stated that he has been falsely implicated simply because one Suresh has lodged one complaint against inspector Ram Charan, P.S. Jatra wherein he was one of the witnesses and therefore, the policeman was having enmity against him and for this reason the policeman has falsely implicated him. This reflects that he has not claimed any enmity against the informant or the deceased or his family members who were also witnesses of the incident. He has further admitted that even his statement has not been recorded in the alleged complaint. No further detail of such alleged complaint has come on record and therefore, this defence that he has been falsely implicated by the police moreso, when said inspector Ram Charan is not associated with the investigation of the present case is not substantiated. During course of arguments, learned Amicus Curiae Sri Tiwari has family conceded that the Court has powers to award punishment so awarded in the present case with the aid of Section 460 CrPC.

26. We, therefore, are of the opinion that there is no reason to differ with the findings recorded by the Co-ordinate Bench that there may be some minor and ignorable discrepancy in the prosecution case/evidence as pointed out by the learned Amicus Curiae, however, there appears to be no major, legal or actual error in the appreciation of evidence by the trial Court, which may prove fatal to the prosecution case. The judgement has been upheld by the Co-ordinate Bench and conviction of the appellant Rameshwar has been confirmed although because of his period of incarceration he has been granted relief to the sentence undergone. We find that in the present case the appellant Rakshpal was granted bail by this Court vide order dated 18.11.1983 and he is on bail since then.

27. Present appeal lacks merit and is accordingly dismissed. The conviction of surviving appellant Rakshpal is confirmed.

28. Since the surviving appellant Rakshpal is on bail, his bail bonds are cancelled and the sureties are discharged.

29. Lower court record be sent to the concerned Court.

30. Let a copy of this order be communicated to the lower Court concerned for compliance.

(2025) 2 ILRA 387
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.02.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Appeal No. 8466 of 2022

Mayank Parasari ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Pradeep Kumar

Counsel for the Respondent:
G.A.

Criminal Law - The Indian Evidence Act,1872 – Sections 145 & 155 - Code of Criminal Procedure - Section 162-Deceased died of firearm injury - Sec 145 & 155 of the Indian Evidence Act and Section 162 Cr.P.C., allow the party adversely affected by a deposition made at a trial- to confront the witness (making such deposition) with their previous St.ment including that recorded u/s 161 Cr.P.C.- deposition of D.W.-1 cannot be brushed aside-neither the prosecution could bring out any contradiction in the testimony of

the said witness - also failed to discredit his credibility- unable to reconcile the prosecution story with the deposition of D.W.-1- he further proved that the accused-appellant was not present at the time and place of occurrence.

Appeal allowed. (E-9)

List of Cases cited:

1. Tara Singh Vs St. of U.P., (1951) SCC OnLine SC 49

2. Rudder Vs St., 1956 SCC OnLine All 141

3. Inder Deo & anr. Vs State, (1958) SCC OnLine All 175

4. Tahsildar Singh & anr. Vs St. of U.P., (1959) SCC OnLine SC 17

5. St. of U.P. Vs Nahar Singh, (1998) 3 SCC 561

6. Rammi Vs St. of M.P., (1999) 8 SCC 649

7. Karan Singh Vs St. of M.P., (2003) 12 SCC 587

8. Munna Pandey Vs St. of Bihar, (2023) SCC OnLine SC 1103

9. Birbal Nath Vs St. of Raj. & ors., (2023) SCC OnLine SC 1396

10. Alauddin & ors. Vs St. of Assam & anr., (2024) SCC OnLine SC 760

11. Lavkush Vs St. of U.P., (2024) SCC OnLine All 7674

(Delivered by Hon'ble Saumitra Dayal Singh, J.
&
Hon'ble Dr. Gautam Chowdhary, J.)

1. The instant appeal has arisen from the judgement and order dated 16.09.2022 passed by Shri Sanjeev Kumar Tiwari, Special Judge SC/ST (P&A) Act, Rampur, in Sessions Trial No. 84 of 2011, State Versus Mayank Parasari whereby the appellant has been convicted and sentenced to undergo rigorous life imprison for the offence under Section 302 IPC and to pay fine Rs. 50,000/- and in default of payment of fine to further undergo simple imprisonment of two years; to undergo rigorous imprisonment of five years and to pay fine Rs. 10,000/- for the offence under Section 452 IPC and in default of payment of fine to further undergo six months further simple imprisonment. In Sessions Trial 85 of 2011, State Versus Mayank Parasari, the appellant has been convicted and sentenced to undergo rigorous imprisonment of three years and fine Rs. 5,000/- for the offence under Section 25(1) Arms Act and in default of payment of fine to further undergo simple imprisonment of two months. The appellant has been acquitted of the offence under Section 27 Arms Act, 1959.

