*, it is further observed that, if one statement is proved, obviously, the other must be false and *vice-versa*. If both statements cannot stand together, then it can be called as 'contradiction'.

**18.** The Constitutional Bench in **Tahsildar Singh's** case (*supra*) was dealing with Section 162 of the old Code, 1898. It is pertinent to mention here that, Section 162 of the old Code did not contain the explanation which is attached to Section 162(1) of the Code of Criminal Procedure, 1973. It is apt

---

<sup>1</sup>. AIR 1959 SC 1012

to recollect that Section 181 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 is the replica of Section 162 of Cr.P.C.

**i)** It was further observed in Paragraph-13 of the above judgment that, the contradiction under Section 145 of the Evidence Act is between what the witness asserted in the witness box and what he stated before the Police and not between what he said he told the Police Officer and what he actually told the Police Officer. As the explanation to Section 162 (1) of Cr.P.C. was not available in the old Code, it was observed that the contradiction under the old Code is the setting up of one statement against another but not the setting up of a statement against nothing at all. In that view, it was clarified that the omission could be inferred in the previous statement of the witness by way of necessary implication, which is clearly demonstrated in the illustrations.

**ii)** The language employed in Section 162 (1) Proviso would indicate the following:

i) in a case instituted on a police report, during the course of investigation, the Police Officer may orally examine any person who is acquainted with the facts and circumstances of the case and reduce the same into writing.

ii) Before the Court, such person, whose statement was recorded by the Police, may be examined as a prosecution witness to establish their case.

iii) In case, prosecution witness before the Court on oath deposes a different version, which cannot co-exist with the previous statement before the police, then the defence may elicit contradiction in the cross-examination.

iv) When a witness deposes before the Court on oath ignoring material facts by taking u-turn to what he stated previously before the Police, then the prosecution with the permission of the Court under Section 154 of the Evidence Act, put such questions to the witness like in cross-examination and elicit the contradictions.

v) In case a witness stated in the chief examination in line with his previous statement, but in the cross-examination giving go-bye to what is stated in chief examination gave a completely a different version, then the prosecution with the permission of the Court may re-examine the witness to clarify the ambiguity in the cross-examination to give an opportunity to the witness to explain, to protect the credibility of such witness.

**19.** In the light of the aforementioned discussion, it is quite clear that the contradiction referred under Section 145 of the Evidence Act is regarding the statement of the witness before the Police during the course of investigation and the evidence of the very same witness before the Court. This was categorically held by the Hon'ble Supreme Court in **Chaudhari Ramjibhai Narasangbhai v. State Of Gujarat And Ors**<sup>2</sup>, wherein it was observed that the witness before the Court cannot be contradicted in the cross-examination

---

<sup>2</sup>. (2004) 1 SCC 184

under Section 145 of the Indian Evidence Act with the aid of the Statement of any other witness. The contradiction as envisaged under Section 145 of the Indian Evidence Act is regarding the previous statement of the maker, i.e., between the evidence of the witness before the Court and the Statement of the very same witness before the Police during the course of investigation.

**20.** Hence, the contradiction can never be between the previous statement of one witness before the Police during the course of investigation with the evidence of another witness before the Court on oath. Which means the evidence of one witness before the Court cannot be contradicted under Section 145 of the Evidence Act with the previous statement of some other person.

#### **Omission - when amounts to contradiction**

**21.** As per the words used in the explanation to Section 162 Cr.P.C., the omission should always be in the statement of a witness before the Police but not a statement of a witness before the Court on oath. When a witness deposes before the Court by ignoring the material facts stated before the Police, then the prosecution put such material to the said witness with the permission of the Court, if denied, it has to be proved through the Police Officer, who recorded the previous statement under Section 161(3) of Cr.P.C. Such contradiction has to be marked in the manner provided under Section 145 of the Evidence Act. The omission of a witness in the evidence before the Court cannot be falling under the explanation to Section 162 Cr.P.C.

**i)** If any material improvement is there in the evidence of a witness before the Court, compared to the statement of witness before the Police, it is a case of omission under the explanation to Section 162 Cr.P.C. When a witness deposes a new fact before the Court which was not there in the previous statement, the Court cannot reject it straight away without examining the explanation of the witness for doing so.

**ii)** Obviously, an omission to refer any fact before the Police does not automatically become a contradiction, but it may turn into a contradiction if such fact appears to be an important one and supposed to be stated before the Police. If it is proved before the Court, it may affect the credibility of a witness depending on the facts and circumstances of a particular case.

**iii)** It is worthy to remember that *Falsus in uno, falsus in omnibus* which means false in one aspect false in all aspects is not applicable to Indian Law. When the evidence is placed before the Court by both sides, it is for the Court to separate the grain from the chaff. In this context, the explanation attached to Section 162 Cr.P.C. further fortifies that, whether any omission amounts to a contradiction in a particular context, shall be a question of fact.

**iv)** In the light of the same, not every omission or discrepancy, though may amount to a material contradiction, destruct the credibility of the witness touching all the aspects, still the discretion is left to the Court to believe such a witness regarding the other facts on record depending on the whole material placed before the Court.

