CRIMINAL REVISION.

Before Chotzner and Duval JJ.

MADARI SIKDAR.

v.

EMPEROR.*

1926

Sep. 10.

Witness—Statements of witnesses to the police—Right to copies of such statements—Stage of the case at which the right arises—Criminal Procedure Code (Act V of 1898), s. 162—Amending Act XVIII of 1923.

The amended section 162 of the Criminal Procedure Code makes it obligatory on the Magistrate to give the accused copies of the previous statements of the prosecution witnesses recorded under section 161, subject only to the exclusion of irrelevant matters in the public interest.

But under the first proviso to section 162, an accused is entitled to be furnished with a copy of such statements, only after the witness has been examined by the prosecution and his cross-examination has laid the foundation for the suggestion that his evidence in Court is contradicted by the previous statements recorded under section 161 of the Code ; and not at any antecedent stage of the inquiry or trial.

In re Peramasami Ragudu (1) followed.

The statement can be used only if it is "*duly proved,*" and in order to contradict him in the manner provided in section 145 of the Evidence Act. The accused must prove it duly either by the cross-examination of the witness or of the recording police officer : and, if it is then intended to contradict the witness by the writing, his attention must be called to those parts of it which are to be used for such purpose.

Bal Gangadhar Tilak v. *Shriniwas Pandit* (2) referred to.

The facts of the case were as follows. The petitioners were under trial before the Additional District

* Criminal Miscellaneous No. 124 of 1926, against the orders of N. V. H. Symons, Additional District Magistrate, Mymensingh, dated July 6 and 27, 1926.

(1) (1925) 27 Cr. L. J. 100. (2) (1915) L. R. 42 I. A. 135.

1926

MADARI SIKDAR v. EMPEROR.

Magistrate of Mymensingh under sections 147 and 295 of the Penal Code. On the 18th June 1926, after the examination-in-chief of the prosecution witnesses had concluded, the Court framed charges. The petitioner's pleader then applied for copies of the statements of P. W's. 2, 17—22, before their cross-examination had commenced. The application was rejected. On the 6th July fifteen prosecution witnesses were cross-examined, and an application made for copies of the statements of the witnesses, but refused. On the 27th July a third application was made for a copy of the statement of P. W. 2 who had not yet been cross-examined, and refused. Another application was presented the same day for copies of the statements of the P. W's. 17—22, with a request to recall them for futher cross-examination, whereupon the Court made the following order: "*This may await "the ruling of the High Court which is being sought "on the question*". It appeared that in no case was a witness asked in cross-examination whether he had made the same statement to the Investigating Officer, and beyond asking the Sub-Inspector whether he had examined witnesses under section 161 of the Code the defence put no question to him as to the statements which they had made before him.

Babu Radhika Ranjan Guha, for the petitioners.

CHOTZNER and DUVAL JJ. This Rule raises the important question as to the stage at which an accused person is entitled to be furnished with a copy of the statements of the prosecution witnesses recorded by a Police Officer under the provisions of section 161 of the Criminal Procedure Code. Section 162 is in these terms: "No statement made by any person to a Police "Officer in the course of an investigation under this

"Chapter shall, if reduced into 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". The first proviso is as follows: "Provided that, when any witness is called "for the prosecution in such inquiry or trial whose "statement has been reduced into writing as afore-"said, the Court shall, on the request of the accused, "refer to such writing and direct that the accused be "furnished with a copy thereof, in order that any "part of such statement, if duly proved, may be "used to contradict such witness in the manner "provided by section 145 of the Indian Evidence Act. "When any part of such statement is so used, any "part thereof may also be used in the re-examina-"tion of such witness, but for the purpose only of "explaining any matter referred to in his cross-"examination". The second proviso is as follows: "Provided further, that, if the Court is of opinion "that any part of such statement is not relevant to "the subject matter of the inquiry or trial or that its "disclosure to the accused is not essential in the "interests of justice and is inexpedient in the "public interests, it shall record such opinion (but "not the reasons therefor) and shall exclude such "part from the copy of the statement furnished to the "accused". It will be observed that in the amended section 162 of the Criminal Procedure Code there is a departure from the procedure laid down in the former section. In the former section it was obligatory on the Judge at the request of the accused to refer to the writing made under section 161, but it gave the Judge

1926

MADARI SIKDAR v. EMPEROR.

a discretion to decide whether a copy should be given to the accused. The effect of the amendment is to annul the Judge's discretion, and to make it obligatory on him to give the accused copies of the statements subject only to the exclusion of irrelevant matters which the public interest requires should not be disclosed.

The next question is at what stage the accused is entitled to make his request. It is plain, first of all, that it must be after the witness has been called for the prosecution and not before the commencement of the preliminary enquiry. Secondly, the statement can only be used (*i*) if duly proved and (*ii*) in order to contradict the witness as provided for by section 145 of the Evidence Act. In order to "prove it duly" the accused must prove it either by cross-examination of the witness or of the police officer who recorded it, but to use the words of section 145 of the Evidence Act "if it is intended to contradict him" *i.e.*, the (witness) "by the writing, his attention must, before "the writing can be proved, be called to those parts "of it which are to be used for the purpose of contra-"dicting him". The object of the provision is to give the witness the chance of explaining or reconciling his statements before the contradiction can be used as evidence, and in *Bal Gangadhar Tilak* v. *Shriniwas Pandit* (1), the Privy Council pointed out the impropriety of treating the oral testimony of a witness as rebutted by statements by him contained in documents in evidence unless such statements were put to him in cross-examination.

This decision, as also the wording of section 145 of the Evidence Act, make it clear that it is at the time of cross-examination and not before that the previous statements of a witness can be put to him.

(1) (1915) L. R. 42 I. A. 135.

But the cross-examination must lay the foundation for the suggestion that the evidence given by the witness in Court is contradicted by his statement recorded under section 161 of the Criminal Procedure Code and it is only then that the accused is entitled to ask the Judge to refer to the writing and grant him copies. Section 162 does not impose the duty upon the Judge of granting copies of the statement recorded under section 161 before the cross-examination has been opened. This view of the law has also been taken by the Madras High Court in *In re Peramasami Ragudu* (1). We may add that if the Legislature had intended to invest the accused with the right to have the copies at any stage of the trial, it must have said so.

In the present case we have examined the deposition of the witnesses named in paragraph 3 of the petition as well as of the Investigating Officer (P. W. 28). In no case was the witness asked in cross-examination whether he had made the same statements before the Investigating Officer as he had made in Court; and beyond asking the Sub-Inspector whether he had examined the witnesses under section 161, which he admitted, the defence put no question to him as to the statements which the witnesses had made before him. As, therefore, no foundation had been laid in cross-examination for the suggestion that the witnesses had made previous statements which, if produced, would have contradicted their testimony in Court, we are of opinion that the learned Magistrate was justified in refusing to grant copies of those statements. The Rule is, accordingly, discharged.

(1) (1925) 27 Cr. L. J. 100.

E. H. M.