2. According to the prosecution story as narrated in the FIR lodged by Geeta Devi (P.W.-1 at the trial), on 21.08.2010 at about 6:00 PM, the deceased Navdurgesh Mishra, his wife Pushpa Devi (P.W.-2 at the trial) and his mother Geeta Devi (PW-1) were sitting inside their house. Their 'Bataidar' Bhurey Singh Diwakar (D.W. 2 at the trial) was sitting outside their house. Just then the accused-appellant Mayank – a relative of Pushpa Devi entered that house carrying our country made pistol. He referred to the deceased, two earlier instances when allegedly the deceased had assaulted the accused - once during the former's marriage celebration and another just 10-15 days earlier. The accused also proclaimed earlier, the deceased had been saved, but now he would not spare him. At this the accused drew his country made pistol to the head of the deceased, little above his ear and shot him from point-blank range. The deceased fell to the

ground. The accused fled from the spot with the weapon of assault. That later occurrence was witnessed by Naval Kishore Mishra, Ram Kishore Mishra, Shree Pal Singh and other not named persons (not examined at the trial) and Bhurey Singh Diwakar (D.W.-2 at the trial). Also, the FIR narrated a quarrel that had taken place earlier, between the accused and the deceased, at the latter's marriage where the accused was beaten up by the guests of the deceased for reason the accused having fired a shot with a firearm. The Tehrir was written by Naval Kishore Mishra. PW-2 affixed her thumb impression to it. The Tehrir is dated 21.08.2010. It is Exhibit Ka-1. The FIR is also dated 21.08.2010, lodged at 08.05 P.M. It is Exhibit Ka-2. On 21.08.2010 itself, the S.H.O. recovered plain and blood-stained earth from the place of occurrence. The recovery memo is Exhibit Ka-21. The Panchayatnama was drawn on 21.08.2010 between 9.30 P.M. and 11.45 P.M. It is Exhibit Ka-5. On 22.08.2010, at 1.00 P.M., the dead body of the deceased was subjected to autopsy by Dr. Parag Agarwal (P.W.- 4 at the the trial). The Autopsy Report records the following ante-mortem injuries:

"1. Lacerated wound of 3 cm x 3 cm on right side of skull just above the right ear margins all inverted and blackening and tattooing present.

2. Lacerated wound of 4 cm x 4 cm on top of skull arterially margins and inverted wound about 7 cm above the right eyes."

3. Also, the time of death was recorded –"about within one day" and the cause of death – "due to firearm injury or ante-mortem causing coma". The Autopsy Report is Exhibit Ka-5.

4. On 05.09.2010, the accused was arrested on information received from an informer. At that time a country made pistol with two live bullets were also recovered from his person. That memo of search and recovery is Exhibit Ka-17. Also, on 05.09.2010, the accused is claimed to have led to the recovery of the empty cartridge of the bullet used in the occurrence, from a Eucalyptus cultivation near a village pond, from under the shrubs etc. That recovery memo is Exhibit Ka-16. On those recoveries, another FIR was lodged against the accused on 05.09.2010, under section 25/27 of the Arms Act, 1959. It is Exhibit Ka-21.

5. Upon completion of investigation, the Investigating Officer submitted two Charge-sheets on 02.11.2010 and 10.10.2010. In the first of the two Charge-sheet arising from the first FIR, amongst others, Bhurey Singh Diwakar (D.W.-2) was a witness listed by the prosecution. However, he was got discharged at the stage of trial. On that, the following two charge were framed against the accused in S.T. 84/2011:

"प्रथमः- यह कि दिनांक 21-8-2010 को समय 6-00 बजे शाम बहद ग्राम अनवा थाना शाहबाद, जिला रामपुर में वादिनी मकदमा श्रीमती गीता देवी के पुत्र नवदुर्गेश को आग्नेयास्त्र से फायर करके मृत्यु कारित करके हत्या की और उसके द्वारा आपने ऐसा अपराध किया जो धारा 302 भा०दं०सं० के अन्तर्गत दण्डनीय अपराध है एवं इस न्यायालय के संज्ञान में है।

द्वितीयः- यह कि उपरोक्त दिनांक, समय व स्थान पर आप अभियुक्त ने वादिनी मुकदमा श्रीमती गीतादेवी के घर मै उपहति

कारित करने की तैयारी करके अनाधिकृत प्रवेश करके गृह अतिचार किया जो धारा 452 भा०दं०सं० के अन्तर्गत दण्डनीय अपराध है एवं इस न्यायालय के प्रसंज्ञान में है।"

6. Also, the following charge was framed against the accused in S.T. 85/2011:

"प्रथमः- यह कि दिनांक 05-09-2010 को समय 1530 बजे स्थान रामपुर बस स्टेण्ड थाना शाहबाद जिला रामपुर में पुलिस द्वारा आपको गिरफ्तार किया गया आपकी जामा तलाशी पर आपके कब्जे से एक अदद तमन्चा देशी 315 बोर व 2 अदद कारतूस जिन्दा 315 बोर के नाजायज बरामद हुये जिनको रखने का आपके पास लाइसेंस नहीं था और इस प्रकार आपने ऐसा अपराध किया जो धारा-25/27 आयुध अधिनियम के तहत दण्डनीय अपराध है एवं इस न्यायालय के संज्ञान में है।"

7. At the trial, Smt. Geeta Devi (P.W.-1) who is the mother of the deceased and the first informant offered ocular version of the occurrence. In that, she first supported the FIR allegation both as to the manner of the occurrence being caused by the accused-appellant as also the fact that Bhurey Singh Diwakar (D.W.-1) who is her *Bataidar* was sitting outside their dwelling house and had seen the appellant flee. She also stated that the FIR was lodged on her dictation as written down by Naval Kishore. Yet, the said scribe was not examined.