### **How to elicit, mark, and prove the contradiction:**

22. The manner in which Contradiction has to be recorded and proved is categorically explained by the Hon'ble Supreme Court at Paragraph-18 in

**V.K.Mishra and another vs. State of Uttarakhand**<sup>3</sup> and it reads as under:

*“18. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.”*

(Emphasis applied)

23. It is apt to mention that the Hon'ble Supreme Court in **Criminal Trials Guidelines regarding Inadequacies and Deficiencies v. State of Andhra**

---

<sup>3</sup> (2015) 9 SCC 588

**Pradesh**<sup>4</sup> directed the State Governments, High Courts and Union of India to implement the rules within six months. The Government of Andhra Pradesh issued a gazette notification by incorporating Rule-58(B) by amending the Criminal Rules of Practice and Circular Orders, 1990 with reference to Section 161 and 164 of Cr.P.C.

**24.** Rule-58-B. References to statements under Sections 180 and 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 -

- (i) During cross-examination, the relevant portion of the statements recorded under Section 180 of BNSS 2023 used for contradicting the respective witness shall be extracted. If it is not possible to extract the relevant part as aforesaid, the Presiding Officer, in his discretion, shall indicate specifically the opening and closing words of such relevant portion, while recording the deposition, through distinct marking.
- (ii) In such cases, where the relevant portion is not extracted, the portions only shall be distinctly marked as prosecution or defence exhibit as the case may be, so that other inadmissible portions of the evidence are not part of the record.
- (iii) In cases, where the relevant portion is not extracted, the admissible portion shall be distinctly marked as prosecution or

---

<sup>4</sup>. 2021 (10) SCC 598

defence exhibit as the case may be.

- (iv) The aforesaid rule applicable to recording of the statements under Section 180 shall mutatis mutandis apply to statements recorded under Section 183 of the BNSS, 2023 whenever such portions of prior statements of living persons are used for contradiction/corroboration.
- (v) Omnibus marking of the entire statement under Sections 180 and 183 of the BNSS, 2023 shall not be done.

**25.** The observations made in **V.K.Mishra's case (supra)** is vivid regarding the procedure need to be followed by the defence as well as the prosecution to contradict a witness in the manner provided under Section 145 of Evidence Act by confronting that part of the Police Statement which the cross-examining party intended to contradict such witness. If the witness admits such contradiction, no further proof is required. It must reflect in the evidence and Court can read such evidence while appreciating the same at appropriate time. If the witness denies, it must be mentioned in the deposition by merely bringing such part on record (subject to proof) mark the same, but still it requires proof in the evidence of the Investigating Officer. The Investigating Officer, who recorded such previous statement referring to such part of the statement in the case diary, has to confirm about the witness having made that statement. If such part of the statement is not confronted to the witness to

contradict, the Court cannot *suo motu* make use of such statement since it is not proved in compliance with Section 145 of the Evidence Act.

Obviously, the Court has to follow Rule 58-B referred to *supra* while marking such contradiction in the evidence of prosecution witnesses.

Interestingly, lifting of the bar under Section 162 of Cr.P.C. regarding the statements recorded under Section 161(3) Cr.P.C. available only to the prosecution witnesses in a police case whose statements are recorded during the course of investigation. And no such exceptions are available to defence witness or Court witness whose statements are recorded by the Police during the course of investigation.

**26.** It is profitable to demonstrate the concept of ‘omission’ – ‘contradiction’ – ‘omission amounting to contradiction’ – ‘omission by necessary implication’ with live examples in decided cases of the Hon’ble Supreme Court in the tabular form *infra*.

<b>Tahsildar Singh And Another v. The State of Uttar Pradesh (<i>supra</i>)</b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
I saw A Stabbing B at a particular point in time. (A only)	He saw A & C stabbing B at the same point of time.	The discrepancy is proved.	Omission necessary implication. by

A dark man stabbed B (He is not a fair man)	A fair man stabbed B.	The discrepancy is proved	Positive statement - negative aspect; Negative statement-positive aspect.
A, after stabbing B, ran away by a northern lane. (A cannot run away towards northern and southern lane at a time)	Immediately after the stabbing, A ran away towards the southern lane.	The discrepancy is proved	Inherent repugnancy. Both cannot co-exist.
D stabbed C	B Stabbed C	Contradiction	Clear case of contradiction.
When he entered the room, he saw A shooting B dead with a gun.	He entered the room he saw, C stabbing B dead.		Both statements cannot stand together.

<b>Dahyabhai Chhaganbhai Thakker vs.State Of Gujarat<sup>5</sup></b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
Attributed clear intention on the part of the accused committing the murder of his wife.	Accused was insane. Denied in the cross-examination that he did not state before the Police that accused was insane at the time of the incident.	Police Officer confirmed that witness did not state before him that the accused was insane at the time of incident.	Omission amounting to contradiction.

<sup>5</sup> AIR 1964 SC 1563

<b>Meera v. State Of Rajasthan<sup>6</sup></b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
Witness did not refer about any harassment by the mother-in-law of the deceased. The statement was recorded after one year of such occurrence.	The deceased was tortured by her mother-in-law. Denied in the cross-examination that he did not refer the above statement before the Police.	Police Officer confirms that the witness did not tell anything about the harassment of the mother-in-law towards the deceased.	Omission amounting to contradiction.

