CHAPTER 12

Police Diaries and Statements Before the Police

1. When accused is entitled to see Police diaries or statement of a witness recorded by Police—The Police diaries called for under Section 172 of the Code of Criminal Procedure should not be shown to accused persons, or to their agents, or pleaders, except under the circumstances stated in the second clause of Section 172 of the Code, that is, when they are used by a Police Officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police Officer. Sessions Judges and District Magistrates should issue such orders as are necessary to guard against the Police diaries being inspected by person not entitled to see them. The right of an accused person to be furnished with a copy of a statement of a person whom the prosecution proposes to examine as its witness, whether this statement has been recorded in a police diary or otherwise, is dealt with in Sections 162 and 173 of the Code.

Note—These restrictions do not apply to a person duly authorized to conduct the prosecution in any case.

2. Instructions *re* despatch of Police diaries and their translation with the records of criminal cases to the High Court—In submitting the records of criminal cases to the High Court, the Police diaries and English translations or notes of them, should be separated from the records and placed in a sealed cover which should then be placed with the record.

3. Use of Police diary by Court—As to be manner in which Police diaries may be used by Courts, the following remarks should be borne in mind :

The Provision of Section 172, that any Criminal Court may send for the Police diaries, not as evidence in the case but to aid it in an inquiry or trial empowers the Court to use the diary not only for the purpose of enabling the Police officer who complied it to refresh his memory, or for the purpose of contradicting him, but for the purpose of tracing the investigation through its various stages the intervals which may have elapsed in it, and the steps by which a confession may have been elicited, or other important evidence may have been obtained. The Court may use the special diary, not as evidence of any date, fact or statement referred to in it, but as containing indications of sources and lines of inquiry and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the State and the accused.

Should the Court consider that any date, fact or statement referred to in the Police diary is, or may be, material, it cannot accept the diary as evidence, in any sense, of such date, fact or statement, and must, before allowing any date, fact or statement referred to in the diary to influence its mind, establish such date, fact or statement by evidence.

Criminal Courts should avail themselves of the assistance of Police diaries for the purpose of discovering sources and lines of inquiry and the names of persons who may be in a position to give material evidence, and should call for diaries for this purpose.

4. Use of statement of witness made before Police; when accused may get its copies—As regards the proper use of statement made by witnesses before the Police during the course of an investigation, the provision of Section 162 of the Code, as amended in 1955, should be carefully studied. It would appear from the provisions of this section that no statement made by a witness to a Police Officer during the course of any investigation under Chapter XIV of the Code can be proved at all for any purpose during the trial, if the statement has not been reduced into writing. If such statement has not been reduced into writing under sub-section (3) of Section 161, whether in a police diary or otherwise a copy thereof along with other papers mentioned in sub-section (4) of Section 173 of the Code, has to be furnished to the accused, free of cost, before the commencement of the inquiry to trial unless the whole or any part of the statement has been excluded under sub-section (5) of the said section. Even so the use of this statement for any purpose whatever is prohibited except (a) when the person making the statement is called as a witness for the prosecution, and (b) the accused or with the permission of the Court, the prosecution desire to use it in the manner provided by Section 145 of the Indian Evidence Act, 1872 to contract the witness and thus to impeach his credit. The original written record of the statement or any portion of it which is relied upon must be put to the witness, duly proved, as required by Section 145 *ibid* and then the Statement can be used for impeaching the credit of the witness as stated above, (*vide*, I.L.R. 7 Lahore 264).

COMMENTS

Under section 162 of the Code of Criminal Procedure, as at present enacted, no statement made by a witness to a police officer in the course of an investigation under Chapter XIV, if not reduced into writing, can be used at the trial for any purpose whatsoever. It cannot be used either to corroborate or to contradict a witness, either for the benefit of the accused or against him. If such a statement has been reduced into writing, its use for any purpose whatsoever is also prohibited, unless (*a*) it is the statement of a witness called for the prosecution, (*b*) the Court has ordered the accused to be furnished with a copy, and (*c*) the written record of the statement has been duly proved. It may then be used within the limits set forth in the proviso to section 162. The interpretation of this section to be adopted by the Courts of this Province is that set out in *Labh Singh vs. Crown*, (1924) I.L.R. 6 Lah. 24, and *Rakha vs. Crown*, (1925) I.L.R. 6 Lah. 171. *Bahadur Singh and Another vs. The Crown*, (1926) I.L.R. VII Lah. 264.