8. During her cross-examination, against her original version that the deceased was shot at by the accused-appellant while sitting next to him at point-blank range, she made inconsistent statements as to whether the deceased was shot at point-blank range and also if at the time of the occurrence the accused-appellant was standing while the deceased was sitting.

9. At the same time, as to the presence of Bhurey Singh Diwakar (D.W.-1), she maintained her stand as disclosed in the FIR and as proved during her examination-in-chief i.e. the said Bhurey Singh Diwakar (D.W.-1) was sitting outside the dwelling house of the accused-appellant. The accused-appellant was further described to have fled from the place of occurrence. Also, as to motive, she described the earlier occurrence of quarrel between the deceased and the accused-appellant at the time of the marriage celebration of the deceased. In that, she disclosed that the accused-appellant is the cousin brother of her daughter-in-law, Pushpa Devi (P.W.-2).

10. Then, Smt. Pushpa Devi (P.W.-2) also first supported the FIR allegation and narrated the occurrence as disclosed therein and as proved by Smt. Geeta Devi (P.W.-1). Further, she also established the presence of Bhurey Singh Diwakar (D.W.-1) outside her dwelling house, at the time of the occurrence.

11. During her cross-examination, she admitted that her marriage had been solemnised about 4 years ago. She also narrated the incident that may have taken place 10-15 days prior to the occurrence wherein the deceased was described to have beaten the accused-appellant. As to the actual occurrence, she described that the accused-appellant was sitting next to the deceased and that the accused-appellant had shot at the deceased thus sitting next to him.

12. Then, Head Constable Brij Mohan Rana was examined at the trial as P.W.-3. He proved the registration of the FIR.

13. Next, Dr. Parag Agrawal (P.W.-4) was examined at the trial. He proved the autopsy report including the ante-mortem injuries and the cause of death. He described the entry wound to have been caused above right ear of the deceased and the exit wound above line of the right eyebrow. He also established that no foreign object/projectile etc. was found inside the body of the deceased.

14. Next, Shri Machal Singh (P.W.-5 at the trial) was examined. He was the Sub-Inspector who recorded the *Panchayatnama* etc. He proved that he received the information of the occurrence at about 8:05 p.m. and that he reached the place of occurrence at about half hour later. Nothing significant emerged during that cross-examination.

15. Next, Shri Mohan Lal (P.W.-6), the S.H.O. In-Charge of Police Station Shahabad was examined at the trial. He was the Investigating Officer of the case. He proved the recoveries and the various steps of investigation. During his cross-examination, he admitted that he had made due inspection of the room where the occurrence is described to have taken place, yet he did not recover any bullet.

16. Next, Shri Bhuwnesh Datt Sharma (P.W.-7 at the trial) was examined. He proved the recovery of firearm described to have used in the occurrence. He reiterated that the recovery of the cartridge was made from an open place lying under a bush.

17. Thereafter, statement of the accused was recorded under Section 313 Cr.P.C. He denied adverse circumstances cited against him. Thereafter, the defence evidence was recorded. Therein, Bhurey Singh Diwakar was examined as D.W-1. He stated that the deceased was addicted to liquor and that on 21.8.2010 i.e. the date of occurrence that the said witness was sitting outside the dwelling house of the deceased. He further described to have heard a gun-shot from inside the house of the deceased. He ran inside and found that the deceased was lying in the courtyard holding the country made firearm in his hand. He further stated that Pushpa Devi (P.W.-2) told him that the deceased had committed suicide. Further, he specifically denied having made any statement to the Investigating Officer under Section 161 Cr.P.C. that he had seen the accused appellant enter the dwelling house of the deceased and he further denied to make any statement to the Investigating Officer that he had seen the accused appellant flee from the place of occurrence brandishing a firearm. He specifically denied having seen the accused appellant at any time on 21.8.2010. He reiterated that the deceased was a drunkard and he used to indulge in domestic quarrel and further that he committed suicide.

18. Here, we have checked from the record and it is critical to note that there exists statement of the said Bhurey Singh Diwakar (D.W.-1) recorded under Section 161 Cr.P.C. supporting the FIR story. He was also listed as a prosecution witness, in the charge-sheet submitted against the accused appellant. However, apparently, the prosecution got him discharged.

19. In such circumstances, upon being offered for cross-examination, he stated that the accused appellant used to visit the deceased at his dwelling house being relative of Smt. Pushpa Devi (P.W.-1), the wife of the deceased. He further stated that at the time of occurrence, he along with the others were sitting outside the dwelling

house of the deceased. Also, he reiterated that he had seen a fire-arm in the hand of the deceased. He denied that his statement was ever recorded by the police but then he expressed some doubt with respect to the same.