<b>Shree Gopal and another v. Subhash and others<sup>7</sup></b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
Witness stated to the police about exhortation on the part of the accused.	Witness did not choose to refer before the Court that, there had been exhortation on the part of the accused.  In cross-examination, denied that he made such statement before the Police.	Police Officer confirms that the witness stated before him about exhortation on the part of the accused.  <u>Note:</u> omitted to state before the Court not falling under explanation to Section 162 of Cr.P.C.	Direct contradiction elicited by the prosecution

---

<sup>6</sup> (2004) 11 SCC 231

<sup>7</sup> (2004) 13 SCC 174

<b>State of Punjab v. Parveen Kumar<sup>8</sup></b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
Witness did not refer any dying declaration of the deceased made to him.	Witness deposed that deceased had made a dying declaration.  In cross-examination by the defence, witness denied that he did not tell before the police about the dying declaration.	Witness did not refer dying declaration made to him by the deceased.	Material omission amounting to contradiction
<b>State Of U.P vs Banne @ Baijnath &amp; Ors<sup>9</sup></b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
No reference about the weapon that accused used lathis in the incident.	Accused used lathis.  In cross-examination denied that he did not tell before the Police about the weapon (lathis) are used.	Police Officer admits that the witness did not refer the lathis in his statement.	Omission amounting to contradiction.

---

<sup>8</sup> (2005) 9 SCC 769

<sup>9</sup> (2009) 4 SCC 271

<b>State Of Rajasthan v. Rajendra Singh<sup>10</sup></b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
<p><u>P.W.8:</u> On hearing the sound of gun-shot had gone to the spot.</p>	<p>He had gone to the spot on hearing the sound of gun-shot and tried to snatch away the gun from the accused.</p> <p>Denied in the cross-examination that he did not refer the above statement before the Police.</p>	<p>Police Officer confirms that the witness did not refer that he tried to snatch away the gun from the accused.</p> <p><u>Note:</u> introducing a new case on the material facts which are supposed to be stated before the Police.</p>	<p>Omission amounting to contradiction</p>
<p><u>P.W.9:</u> Witness did not refer that he sustained injuries in the process to save Harveer.</p>	<p>He tried to save Harveer and he sustained injuries.</p> <p>In cross-examination denied that he did not make such statement before the Police.</p>	<p>Police Officer confirms that the witness did not state before him that he sustained injuries while trying to save Mr.Harveer.</p>	<p>Omission amounting to contradiction</p>

---

<sup>10</sup> (2009) 11 SCC 106

<b>Birbal Nath v. The State Of Rajasthan<sup>11</sup></b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
<p>P.W.2 is the wife of the deceased working in the fields along with him at the time of the incident. She sustained grievous injuries.</p> <p>She stated before the Police that while they were working on their field, accused was working on his adjacent field and he had some altercation with the deceased regarding their boundary in which heated arguments were exchanged between the two. Accused (Jethnath) then raised an alarm which resulted his sons and relatives coming to the spot armed with weapons.</p>	<p>Witness omitted to state before the Court the fact of accused (Jethnath) working in the field and altercation between the deceased and Jethnath.</p> <p>Witness in cross-examination denied that she stated before the Police about the altercation between the deceased and Jethnath while working in the field regarding the boundary.</p>	<p>Police Officer admitted that the witness stated before him about the altercation between the deceased and Jethnath regarding the boundary.</p>	<p>The contradiction which is elicited in the evidence of P.W.2 is not suffice to discredit the witness. The reason being she is injured and sustained grievous injuries.</p> <p>The witness may be discredited only to the extent of beginning of the incident, but not entire evidence.</p> <p><u>Note:</u> The Court converted the case as Exception 4 to Section 300 i.e., culpable homicide not amounting to murder, but not discarded the entire evidence of this witness.</p>

<sup>11</sup> 2023 INSC 957

<b>Alauddin and others V. State of Assam and another<sup>12</sup></b>			
Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
<p><u>P.W.3:</u> Appellant No.2 has taken his father on a motor bike at 4.00 p.m. His father went to a meeting with Appellant No.2, as his father was an influential leader of Congress.</p>	<p>At about 6.30 p.m. Appellant No.2 brought his father. He followed them on his bicycle. He heard a hew and cry from a distance of about 30 meters away from L.P.School. After going ahead, he saw, appellant No.3 running towards the road with a sharp weapon in his hand. He saw him in his flash of the head light of the motor cycle. He saw appellant No.2 leaving by motorcycle and then he found the body of his father. He denied every suggestion put by the defence about the omissions in his previous statement.</p>	<p><u>P.W.11:</u> He confirmed the following omissions: P.W.3 went to attend the meeting. At about 6.30 p.m. accused brought his father back from the meeting in a motor cycle. He also followed them after ten minutes. He was returning in his bicycle, he saw in the light of the bike, that accused was running with a weapon in his hand.</p>	<p>He saw appellant No.3 running away with the weapon in his hand in the flash of the motorcycle's head light. Very significant omission which amounts to contradiction.</p>
<p><sup>12</sup> (2024) SCC OnLine SC 760</p>			