5. Method of contradicting a witness with his previous statement—The procedure contemplated by Section 145 of the Indian Evidence Act should be carefully followed. When a witness is found to make statements conflicting with previous statements made by him in writing or reduce into writing and it is intended to contradict him with the previous statements, the relevant portions of the previous statements should be read out to him and his attention should be called to the discrepancies and he should then be asked to offer his explanation (if any), with reference to the same. The record to the Magistrate or Judge should show clearly that this procedure has been followed. The best way of doing this would be to put direct questions reciting the relevant portions of the two statements and asking for an explanation as to the

discrepancies between the same and to record fully such questions and the answers given by the witness.

6. Use of First information Report for purpose of corroboration of statement—It will thus appear that as a result of the provisions of Section 162, Code of Criminal Procedure, a statement made by a witness before the Police, cannot be used to corroborate his testimony in spite of the provisions of Section 157 of the Indian Evidence Act *(cf I. L. R. 6 Lah. 171)*. The first information report recorded under Section 157 of the Code, however, does not fall within the scope of Section 162 as it is not a statement made in the course of an investigation and hence it can, be used to corroborate the testimony of the person making the report if he appears as a witness. It frequently happens, however, that the person making the first information report has no personal knowledge at all of the facts stated in the report and in such cases the reports has no value except in so far as it discloses the manner in which the Police obtained the first information about the offence.

COMMENTS

The rule laid down in section 157 of the Indian Evidence Act is controlled by the special provisions contained in section 162 of the Criminal Procedure Code (as amended by Act XVIII of 1923), and that the latter section prohibits the use of the record containing the statement of a witness to the police as evidence against the accused as well as proof of such statement by oral evidence. *Rakha vs. The Crown,* (1925) I.L.R. VI Lah. 171.

7. Confession made by accused to Police is admissible in evidence if it has led to discovery of any fact—It has been held in *Ranun v. Crown* (I.L.R. 7 Lahore, 84), that Section 162 of the Code of the Criminal Procedure applies to the statements of persons examined as witnesses by the Police and not to the statement of an accused person, and that it does not modify or override the provisions of Section 27 of the Indian Evidence Act in any way. Consequently a confession by an accused person to the Police, whether it has been reduced into writing or not, is admissible in evidence under Section 27 of the Indian Evidence Act—if any fact is disposed to as having been discovered in consequence of such a confession. As regards the extent to which such a confession can be proved. A.I.R. 1947 Privy Council 67, 1952 Supreme Court Reports 839 and A.I.R. 1954 Punjab 97 (F.B.) should be consulted.

COMMENTS

Section 162 of the Code of Criminal procedure applies to the statements of persons examined as witnesses by the Police in the course of an investigation and not to the statement of an accused person, and that it does not override or modify the provisions of section 27 of the Indian Evidence Act.

A repeal by implication is only effected when the provisions of a later enactment are so inconsistent with, or repugnant to, the provisions of an earlier one, that the two cannot stand together.

It is a cardinal rule of interpretation that a general statute is to be constructed as not repealing by mere implication a particular one, that is, one directed to a special object or a special class of objects. *Rannun vs. The Crown,* (1926) I.L.R. VII Lah. 84. (*Seward vs. The Vera Cruz,* (1884) 10 A.C. 59, *Queen vs. Harrald,* (1872) 41 L.J.Q.B. 173, *Kutner vs. Phillips,* (1891) 2 Q.B. 267. referred to.)

The prosecution can rely, not only upon the discovery of the corpse in the field of the accused, but also upon the statement made by him in consequence of which that discovery was made. *Rannun vs. The Crown,* (1926) I.L.R. VII Lah. 84. (*Begu vs. The King-Emperor,* (1925) I.L.R. 6 Lah. 226 (P.C.) followed)

Where on being interrogated by the police, the accused persons made certain statements which were duty recorded by the police and in these statements it was disclosed that the dead bodies of the persons murdered were thrown in a *nala* and thereafter the

police party with the accused went to the *nala* where each of them pointed out a place where different parts of the dead bodies were discovered but the "initial pointing out" was by the accused S:

Held that even if the rule to be applied in the case was that it is only the information which is first given that is admissible under Section 27 and once a fact has been discovered in consequence of information received from a person accused of an offence, it cannot be said to be rediscovered in consequence of information received from another accused person, the case was covered by the rule and the discoveries made at the instance of S were admissible in evidence under Section 27. *Lochaman Singh and others vs. The State*, AIR 1952 SC 167 : 1952 SCR 839.

8. Dying declaration excluded from operation of Section 162, Cr. P.C.—It should be noted that dying declarations falling under Section 32(1) of Indian Evidence Act are excluded from the scope of Section 162, Criminal Procedure Code.