20. At that, the cross-examination of the said witness was closed. No further question was put to him and the said witness was not confronted with his previous statement recorded under Section 161 Cr.P.C.. His credibility and the truthfulness of his account was not impeached by the prosecution by confronting him by such previous statement. No part of his previous statement was marked or otherwise read out or shown to him and no question was asked of him to explain that statement. Thereafter, the accused appellant was examined as D.W.-2. He sought to prove that he had lent about Rs. 45-46,000/- to the deceased, in cash. Since the deceased was reluctant to repay the amount, the relations between the parties got spoiled. However, he denied any prior occurrence of the nature described by the prosecution i.e. of earlier quarrels (one about four years ago at the time of marriage of the deceased and other 10-15 days prior to the occurrence). Here, it may also be noted that other than the oral say of the P.W.-1 & P.W.-2, no evidence of any of those two occurrences was led by the prosecution through any independent witness.

21. In such circumstances, the learned court below has found the prosecution case proven on the strength of ocular evidence. It has disbelieved the defence explanation. Accordingly, the accused appellant has been convicted and sentenced.

22. Submission of learned counsel for the accused appellant is that more than reasonable doubt exists in the prosecution story. Those are not explained. The accused appellant being right handed, he may not have shot the deceased who was sitting or standing on the bed, at a point blank range above his right ear as may have caused the bullet to exit from the forehead of the deceased above his right eye-brow. Next, it has been submitted, non-existent or extremely weak motive has been cited. The accused appellant is the brother-in-law of the deceased being a cousin brother of Pushpa Devi (P.W.-2). In the admitted fact that the marriage of the deceased was solemnized four years earlier and in absence of any occurrence attributed to the accused appellant for that long period to take revenge for a quarrel that may have been witnessed at the time of marriage of the deceased, the accused appellant has been falsely implicated. As to the other quarrel, wholly incomplete and vague occurrence has been described as may never give rise to any motive to the accused appellant.

23. Then, doubt has been attempted to be created on the alleged conflict in the ocular testimony insofar as one eye-witness described the occurrence to have been caused while the deceased was sitting on the bed and the other gave an inconsistent account where the deceased was sitting or standing at the time of occurrence. In that regard, it has also been submitted that the prosecution has not offered a consistent stand if the deceased was shot at from point blank range or from some distance.

24. Then, as if to puncture a hole in the prosecution story, learned counsel for the accused appellant would submit, the presence of Bhurey Singh Diwakar (P.W.-1) outside the dwelling house of the deceased at the time of occurrence, remained admitted to the two prosecution

witness of fact namely the mother of the deceased Geeta Devi (P.W.-1) and the wife of the deceased Pushpa Devi (P.W.-2). During their cross-examination, both witnesses admitted that Bhurey Singh Diwakar (P.W.-1) was their 'bataidar' and that he along with others was sitting outside their dwelling house and had seen the accused appellant enter the dwelling house of the deceased; heard the gun-shot and; seen the accused appellant flee from the dwelling house of the deceased, brandishing the country made firearm in his hand. In such circumstances, once Bhurey Singh Diwakar (P.W.-1) entered the witness box though as defence witness (after being discharged by the prosecution) he categorically denied the prosecution story and in fact tried to prove the death caused by suicide, by the deceased, the prosecution accepted that fact proven by the defence witness. In terms of Section 145 of Indian Evidence Act, 1872, the deposition of the said defence witness was neither doubted nor his credibility was impeached. The cross-examination by the prosecution stopped short of confronting the said eye-witness with his previous statement recorded under Section 161 Cr.P.C.

25. Therefore, the entire prosecution story is ridden with doubt and is irreconcilably contradicted. In face of unrebutted deposition of Bhurey Singh Diwakar (D.W.-1), more than reasonable doubt exists as to the truthfulness of the prosecution story.

26. On the other hand, learned AGA would submit that the prosecution has duly proven the occurrence by relying on two ocular account. Minor discrepancies in that narration apart, there is no fundamental or patent doubt or fault in the prosecution case as may allow for any other inference to arise. As to the testimony of the defence witness (D.W.-1), it has been urged, clearly, he had been won over by the defence. To that extent his deposition was rightly discarded by the learned court below.

27. Having heard learned counsel for parties and having perused the record, in the first place, it cannot be doubted that the deceased died of firearm injury suffered by him on 21.08.2010 at about 6.00 p.m. Both the prosecution and defence are agreed to that extent. As to motive, in face of ocular evidence, first we may not look to discredit the direct prosecution evidence for reason of lack of motive. At the same time, it cannot be denied that the prosecution story is not wholly consistent either as to whether the deceased and the accused-appellant were sitting next to each other when the accused-appellant caused the occurrence by firing at the deceased or if the accused-appellant was standing when he caused that occurrence. Also, the prosecution narration is not wholly consistent if the deceased was shot at from point blank range or from some distance. At the same time, in absence of it being proven by the defence that the accused-appellant is a right handed person, no presumption may be drawn in that regard and the defence hypothesis that the accused-appellant may not have shot at the deceased on his right temple with his right hand in a manner that the bullet thus fired caused the exit wound on the right side of his forehead, is equally a supposition or a possibility that may not weigh with the Court in the context of prosecution and the challenge to it that may arise only on proven facts.