<p><u>P.W.4:</u> He saw hulla near L.P.School while he was returning from the market. He referred the names of Rusthum, Mamrus and Tahiruddin before the Court.</p>	<p>He saw 8 to 10 persons including appellant Nos.2 and 4 assaulting the deceased by using a dao. He and P.W.9 raised a hew and cry after which the accused left.</p> <p>In cross-examination by the defence, he denied that he did not tell the Police about 8 to 10 people were assaulting the deceased by surrounding him.</p>	<p><u>P.W.11:</u> Witness did not state before him that he along with ainul were going in a motorcycle.</p> <p>He saw accused Alaluddin, nurislam, nurul, Khadir and Zilani assaulted Sahauddin by means of Dao.</p> <p>He did not mention the names of Abdul Khadir Zilani before him.</p>	<p>Material omissions which affect the reliability of the witness. Thus, it is very doubtful whether P.W.4 had seen the assault on the deceased.</p>
<p><u>P.W.5:</u> The deceased requested him to carry his bag as he was going to campaign for election.</p>	<p>At About 8.00 P.M. He Saw The Deceased, Appellant Nos.2,3 and 4, conversing on the road near Bhojkhowa Girls School.</p> <p>In cross examination by the defence, he denied that he had not told the police that at 8.00 p.m. while he was going back to his house, he saw the accused conversing with the deceased.</p>	<p><u>P.W.11:</u> P.W.5 did not state before him that at about 8.00 pm. While he was coming from Bhojkhowa Girls School, he saw the deceased conversing with the accused.</p>	<p>The material part of the testimony of P.W.5 is a significant omission which amounts to contradiction.</p>
<p><u>P.W.7:</u> He did not state that he noticed</p>	<p>At 8.10 pm., on the fateful day,</p>	<p><u>P.W.11:</u> He admitted that P.W.7 did not tell</p>	

<p>A.2 was raiding on the pillion of the deceased's motor cycle at 8.10 pm. on the fateful day.</p>	<p>while he was ready to go to his house to bring food, he noticed A.2 was riding on the pillion of the deceased's motorcycle.</p> <p>In cross-examination by the defence, he denied that he did not tell before the Police the above statement.</p>	<p>before him that he noticed A.2 was raiding on the pillion of the deceased's motor cycle at 8.10 pm. on the fateful day.</p>	<p>Omission</p>
<p><u>P.W.9</u></p> <p>He did not state before the Police that he had seen Appellant No.2 and Abdul Khadir leaving the place where the deceased was lying at 8.00 p.m.</p>	<p>At 8.00 pm. on the day of the incident, he had seen Appellant No.2 and Abdul Khadir Zilani (Acquitted Accused) leaving the place where the deceased was lying.</p> <p>In cross examination by the defence denied that they did not tell the police the above statement.</p>	<p><u>P.W.11:</u></p> <p>He admitted that the witness did not tell before him that he had seen Appellant No.2 and Abdul Khadir leaving the place where the deceased was lying at about 8.00 pm.</p>	<p>Omission</p>

**27.** In the background of the legal principles and the discussion referred to *supra*, this Court would like to examine the evidentiary value attached to the evidence of P.Ws.4, 7 and 9 regarding adding of the proposed Accused in a case of murder at the stage of judgment.

28. For ready reference, the evidence of P.W.4 is extracted hereunder.

**“Examination in Chief by A.P.P:**

*I am resident of Burugupalem Village, Makavarapalem Mandal, Anakapalli District. I do cultivation. I know P.W.1 and P.W.2 and other witnesses as local residence. I know all the accused who are related to me. The above incident took place at our house about 15 years back. I can say the date and time of the incident. By then, I was cooking inside. After hearing some galata, I came out and found Pothu Raju and Raja Babu laid on the road and found injuries on their body. The people who bet them left from that place. I found huge gathering. The police examined me.*

**At this stage Spl.P.P sought permission to put the questions which are ordinary put in the cross examination. Perused sec.161(3) Cr.RC., statement of witness. Permitted.**

**Cross examination by A.P.P:**

*I stated before police in my statement that A1 to A3 and one Ruthala Ramana assaulted P.W.1 to P.W.3 and Pothu Raju with sticks and rods on 02.12.2008 at 08.00 P.M. when they were seated on the pile of the house of Allu Appalanaidu.*

**Cross examination by Sri P.A.K.Kishore, Advocate for the accused:**

*I did not witness as to which of the accused that Pothu Raju and P.W.1 to P.W.3 at the time of the alleged incident. I did not state before police as in Ex.D4 contradiction (marked subject to proof) stating that by the time of the incident, the entire men folk of that village were not p[resent on that road. It is not true to suggest that recording my statement by the police is not correct.*

**Re-examination: NIL”**

29. Coming to the facts of the present case, P.W.4 has stated before the Police referring to the names of x x x and the proposed Accused. But, before the Court, in her chief examination, she did not choose to name any Accused. Then, the Prosecution elicited in her evidence that part of statement and the witness admitted the same. Doubtlessly this contradiction does not require any other proof as the witness admitted the same. What is the evidentiary

value of such statement, is the crucial question. Contradiction elicited in a testimony of a witness primarily be used to impeach the credibility of such witness. Truthfulness is the only test to decide the reliability of the witness.

**30.** In the present case, the testimony of P.W.4 has to be appreciated, keeping in mind the other evidence available on record. It is apt to recollect the judgment of the Hon'ble Apex Court in **Brijendra Singh & Others vs. State of Rajasthan**<sup>13</sup>, wherein, in a similar circumstances it was held that the trial Court though is competent to exercise the power under Section 319 Cr.P.C on the basis of the statements recorded before the Court in examination-in-chief, where plethora of evidence was collected by the Investigating Officer during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming *prima facie* opinion and to see as to whether 'much stronger evidence than mere possibility of their complicity' has come on record.

