

**EVIDENTIARY VALUE OF STATEMENT UNDER
SECTION 161 AND 162 OF THE CODE OF
CRIMINAL PROCEDURE, 1973**

**PRESENTED BY:
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Section 161 CrPC states that (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) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(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 that statement made under this sub-section may also be recorded by audio-video electronic means.

Section 162 CrPC states that (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; 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 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 subsection (1) may amount to contradiction if the same appears to be significant and otherwise relevant to the facts in issue, and such omission is material to the case, and whether such omission

A witness is a person who sees an event happening, especially a crime or an accident, or who testifies under oath in a trial. The term '*witness*' itself reveals the meaning: any individual who observed the crime and has firsthand knowledge of any occurrence in a criminal case and who assists in testifying the evidence.

When an investigation begins, one of the first things an investigating officer must do is contact the persons who appear to be familiar with the facts and circumstances of the case, as provided under section 160 CrPC. During a witness examination, the police take the person's statement to proceed with the investigation under the provisions of the Criminal Procedure Code, 1973. However, the word 'statement' is not defined under CrPC. According to the Encyclopedia, a statement is defined as a proclamation or explicit expression of anything in speaking or writing. Section 161 CrPC deals with the examination of witnesses by the police, and this provision allows the police or gives them authority to interrogate the witnesses whenever they need to record the statements of the witnesses. The goal of Section 161 is to acquire evidence that can subsequently be used in the court. An oath or affirmation is not needed during a witness examination under this Section.

The evidentiary value of these statements

Essentially, the witness signature on a statement is not necessary under Section 161 of the CrPC because it is prohibited under Section 162 CrPC. It is, however, not the law that anytime a person's signature is acquired in a statement recorded during an inquiry, the statement shall be rejected.

In **State of Rajasthan v Teja Ram and others** 1999 (3) SCC 507, the Hon'ble Apex Court stated that "No doubt the aforesaid prohibition is in peremptory terms. It is more a direction to the investigating officer than to the court because the policy underlying the rule is to keep witnesses free to testify in court unhampered by anything which the police claim to have elicited from them. But if any Investigating Officer, ignorant of the said provision, secures the signature of the person concerned in the statement, it does not mean that the witnesses testimony in the court would thereby become contaminated or vitiated. The Court will only reassure the witness that he is not bound by such statement albeit his signature finding a place thereon."

The statements of witnesses recorded by police under section 162 Crpc during investigation cannot be used for seeking corroboration or assurance for the testimony of a witness in court. It may be made clear that if the statements recorded by the police could be used only for contradicting the prosecution witnesses and for no other purpose. Such statements cannot be used for seeking corroboration or assurance for the testimony of the witnesses in court.

In **Sewaki v State of Himachal Pradesh**, 1981 Cri LJ 919, it was held that statements recorded by investigating officer under Section 161 CrPC are neither recorded under oath nor are they subject to cross-examination as required by section 145 of the Evidence Act, and hence such statements, according to law of evidence, are not the evidence of facts stated therein and therefore no substantive pieces of evidence.

What is a contradiction?

In case of a witness testifies before the court that a certain fact is existed without stating same before police; it is a case of conflict between the testimony before the court and statement made before the police. This is a contradiction. Therefore, statement before the police can be used to contradict his testimony before the court.

In **Appabhai .Vs. State of Gujrat** AIR 1988 S.C. 694, The Hon'ble Apex Court observed "The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

What is an Omission?

An omission is either skip or slip, it means 'exclusion' or 'leaving out'. If a certain fact is testified by a witness in his Examination-in-Chief, such fact, which is testified in Court, had been omitted to state before police, it is called an 'Omission'. Now, it is to be tested by the Court whether it is a material omission or not. If it is a material omission, it amounts material contradiction. The Hon'ble Apex Court opines that relevant and material omissions amount to vital contradictions which can be

How to record contradictions in evidence

To record contradictions in evidence the portion of statement which is about to use for contradiction is first brought to the notice of witness, and should be questioned about it. If the witness admits that he made said statements before police then no further proof is needed. But if witness denies that he made confronting statements before police then, comes the role of contradiction, court is bound to note the said statements .

The statements of witnesses recorded by police officer during investigation cannot be used as substantial evidence. It cannot be used except for the purpose of contradictions under section 145 of Indian Evidence Act.

In **Raghu Nandan Vs State of A.P.** (1974 Cr.L.J. 453) it was held the Hon'ble Apex court that the bar imposed by section 162 Cr.P.C, though wide is not explicit or specific enough to extend the prohibition to the use of the wide and special power of the court to question a witness, expressly and explicitly given by section 165 of Evidence Act.

Delay in recording of statements under section 161 CrPC.

Delay in recording of statement of witnesses does not necessarily discredit their testimony, if they are cogent and credible and delay is explained to the satisfaction of Court.

The effect of delay in recording statements of witnesses under section 161 of the Code of Criminal Procedure was examined by the Hon'ble Supreme Court in the case of **Harbeer Singh vs Sheeshpal**, (2016) 16 SCC 418, where in it was held that “delay in recording of statements of the prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter would cast a doubt about prosecution case. It is settled law that every delay in examining witness not fatal subject to explanation given by investigating officer to the satisfaction of court.”

However, there are two exceptions to the above laid down rule.

The statements made under section 32(1) and section 27 of the Evidence Act.

- (1) Sub-section 1 of section 32 Evidence Act talks about dying declaration. When a statement is made by a person in relation to his death, cause of death and circumstances surrounding the same, such statements are relevant irrespective of the fact that they were not made under oath.

The maxim behind this is *Nemo Moriturus praesumitur mentire* which means “a man will not meet his maker with a lie in his mouth.” Such statements have a greater evidentiary value and can be used as substantive evidence during a trial even though they have not been cross-examined.

- (2) Under section 27 of the Evidence Act such statements, made to the investigating officer during the the investigation by the accused, that lead to a discovery of a material fact can be used as a piece of evidence during a trial and hence has a higher evidentiary value. But if no discovery is made which is relevant to the trial then the statement would be of no evidentiary value to the trial.

CONCLUSION

Recording of statements under section 161 and 162 of Cr.P.C., plays a pivotal role in criminal trial. The purpose of contradiction between evidence of a witness before the court and the statement recorded under section 161 of Cr.P.C is primarily to shake credit of the witness, it is only to put the court on guard, to scrutinise the evidence with greater care.

THANK YOU