28. At the same time, in the facts of the present case, the testimony of Bhurey

Singh Diwakar (D.W.-1) may not lightly brushed aside. It is easy for the defence to produce witness who may completely deny or dispute the occurrence as disclosed by the prosecution. The Courts may not rely on such evidence as it may remain of low evidentiary value for reason of inherent object and intent on the part of such witness to save the accused person.

29. At the same time, in the present facts Bhurey Singh Diwakar (D.W.-1) is not a simple defence witness. He is named in the F.I.R. as a person who had seen the accused-appellant enter the dwelling house of the deceased, heard the gunshot caused by the accused-appellant and further to have seen the accused-appellant fleeing from the place of occurrence brandishing a fire arm in his hand. That fact was first narrated in the F.I.R. by Geeta Devi (P.W.-1), mother of the deceased. Further, alleged statement of said Bhurey Singh Diwakar (D.W.-1) recorded under Section 161 Cr.P.C. also exists. Perusal of the charge sheet also reveals that the said Bhurey Singh Diwakar (D.W.-1) was listed as a prosecution witness. For reasons not explained, he was got discharged by the prosecution.

30. In such facts, both Geeta Devi (P.W.-1) and Pushpa Devi (P.W.-2) made deposition to the Court and specifically stuck to the F.I.R. stand that Bhurey Singh Diwakar (D.W.-1) was present outside the dwelling house of the appellant. Therefore, his presence was admitted to the prosecution from very beginning. It is in such circumstances that the said Bhurey Singh Diwakar (D.W.-1) proceeded to disprove the prosecution story both as to the manner of occurrence and as to the presence and involvement of the accused-appellant. According to him, the deceased died by suicide by causing firearm injury disclosed in the F.I.R. Also, he completely denied the presence of the appellant at the time and place of occurrence.

31. Once, the said defence witness had thus testified, it was for the prosecution to demolish his testimony by either doubting its correctness or by impeaching the credibility of the witness or both.

32. Section 162 of the Code of Criminal Procedure read as below:

"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 of 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 circumstances 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."

33. Also, the statements recorded by the Investigating Officer during investigation are not evidence to be read at the trial. Yet, they are important and at times critical to ascertain the truth or the credibility of a witness. Section 145 of The Indian Evidence Act, 1872 reads as below:

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

34. Further, the credit of any witness could be impeached in accordance with the provisions of Section 155 Cr.P.C. That provision of law reads as below:

"***155. Information as to non-cognizable cases and investigation of such cases***

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

35. In **Tara Singh vs State of U.P., (1951) SCC OnLine SC 49**, two witnesses entered the witness box at the trial and made depositions contrary to their statements recorded earlier under Section 288 Cr.P.C. Yet, they were not confronted with that previous statements made by them. When asked about those previous statements (at the trial), they only replied that they were made under coercion. That reply was found to have not met the requirement of Section 145 of the Indian Evidence Act. In that regard, the Supreme Court observed as below:

41. Now, it is evident that one of the main purposes of using the previous statements was to contradict and displace the evidence given before the Sessions Court because until that evidence was contradicted and displaced, there was no

room in this case for permitting the previous statements to be brought on record and used under Section 288. Therefore, as these statements were not put to these witnesses and as their attention was not drawn to them in the manner required by Section 145, Evidence Act, they were not admissible in evidence. The observations of the Privy Council in Bal Gangadhar Tilak v. Shriniwas Pandit [Bal Gangadhar Tilak v. Shriniwas Pandit, (1914-15) 42 IA 135 at p. 147 : 1915 SCC OnLine PC 16] are relevant here.

(emphasis supplied)

36. In **Rudder vs State, 1956 SCC OnLine All 141**, a co-ordinate bench of this Court opined, a deposition in Court can or cannot be reconciled with a statement made under Section 161 Cr.P.C. only after the alleged omission is brought to the notice of the witness and he is given an opportunity to explain the same. In that regard, it was observed as below:

"Desai, J. also went on to hold that if the statement under Sec. 162, Cr. P.C. can be reconciled with the deposition in court and can stand with it then there is absolutely no contradiction. The question whether the deposition in court can or cannot be reconciled with the statement recorded under Sec. 161, Cr. P.C. can only be settled after the omission has been brought to the notice of the witness and the witness has had an opportunity to give his explanation. If after the explanation it appears that the two are reconcilable, it would cease to be a contradiction. But that can happen not only in the case of an omission, but even in the case of an apparent contradiction of positive facts included in the deposition and the statement under Sec. 161, Cr. P.C. There may appear to be a contradiction between the deposition in court and the statement under Sec. 161, Cr. P.C. but when it is put to the witness, he may give an explanation which may reconcile them, whereupon the contradiction may cease to be a contradiction. The mere fact that he may possibly reconcile the two statements, cannot effect the applicability of the proviso to Sec. 162, Cr. P.C. in the case of an omission which is of such a nature that it can be held to be a contradiction."