**31.** In this context, it is worthy to note that, the evidence of P.W.18 is very much available before the trial Court. P.W.18 testified in his cross examination that, during the course of investigation, he recorded the statements of Ruthala Varaha Dora, Ruthala Raghu Satyanarayana Raju and Kamireddy Satya Rao on 06.12.2008. He admitted that, his investigation relating to the statements of the above persons, discloses that one Ruthala Ramana, who is arrayed as A3 (Proposed Accused) in Ex.P8 and Ex.P9 along with the above three

---

<sup>13</sup> 2017 (7) SCC 706

persons and four others participated in a dinner at Sector-IX, Visakhapatnam Steel Plant on 01.12.2008 from 07.00 P.M., to 10.00 P.M which was arranged by one Teacher Satya Geetha for the marriage function. He further deposed that his investigation reveals that A3 (Proposed Accused) was not present at the time of the alleged incident as referred by P.W.1 to P.W.4. The name of the proposed Accused is referred in Ex.P.8. In fact, Ex.P.8 would show that the case is lodged against 19 named Accused and 10 unnamed persons. After due investigation, the Investigating Officer filed a report against eight Accused by deleting the names of the remaining Accused due to lack of evidence. The evidence of P.W.18 further would show that the proposed Accused is a 65 years old retired teacher and is a brother of the Accused Nos.1 and 2. It is pertinent to mention that P.W.18 filed a report against eight persons despite the statement of the defacto complainant refers to 29 persons. P.W.18 has stated the reason for deleting the name of the proposed Accused. Admittedly, no protest petition has been filed by the defacto complainant against the report filed by the Police placing their objections.

**The purpose and end use of the Contradiction:**

**32.** For quick reference Section 155(3) of the Indian Evidence Act is extracted as under:

***“155. Impeaching credit of witness.—** 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 him:—*

(1) .....

(2) .....

(3) *By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.”*

**33.** As discussed *supra*, the statement of a witness during the course of investigation recorded by the Police, is not a substantive piece of evidence. Its use is only to contradict a witness. The use of the contradiction is to establish that the witness is speaking lie. It means, only to impeach the creditworthiness of the witness under Section 155 of the Evidence Act. In the context of the present case, nothing is on record to establish that P.W.4 actually witnessed the presence of the proposed Accused in the incident and at the earliest point to time stated before the Police, but deposing falsehood before the Court. The reason being, the evidence of P.W.18 goes to the root of the case for eliminating the presence of the proposed Accused at the time of the alleged incident. In this regard, it is profitable to refer to the judgment of the Hon’ble Apex Court in a Criminal Appeal directly addressing the very same issue in **Anees vs. The State of Government of NCT**<sup>14</sup>, wherein, at Para 69 it was held as under:

*“69. Over a period of time, we have noticed, while hearing criminal appeals, that there is practically no effective and meaningful cross-examination by the Public Prosecutor of a hostile witness. All that the Public Prosecutor would do is to confront the hostile witness with his/her police statement recorded under Section 161 of the Cr.P.C. and contradict him/her with the same. The only thing that the Public Prosecutor would do is to bring the contradictions on record and thereafter prove such contradictions through the evidence of the Investigating Officer. This is not sufficient. The*

---

<sup>14</sup> 2024 INSC 368

*object of the cross-examination is to impeach the accuracy, credibility and general value of the evidence given in-chief; to sift the facts already stated by the witness; to detect and expose the discrepancy or to elicit the suppressed facts which will support the case of the cross-examining party. **What we are trying to convey is that** it is the duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth & also establish that the witness is speaking lie and has deliberately resiled from his police statement recorded under Section 161 of the Cr.P.C. A good, seasoned and experienced Public Prosecutor will not only bring the contradictions on record, but will also cross-examine the hostile witness at length to establish that he or she had actually witnessed the incident as narrated in his/her police statement.”*

(Emphasis applied)

**34.** In case of eliciting and proving such contradictions in the evidence of a witness, they can be used to impeach the credit of a witness in the light of Section 155 (3) of the Indian Evidence Act. It is not uncommon to see the natural variations in the evidence of a witness before the Court when compared to their earlier statements before the Police. Perhaps, the reason being, every human being is unique in their perception to understand, recollect and reproduce the thing happened before him in a similar way. The very same witness cannot repeat the statement in a similar fashion in the same chronology without any minor deviation for the second time except the said witness is a well tutored witness. For example, ten persons witnessed a murder happened on the road right in front of their houses, the sum and substance of the statements of such witnesses may be the same, but the words of such witnesses, the manner in which they narrate the incident may not be one and the same. Sometimes, we may come across to witnesses,

who add something which is not there in their previous statement. While narrating the incident, when such addings in the evidence are not material and capable to destruct the very substantive evidence, and they are to be considered as minor inconsistencies, which are not sufficient to discredit the testimony of such witness despite, such omissions.

**35.** In **Birbalnath's** case (*supra*), the Hon'ble Supreme Court while dealing with a Criminal Appeal preferred by the Complainant as well as the State regarding the acquittal of the Accused, for the offences under Section 302 and 307 IPC, categorically observed that, every contradiction of a witness proved before the Court is not suffice to discredit the entire testimony by doubting the credit worthiness of such a witness. Unless and until the previous statement of the witness is capable of discrediting the witness, it has no great relevance. It is further observed that the witness in the said case being injured and the wife of the deceased, the contradiction elicited regarding the altercation preceded by the incident is not sufficient to completely discredit her testimony. It is further observed that, limited benefit can be given to the Accused to the extent of the possibility of the incident not being premeditated but not to discard her entire testimony.

