

1930
 SHEO NATH
 v.
 GIANI.
 TEK CHAND J.

After giving the matter my best consideration, I venture to think, that *Singh Ram v. Data Ram* (1) was wrongly decided and must be overruled. In my opinion the law had been correctly laid down in *Khubi v. Ast Khan* (2), and its authority remains unaffected by any later decision.

My answer to the reference is that the question involved is one of title and is not excluded from the jurisdiction of Civil Courts by section 158 (2) (*vii*) of the Punjab Land Revenue Act.

ADDISON J.

ADDISON J.—I agree.

HILTON J.

HILTON J.—I agree.

N. F. E.

APPELLATE CRIMINAL.

Before Jai Lal and Bhide JJ.

GOPI CHAND—Appellant

versus

THE CROWN—Respondent.

Criminal Appeal No. 109 of 1930.

Indian Evidence Act, I of 1872, sections 145, 155—Witness—contradiction of—by previous inconsistent statements—Procedure—Criminal Procedure Code, Act V of 1898, section 162—Statements before investigating officer—use of.

Held, that under section 162 of the Criminal Procedure Code, a statement before the investigating officer by a witness can be used for the purpose of contradicting such witness when produced at the trial, but only after strict compliance with the provisions of section 145 of the Indian Evidence Act.

The proper procedure therefore is to ask the witness first whether he made such and such a statement before the

(1) (1922) I. L. R. 3 Lah. 4.

(2) 82 P. R. 1893.

police officer. If the witness returns the answer in the affirmative, the record of the previous statement need not be proved, and the cross-examiner may, if he chooses, leave it to the party who called the witness to have the discrepancy, if any, explained in re-examination. If, on the other hand, the witness denies having made the previous statement attributed to him or states that he does not remember having made any such statement, and it is desired to contradict him by the record of the previous statement, the cross-examiner must put to the witness the relevant portion or portions of the record which are alleged to be contradictory to his statement in Court and thus give him an opportunity to reconcile the same, if he can. It is only when the cross-examiner has done so, that the record of the previous statement becomes admissible in evidence for the purpose of contradicting the witness and can then be proved in any manner permitted by law.

Held also, that section 155 of the Indian Evidence Act is controlled by section 145 of the Act and sub-section (3) of the former section does not therefore do away with the necessity of drawing the attention of the witness to the previous statement.

Appeal from the order of Lala Devi Dayal Dhawan, Sessions Judge, Shahpur, at Sargodha, dated the 13th January 1930, convicting the appellant.

M. L. BATRA, for Appellant.

R. C. SONI, Assistant Legal Remembrancer, for Respondent and NANAK CHAND, for Complainant.

JAI LAL J.—This judgment will dispose of criminal appeals No. 109 and 110 of 1930. Gopi Chand and Fazal Karim have been convicted by the Sessions Judge of Shahpur for an offence under section 307 of the Indian Penal Code and have each been sentenced to transportation for life. They are alleged to have caused injuries to Nanak Chand a shopkeeper

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of Chak No. 21 G. B., to which village both the appellants also belong, on the night preceding the 22nd July 1929.

(Having dealt with the facts—which are unnecessary for the purposes of this report—His Lordship, having dismissed both appeals, concluded as follows:—)

I desire to make a few observations on a matter which transpired during the hearing of this appeal. It appears that the prosecution witnesses were cross-examined by the counsel for the accused as to the statements made by them before the head constable during the investigation, and also before the Committing Magistrate. To some questions the answers were that the witnesses did not make the statements or that they did not remember having made them. No further questions were asked of them with regard to these statements and finally when the investigating officer appeared as a witness, questions were put to him whether those statements were made by the witnesses. The learned counsel then attempted to refer before us to the statements made by the witnesses concerned before the head constable in order to contradict their testimony in court. An objection was raised that the appellants were not entitled to make use of those statements to contradict the witnesses, because the provisions of section 145 of the Indian Evidence Act had not been complied with, as the attention of the witnesses was not drawn to the statements recorded by the head constable. The appellants' counsel conceded that the strict procedure provided by law had not been followed in this case but he contended that this was due to the fact that the learned Sessions Judge did not permit the appellants' counsel to draw the attention of the witnesses to the statements made

during the investigation. There is no record that this happened in the present case but it is not the first time that it has come to our notice that the trial courts in many cases do not properly follow the procedure laid down by the Criminal Procedure Code and the Indian Evidence Act on this subject, and consequently difficulty is felt in this court in granting permission to the appellants to refer to previous statements of witnesses with regard to which proper procedure has not been followed. * * * * *

I would note for the guidance of the Sessions Judges and the Magistrates that under section 162 of the Criminal Procedure Code a statement made before the investigating officer by a witness can be used for the purpose of contradicting such witness when produced at the trial but only after strict compliance with the provisions of section 145 of the Indian Evidence Act. That section provides that a witness may be cross-examined as to a previous statement made by him in writing or reduced into writing and relevant to the 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. The proper procedure would, therefore, be to ask a witness first whether he made such and such statement before the police officer. If the witness returns the answer in the affirmative, the record of the previous statement need not be proved and the cross-examiner may, if he so chooses, leave it to the party who called the witness to have the discrepancy, if any, explained in the course of re-examination. If, on the other hand, the witness denies having made the previous statement

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attributed to him or states that he does not remember having made any such statement and it is desired to contradict him by the record of the previous statement, the cross-examiner must put to the witness the relevant portion or portions of the record which are alleged to be contradictory to his statement in court and thus give him an opportunity to reconcile the same, if he can. It is only when the cross-examiner has done so, that the record of the previous statement becomes admissible in evidence for the purpose of contradicting the witness and can then be proved in any manner permitted by law.

It was contended by the appellants' counsel that having regard to section 155 (3) of the Indian Evidence Act, it was not necessary to draw the attention of the witness to the previous statement. I am unable to agree with this contention. Section 155 only lays down that the credit of a witness may be impeached, *inter alia*, by 'proof of former statements inconsistent with any part of his evidence, which is liable to be contradicted', but it does not lay down the manner in which the former statement is to be proved. The mode of proof of such a statement in writing when it is sought to be tendered in evidence for contradicting a witness is provided in section 145 of the Act. In other words, section 155 is, in my opinion, controlled by section 145 and is not independent of it.

BHIDE J.

BHIDE J.—I agree.

N. F. E.

Appeals dismissed.