37. In **Inder Deo & Anr. vs State, (1958) SCC OnLine All 175**, an issue arose if a statement recorded under Section 288 Cr.P.C. may be treated as evidence if it was not disclosed to the witness (at the time of such statement being recorded), that the Court may use the statement as evidence. While considering the issue, a coordinate bench of this Court noticed non-compliance of Section 145 of the Indian Evidence Act, 1875. Thereupon, relying on **Tara Singh vs State of U.P., (supra),** a coordinate bench of the Court observed as below:

"There is, in the present case, yet another difficulty which we have found in the way of properly treating the statements of the two witnesses mentioned above as admissible, if we may use that expression, under Sec. 288, Cr. P.C. and the difficulty we find is that in respect of these statements compliance had not been made of the provisions of Sec. 145 of the Indian Evidence Act. Sec. 288 itself states that evidence was subject for all purposes to the provisions of the Indian Evidence Act. As we have pointed out earlier, specific passages or the particular portions on which the prosecution desired to contradict the witnesses were not read out to the witnesses and they were not afforded an opportunity of explaining those particular

or specific passages. The entire statements were read out to the witnesses and they were asked to say what they had to in regard to the entire statements. In our opinion, this was not compliance with the provisions of Sec. 145 of the Indian Evidence Act. A proper compliance of these provisions can only be if the particular passages are put to the witnesses. We may here refer to the decision of their Lordships of the Supreme Court in Tara Singh v. The State [1951 A.L.J. 640 : A.I.R. S.C. 441.] wherein their Lordships at pages 446-447 said this:

"There is some difference of opinion regarding this matter in the High Courts. Sec. 288 Provides that the evidence recorded by the Committing Magistrate in the presence of the accused may, in the circumstances set out in the section, 'be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872.' One line of reasoning is that Sec. 145, Evidence Act, is not attracted because that section relates to previous statements in writing which are to be used for the purpose of contradiction alone. Statements of that kind do not become substantive evidence and though the evidence given in the trial can be destroyed by a contradiction of that kind, the previous statements cannot be used as substantive evidence and no decision can be grounded on them. But under Sec. 288, Cr. P.C. the previous statement becomes evidence for all purposes and can form the basis of a conviction. Therefore, according to this line of reasoning Sec. 145, Evidence Act, is not attracted. Judges who hold that view consider that provisions of the Evidence Act referred to are those relating to hearsay and matters of that kind which touch substantive evidence."

In my opinion the second line of reasoning is to be preferred. I see no reason why Sec. 145, Evidence Act, should be excluded when Sec. 288 states that the previous statements are to be 'subject to the provisions of the Indian Evidence Act.' Sec. 145 falls fairly and squarely within the plain meaning of these words. More than that this is a fair and proper vision and is in accord with sense of fair-play to which Courts are accustomed……..I hold that the evidence in the Committal Court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by Sec. 145, Evidence Act…… but if the prosecution wishes to go further and use the previous testimony to the contrary as substantive evidence, then it must, in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence under Sec. 288." (The decision of the Supreme Court was given, by Bose, J. and Fazl Ali, J., Patanjali Sastri, J., and Das, J., agreed with that decision.)."

(emphasis supplied)

38. In **Tahsildar Singh & Anr. vs State of U.P., (1959) SCC OnLine SC 17**, six-judge bench of the Supreme Court had the occasion to consider the changes made to Section 162 of the Cr.P.C. The Supreme Court recognized the object to incorporate the amendment to Section 162 Cr.P.C. and Section 145 of the Indian Evidence Act - to protect the accused from any statement made by a witness only before any police authority and to protect the accused from any false statement deposition made at the trial. It was also recognized, such previous statement made to the police may be used by the accused person to bring out any contradiction that would be of help to the accused and/or to discredit the witness making any statement before the Court. In

that regard, in paragraph 17 of the report, it has been observed as below:

"17. At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by Section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a court witness. Nor can it be used for contradicting a defence or a court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar."

(emphasis supplied)

39. Then, in **State of U.P. vs Nahar Singh, (1998) 3 SCC 561**, the Supreme Court referred to and applied the following principle of law laid down by Lord Herschell, L.C. in Browne v. Dunn, [(1893) 6 R 67] wherein it was observed as below:

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

(emphasis supplied)

40. Then, in **Rammi vs State of M.P., (1999) 8 SCC 649,** the Supreme Court examined the scope of Section 155 of the Indian Evidence Act and held, the previous statement made by a witness (who later deposes before a Court), may be used to impeach his credibility, in accordance with the Section 155(3) of the Indian Evidence Act. In that, it observed as below:

"25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

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;"

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness."

(*emphasis supplied)*

41. In **Karan Singh vs State of M.P., (2003) 12 SCC 587**, the Supreme Court explained the object of Section 145 of the Indian Evidence Act – to give the witness a chance to explain the discrepancy or inconsistency or to clear up the point of ambiguity or dispute. In that, it observed as below:

"5. When a previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denies having given such a statement it does not amount to any admission and if it is proved that he had given such a statement the attention of the witness must be drawn to that statement. Section 145 of the Evidence Act is clear on this aspect. The object is to give the witness a chance of explaining the discrepancy or inconsistency and to clear up the particular point of ambiguity or dispute. In the instant case, Ext. D-4 statement as such was not put to the witness nor was the witness given an opportunity to explain it. Therefore, Ext. D-4 statement, even if it is assumed to be a statement of PW 1 Hari Singh, that is of no assistance to the appellants to prove their case of private defence."