**36.** In **Rammi Alias Rameshwar vs State Of Madhya Pradesh**<sup>15</sup> the Hon'ble Supreme Court at paragraph-24 observed that *Courts should bear in*

---

<sup>15</sup> 1999 (8) SCC 649

*mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious view to be adopted on mere variations falling in the narration of an incident either as between evidence of two witnesses or as between two statements of the same witness is an unrealistic approach for judicious scrutiny.*

**37.** In general practice before the Trial Courts, the defence may make out several contradictions during the lengthy cross examination of a prosecution witness from the previous statements of such witnesses before the Police. Simply because the inconsistencies found in the evidence of such witness, they cannot impair the credibility of the witness. The language employed in Section 155 (3) of Cr.P.C. is vivid to the effect that the Court has discretion to decide the inconsistent statements, which are contradicted in the evidence of a witness, would affect the veracity of the said witness. The purpose of cross-examination of a witness in the light of Sections 145 and 155 of the Indian Evidence Act is only to establish before the Court that the witness is not reliable and goes on changing the versions, by bringing into the attention of the Court with the aid of contradictions.

**38.** Coming to the evidence of P.Ws.7 and 9, according to P.W.18, they are not the eye-witnesses to the occurrence. P.Ws.7 and 9 flatly denied the suggestion made by the defence that, they did not state before the Police that they have watched the incident. But, coming to the evidence of P.W.18, on

perusal of the case diary, P.W.18 deposed that no eye-witness was present at the time of inquest. Such being the case, it is an omission on the part of these witnesses in not revealing such a material fact before the Investigating Officer. The purpose of contradiction is to establish before the Court that, here is a witness, who is not ready to speak the truth and goes on changing his versions. The contradiction can destruct the very substantive evidence deposed by the witness before the Court regarding such fact. In view of the same, no Court could have recorded a satisfaction, which is required, as held by the Constitutional Bench of the Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab and others**<sup>16</sup>, even to believe the *prima facie* case of involvement of the proposed Accused in the alleged incident.

**39.** Further, in the instant case, the learned Public Prosecutor elicited from P.W.4 to the extent that this witness stated before the Police referring the name of the proposed Accused. The record shows no further cross-examination to establish that the witness had actually witnessed the presence of the proposed Accused in the incident as stated before the Police Officer during the course of investigation while recording the statement under Section 161 Cr.P.C. Such being the case, though this contradiction does not require any further proof that the witness stated before the Police referring the name of the proposed Accused, failed to establish that the witness has deliberately resiled from the statement given to the Police having watched the incident.

---

<sup>16</sup> (2014) 3 SCC 92

From the evidence of P.W.4 regarding the alleged involvement of the proposed Accused, in the statement before the Police, she named four Accused including the name of the proposed Accused. Before the Court, in chief-examination, P.W.4 did not refer to the names of any Accused. Her evidence is that the Accused left the place and she found the injured with injuries after coming out from the house. Then, after showing hostility, she admits that, she stated before the Police in her statement that, four Accused including the proposed Accused involved in the commission of the crime. It is pertinent to note that, this is not a positive statement that, this witness witnessed the involvement of the proposed Accused in the alleged crime. In the very next sentence in the cross examination by the defence, this witness positively stated that she did not witness as to which of the Accused beat the injured at the time of the incident. It is vivid that this witness gave different statements regarding the proposed Accused. There is no reexamination by the prosecution to explain the reason referring to the cross examination by the defence.

**40.** It is relevant to extract Section 319 Cr.P.C., which reads as under:

***"Section 319. Power to proceed against other persons appearing to be guilty of offence.***

*(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed."*

**Stage to invoke Section 319 Cr.P.C and procedure to be followed in a criminal case:**

41. As can be seen from the language employed in Section 319 Cr.P.C., the Court can proceed against a person whose name is not mentioned in the FIR or the person whose name is deleted in the final report, even before framing charges till the time of pronouncement of judgment. At this stage, it is beneficial to refer to the judgment in **Sukhpal Singh Khaira vs. The State of Punjab**<sup>17</sup>, wherein, the Constitutional Bench of the Hon'ble Apex Court gave certain guidelines to be followed by the competent Court when the Court intends to invoke the power under Section 319 Cr.P.C., which are as follows:

*“(i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.*

*(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.*

*(iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.*

*(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.*

*(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.*

---

<sup>17</sup> 2022 LiveLaw (SC) 1009

*(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.*

*(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.*

*(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.*

*(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.*

*(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.*

*(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.*

*(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;*

*(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.*

*(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.”*

**Standard of satisfaction required to invoke Section 319 Cr.P.C:**

42. On this aspect, the Hon'ble Apex Court while following the decision in **Hardeep Singh's case (supra)**, observed in **Labhuji Amratji Thakor and others Vs. State of Gujraat**<sup>18</sup> and categorically held that the mere fact that the Court has power under Section 319 Cr.P.C. to proceed against any person who is not named in the F.I.R. or in the Charge Sheet, does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under Section 319 Cr.P.C. The Court has to consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in *Hardeep Singh's case (supra)* has to apply the test, i.e., more than *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

43. The Hon'ble Apex Court, while dealing with a case of similar nature, in **Brijendra Singh's case (supra)**, categorically held as follows:

*"This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to*

---

<sup>18</sup> (2019) 12 SCC 644

*look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."*

**Evidence of a witness includes chief, cross and re-examination:**

**44.** In this context, the Hon'ble Apex Court in **Hetram @ Babli vs. State of Rajasthan & another**<sup>19</sup> held that, when cross examination is available on record, ignoring the cross examination of witnesses while deciding an application under Section 319 Cr.P.C., by summoning an Accused cannot be exercised. When the omissions which are material and which amount to contradiction are elicited, no Court could have recorded the satisfaction which is contemplated by Section 319 of Cr.P.C. It is further observed that it is impossible to record a finding that even a *prima facie* case of involvement of the Appellant has been made out.

The evidence relied upon by the learned Trial Judge is referred infra in a tabular form.

---

<sup>19</sup> 2024 INSC 903

Statement before the Police Officer during the course of investigation	Evidence of the Witness before the Court.	Confirmation of the Police Officer in his evidence before the Court	Finding of the Court
1	2	3	4
<p><u>P.W.4</u></p> <p>Proposed Accused Assaulted P.Ws.1 to 3 and Pothu Raju with sticks and rods on 2.12.2008 at 8.00 p.m. when they were seated on the pial of the house of Allu Appala Naidu.</p>	<p>I can say the date and time of the incident. By then, I was cooking inside. After hearing some galata, I came out and found Pothuraju and Rajababu laid on the road and found injuries on their body. The people who beat them left from that place. I found huge gathering.</p> <p>Witness in cross-examination admitted about her statement before the Police as: "I stated before the Police in my statement that .....</p> <p><b>Note:</b> Contradiction is proved as the witness admitted the previous statement.</p> <p>Cross examination by defence:</p> <p>I did not witness as to which of the accused beat</p>	<p>P.W.16 stated that P.W.4 stated before him as in Ex.D4.</p> <p>P.W.18 stated in cross-examination that during the course of investigation, I recorded the statements of Ruthala Varaha Dora, Ruthala Raghu Satyanarayana Raju and Kamireddy Satya Rao on 06.12.2008. It is true that part of my investigation relating to the statements of the above 3 persons, it discloses that one Ruthala Ramana who is arrayed as A.3 in Ex.P8 and Ex.P9 along with the above 3 persons and 4 others participated in a dinner at Sector-IX, Visakhapatnam Steel Plant on</p>	<p>Learned Trial Judge opined that the evidence of P.Ws.4,7 and 9 shows the involvement of the proposed accused in the alleged incident and Ex.P8 also shows his involvement in the alleged offence.</p>

	<p>Pothuraju and P.Ws.1 to 3 at the time of the alleged incident. I did not state before the Police as in Ex.D4 stating that at the time of the incident, the entire men folk of that village were not present on that road.</p>	<p>02.12.2008 from 07.00 p.m. to 10.00 p.m. that was arranged by ne Teacher Satya Geetha for the marriage function. That part of my investigation that A.3 was not present at the time of the alleged incident as referred by P.W.1 to P.W.4.</p>	
<p><u>P.W.7:</u></p> <p>----</p>	<p>I found x, one Ramana Master (proposed accused), xxx and x beating all the above people with sticks and rods. I went there while beating them.</p> <p>Ex.D5 is marked to the effect that the above injured were beaten by some others along with the referred people and also about coming to know the same with regard to the above incident as well as the death of the deceased at KGH on 05.12.2008 and also about going to the KGH on 06.12.2008 and found her husband died.</p>	<p>P.W.18 admitted that P.W.7 stated before him as in Ex.D5.</p> <p>Contradiction is proved.</p> <p>P.W.18 further stated that no persons claimed to be eyewitness were present at the time of inquest. P.Ws.7 to 9 are not eye witnesses to the occurrence of the alleged incident.</p>	<p>-do-</p>

<p><u>P.W.9</u></p> <p>----</p>	<p>At that time I found all the accused along with Ramana Master (proposed accused) proceeding towards the house of Allu Appala Naidu by arming with sticks and rods.</p> <p>We also followed them at some distance.</p> <p>By the time, I reached there, deceased was already beaten.</p> <p>I also found P.Ws.1 to 3 laid on the road with injuries. After that incident, all the accused along with proposed accused left towards SC colony.</p> <p>Witness in the cross-examination denied that he did not state before the Police that accused along with proposed accused proceeding towards the house of Appala Naidu by arming with sticks and rods.</p>	<p>P.W.18 admitted that P.W.9 stated before him as in Ex.D6.</p> <p>Contradiction is proved.</p> <p>P.W.18 further stated that P.W.9 is not an eye witness.</p>	<p>-do-</p>
---------------------------------	--	---	-------------

	<p>Witness also denied the contradiction to the effect that he came to know about shifting the injured to KGH in an ambulance after the incident and also the demise of Pothuraju on 05.12.2008.</p>		
--	--	--	--

**45.** Keeping in mind the evidence referred to *supra*, a cursory look at the impugned Order would show that the contradictions, which are recorded in the evidence of the above witnesses regarding the involvement of A.3 (proposed accused), are ignored. The standard of satisfaction as guided in **Hardeep Singh's** (*supra*) case is not made out from the evidence of P.Ws.4, 7 and 9.