(emphasis supplied)

42. Then, in Munna **Pandey vs State of Bihar, (2023) SCC OnLine SC 1103**, the three-judge bench of the Supreme Court had the occasion to consider the issue as to the credibility of the prosecution evidence led at the trial, in the absence of such evidence being tested on the anvil of Section 145 of the Indian Evidence Act, 1875-by contradicting the witness with their previous statement (recorded during investigation). Deprecating the practice on part of the prosecution in not doing so and further not appreciating the slackness on part of the defence in that regard, as also cautioning the Courts to remain vigilant, on that aspect, the Supreme Court observed as below:

41. It was the duty of the defence counsel to confront the witnesses with their police statements so as to prove the contradictions in the form of material omissions and bring them on record. We are sorry to say that the learned defence counsel had no idea how to contradict a witness with his or her police statements in accordance with Section 145 of the Evidence Act, 1872 (for short, 'Evidence Act').

42. The lapse on the part of public prosecutor is also something very

unfortunate. The public prosecutor knew that the witnesses were deposing something contrary to what they had stated before the police in their statements recorded under Section 161 of the CrPC. It was his duty to bring to the notice of the witnesses and confront them with the same even without declaring them as hostile.

43. The presiding officer of the Trial Court also remained a mute spectator. It was the duty of the presiding officer to put relevant questions to these witnesses in exercise of his powers under Section 165 of the Evidence Act. Section 162 of the CrPC does not prevent a Judge from looking into the record of the police investigation. Being a case of rape and murder and as the evidence was not free from doubt, the Trial Judge ought to have acquainted himself, in the interest of justice, with the important material and also with what the only important witnesses of the prosecution had said during the police investigation. Had he done so, he could without any impropriety have caught the discrepancies between the statements made by these witnesses to the investigating officer and their evidence at the trial, to be brought on the record by himself putting questions to the witnesses under Section 165 of the Evidence Act. There is, in our opinion, nothing in Section 162 CrPC to prevent a Trial Judge, as distinct from the prosecution or the defence, from putting to prosecution witnesses the questions otherwise permissible, if the justice obviously demands such a course. In the present case, we are strongly of the opinion that is what, in the interests of justice, the Trial Judge should have done but he did not look at the record of the police investigation until after the investigating officer had been examined and discharged as a witness. Even at this stage, the Trial Judge could have recalled the officer and other witnesses and questioned them in the manner provided by Section 165 of the Evidence Act. It is regrettable that he did not do so.

(emphasis supplied)

43. In **Birbal Nath vs State of Rajasthan & Ors., (2023) SCC OnLine SC 1396**, it has been observed as below:

"19. Statement given to police during investigation under Section 161 cannot be read as an "evidence". It has a limited applicability in a Court of Law as prescribed under Section 162 of the Code of Criminal Procedure (Cr.P.C.).

20. No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong."

(emphasis supplied)

44. Recently, in **Alauddin & Ors. vs State of Assam & Anr., (2024) SCC OnLine SC 760**, the Supreme Court again considered the manner in which a prosecution witness may be cross-examined with the help of their prior statement. Referring to Section 162 of the Cr.P.C. and Section 145 of the Indian Evidence Act, the Supreme Court has observed as below:

"6……..

The basic principle incorporated in sub-Section (1) of Section 162 is that any

statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 ***(for short, 'Evidence Act').*** *Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved."*

(emphasis supplied)

45. Specifically, with respect to Section 145 of the Indian Evidence Act, the Supreme Court observed as below:

"8……

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."

(emphasis supplied)

46. Recently, in **Lavkush vs State of U.P., (2024) SCC OnLine All 7674,** a coordinate bench of this Court also had the occasion to consider the manner of confrontation of a witness with his previous statement, in accordance with the Section 145 of the Indian Evidence Act, 1875. In that, it was observed as below:

"37……..

The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 (for short, 'Evidence Act'). Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.

38.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.

39……..

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.

40……

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 depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case."

47. Thus, though neither the prosecution nor the defence may rely by way of evidence - on any previous statement recorded under Section 161 Cr.P.C., at the same time, Sections 145 & 155 of the Indian Evidence Act and Section 162 Cr.P.C., allow the party adversely affected by a deposition made at a trial, to confront the witness (making such deposition), with their previous statement including that recorded under Section 161 Cr.P.C., to either impeach the credibility of the witness or to bring out a contraction. If that confrontation (with any previous statement) is not offered by that affected

party, in the manner permitted under Section 145 and/or 155 of the Evidence Act or Section 162 Cr.P.C., then, the deposition made would have to be considered on its own weight, in the individual facts of each case and its correctness or truthfulness may not be doubted merely because it may be claimed (by the party affected by the depositions made by that witness), that there exists contrary to the deposition made a previous statement of the same witness, that runs contrary to the depositions thus made.