**46.** In the instant case, when the trial has already completed and when the matter was posted for judgment, the degree of satisfaction required to be recorded by the trial Court while summoning any other person as an additional Accused, should be more than the standards required at the stage of framing of charges as held in *Hardeep Singh's case (supra)*. In other words, the evidence on record must strongly suggest more than a "*prima facie*" case against such a person and his involvement in commission of the crime. As discussed above, in the instant case, though there is no material to *prima facie* show the involvement of the Appellant/proposed Accused in the commission of the alleged offence, the learned trial Judge, by invoking the

power under Section 319 Cr.P.C., added the name of the proposed Accused and ordered to issue summons to him. In such circumstances, this Court is of the view that the impugned order suffers from serious infirmity and it does not stand for legal scrutiny and the same is liable to be set aside.

**47.** In the result, the Criminal Appeal is allowed setting aside the order dated 11.09.2024 passed in S.C.No.10 of 2015 on the file of the Court of Special Sessions Judge for SC & ST Cases-cum-XI Additional District and Sessions Judge, Visakhapatnam and the consequent order dated 20.12.2024 of issuance of summons to the Appellant. However, it is made clear that consideration by this Court regarding the evidence of the witnesses discussed *supra*, is only for the limited purpose of consideration of prayer under Section 319 Cr.P.C as against the Appellant. The learned trial Judge may independently appreciate the evidence on record according to law without being influenced by the observations made in this judgment.

As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

**Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

07.03.2025

**L.R.Copy to be marked**

*Dinesh/*

*Mjl/\**

**HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**CrI.A.No.41 of 2025**

07.03.2025

*Dinesh  
Mjll\**

**IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI**

**CRIMINAL APPEAL No. 41 OF 2025**

**Between:**

RUTHALA RAMANA ALIAS RAMANA MASTER, S/O PARADESI, RETD. TEACHER, 65 YEARS. K. VELAMA, BURUGUPALEM VILLAGE, MAKAVARAPALEM MANDAL, (ADDED AS CO-ACCUSED IN THE ABOVE CASE AS PER THE ORDER OF THE HONOURABLE COURT VIDE DT. 11-09-2024)

**...APPELLANT**

**AND**

1. THE STATE OF ANDHRA PRADESH, REP, BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH, HIGH COURT BUILDINGS AT AMARAVATHI.
2. OBBALAREDDY CHINNABBAI, S/O NOOKARAJU 59 YEARS K VELAMA, BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.
3. YADAGIRI MALIAYA, S/O NAGULU 76 YEARS, SC BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.
4. MARRA PENTAMMA, W/O VEERANNA 63 YEARS SC BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.

**...RESPONDENT(S):**

DATE OF JUDGMENT PRONOUNCED: **07.03.2025**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE Dr. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

- |    |   |        |
|----|---|--------|
| 1. | Whether Reporters of Local Newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters / Journals? | Yes/No |
| 3. | Whether Her Lordship wish to see the fair copy of the Judgment?           | Yes/No |

**Dr. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**\* THE HON'BLE Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**+ CRIMINAL APPEAL No. 41 OF 2025**

**% 07.03.2025**

**Between:**

RUTHALA RAMANA ALIAS RAMANA MASTER, S/O PARADESI, RETD. TEACHER, 65 YEARS. K. VELAMA, BURUGUPALEM VILLAGE, MAKAVARAPALEM MANDAL, (ADDED AS CO-ACCUSED IN THE ABOVE CASE AS PER THE ORDER OF THE HONOURABLE COURT VIDE DT. 11-09-2024)

**...APPELLANT**

**AND**

- 1.THE STATE OF ANDHRA PRADESH, REP, BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH, HIGH COURT BUILDINGS AT AMARAVATHI.
- 2.OBBALAREDDY CHINNABBAI, S/O NOOKARAJU 59 YEARS K VELAMA, BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.
- 3.YADAGIRI MALIAYA, S/O NAGULU 76 YEARS, SC BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.
- 4.MARRA PENTAMMA, W/O VEERANNA 63 YEARS SC BURUGUPALLEM VILLAGE, MAKAVARAPALEM MANDAL, PRESENTLY ANAKAPALLI DISTRICT.

**...RESPONENT(S):**

! Counsel for Appellant : Sri P.A.K.Kishore  
 ^ Counsel for Respondents : Ms.K.Priyanka Lakshmi,  
 Assistant Public Prosecutor for R.1

< Gist:

> Head Note:

? Cases referred:

1. AIR 1959 SC 1012
2. (2004) 1 SCC 184
3. 2015 (9) SCC 588
4. 2021 (10) SCC 598
5. AIR 1964 SC 1563
6. (2004) 11 SCC 231

7. (2004) 13 SCC 174
8. (2005) 9 SCC 769
9. (2009) 4 SCC 271
10. (2009) 11 SCC 106
11. 2023 INSC 957
12. (2024) SCC Online SC 760
13. 2017 (7) SCC 706
14. 2024 INSC 368
15. 1999 (8) SCC 649
16. (2014) 3 SCC 92
17. 2022 LiveLaw (SC) 1009
18. (2019) 12 SCC 644
19. 2024 INSC 903