48. Strangely, the prosecution completely failed to confront Bhurey Singh Diwakar (D.W.-1) with his previous statement allegedly recorded under Section 161 Cr.P.C. Thereby the prosecution chose not to confront the said witness with any part of his alleged previous statement. Thereby, it did not call upon Bhurey Singh Diwakar (D.W.-1) to furnish any explanation with respect to the alleged irreconcilable contradictions in his statement allegedly recorded under Section 161 Cr.P.C. and his deposition made in Court.

49. Not only the prosecution thus miserably failed to discharge its obligation in that regard, the Investigating Officer Mohan Lal (P.W.-6) neither proved any statement recorded by him of Bhurey Singh Diwakar (D.W.-1) under Section 161 Cr.P.C. nor he was recalled to prove that piece of evidence. Perusal of testimony of P.W.-6 only brings out facts that are proved without reference to the alleged statement of Bhurey Singh Diwakar (D.W.-1) recorded under Section 161 Cr.P.C.

50. In view of the law noted above, we reach a conclusion that deposition of Bhurey Singh Diwakar (D.W.-1) cannot be brushed aside. His presence being admitted to the only two eye witnesses relied by the prosecution, the fact that neither the prosecution could bring out any contradiction in the testimony of the said witness and it also failed to discredit his credibility, the facts proven by such a witness have to be reconciled, if possible with the prosecution story. Here, we find ourselves completely unable to reconcile the prosecution story with the deposition of Bhurey Singh Diwakar (D.W.-1). While the prosecution sought to prove a homicidal occurrence caused by the accused-appellant, the other story cannot be reconciled that the occurrence was suicidal as proven by Bhurey Singh Diwakar (D.W.-1), the eye witness whose presence has been established by the prosecution witnesses themselves. The two versions cannot co-exist. Bhurey Singh Diwakar (D.W.-1) further proved that the accused-appellant was not present at the time and place of occurrence.

51. It is in that context, we also look at the inconsistencies and contradictions referred to by learned counsel for the appellant (as were first not considered in this order), in face of ocular evidence relied by the prosecution. Once the ocular evidence itself is rendered doubtful on the undoubtable testimony of Bhurey Singh Diwakar (D.W.-1), those contradictions and inconsistencies do merit consideration. Seen in that light, we have also gone through the deposition of the accused-appellant (D.W.-2) as also the other deposition made by Bhurey Singh Diwakar (D.W.-1) that the deceased was addicted to alcohol and that he is alleged to be indebted to the accused-appellant. We are also mindful that the main motive attributed by the prosecution was an incident four year prior to the occurrence not followed by any other major event or quarrel.

52. In the entirety of facts and circumstances and for the reasons noted above, present appeal succeeds and is **allowed** on the benefit of doubt that has arisen in favour of accused appellant. The appellant is on bail. His sureties and bail bonds are discharged, subject to compliance of Section 437-A Cr.P.C..

53. Let the trial court record be returned to the concerned court forthwith alongwith a copy of this order.

(2025) 2 ILRA 405
REVISIONALJURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.02.2025

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Revision No. 2019 of 2024

Ramesh Tiwari ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Narendra Deo Shukla, Vivek Shukla

Counsel for the Opposite Parties:
G.A., Lokesh Kumar Dwivedi, Ratnesh Kumar Pathak

Criminal Law —Indian Penal Code, 1860 - Sections 323, 325, 452, 504, 506 & 308 - Criminal Procedure Code, 1973 - Sections 319, 397 & 401-Summoning under Section 319 Cr.P.C. — Sustainability of summoning order passed after conclusion of trial of chargesheeted accused — Applicant not charge-sheeted — Summoned as additional accused after co-accused already convicted and sentenced — Held, in view of law laid down in *Sukhpal Singh Khaira v. St. of Punjab*, (2022) 17 SCC 246, summoning under Section 319 Cr.P.C. must precede conclusion of trial — Summoning order passed after trial concluded and sentence pronounced is not sustainable — Impugned order set aside. (Paras 15 to 19)

HELD:
The Hon'ble Court answered question No.1, which is pertinent for the purposes of present Criminal Revision in affirmative and observed as under:- "The power under Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable." (Para 16)

In the light of above observation it can be concluded that where the trial of co-accused where at the time of passing of summoning order under Section 319 Cr.P.C. in respect of a person who was not earlier facing trial as accused in the case after conclusion of trial of the persons who were already facing as accused in the case resulting in their conviction and imposition of sentence, summoning order of the persons concerned as additional accused in exercise of powers under Section 319 Cr.P.C. will not be sustainable. (Para 17)

The facts of present case are squarely covered with the land mark judgment of the Hon'ble Supreme Court in Sukhpal Singh Khaira (supra) and in view of foregoing discussion, the summoning order passed by learned court below against the revisionist in exercise of powers under Section 319 Cr.P.C. after conclusion of trial, resulting in conviction and sentencing of accused persons who had already faced trial in main S.T. No. 84 of 2006, is not sustainable and thus cannot affirmed, the impugned summoning order is in conflict with law laid down by Hon'ble Supreme Court in