IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1764 OF 2019

1) Sanjay s/o Shankar Bhalkar,
Age 44 years, Occupation Agriculture,

2) Sahebrao s/o Shankar Bhalkar,
Age 52 years, occupation Agriculture,

3) Shrinath s/o Shankar Bhalkar,
Age 46 years, Occupation Agriculture,

4) Manohar @ Shivaji s/o Shankar Bhalkar,
Age 56 years, Occupation Agriculture,

5) Anita w/o Sanjay Bhalkar,
Age 35 years, Occupation Household,

All R/o. Village Ovar At Post : Jatwada
Tq. And Dist. Aurangabad. **...Petitioners.**

VERSUS

The State of Maharashtra. **...Respondent.**

.....

Advocate for Petitioners : Mr. S. G. Ladda And Mr. S. S. Khivansara.
APP for respondent-State : Mr. A. A. Jagatkar.

.....

WITH
CRI.APPLN.NO.3620/2019 IN CRI.WP/1764/20149

Aruna w/o Vishwas Shinde,
Age 58 years, Occupation Household,
R/o. No-3, Plot No.397, CIDCO,
Aurangabad. **...Applicant.**

VERSUS

1) Sanjay s/o Shankar Bhalkar,
Age 44 years, Occupation Agriculture,

2) Sahebrao s/o Shankar Bhalkar,
Age 52 years, occupation Agriculture,

3) Shrinath s/o Shankar Bhalkar,
Age 46 years, Occupation Agriculture,

4) Manohar @ Shivaji s/o Shankar Bhalkar,
Age 56 years, Occupation Agriculture,

5) Anita w/o Sanjay Bhalkar,
Age 35 years, Occupation Household,

All R/o. Village Ovar At Post : Jatwada
Tq. And Dist. Aurangabad.

6) State of Maharashtra. **...Respondents (Accused)**

.....

Advocate for Applicant : Ms. R. S. Kulkarni.
APP for respondent-State : Mr. A. A. Jagatkar.

.....

CORAM : SMT.VIBHA KANKANWADI, J.

Date of Rerseving the Judgment : 03-01-2020.

Date of Pronouncing the Judgment : 13-01-2020.

JUDGMENT :

1. Present petition has been filed by the original accused persons challenging the order in deposition of P.W.18 (Exhibit 215) in para No.14 and 15 in Sessions Case No.153 of 2015, by learned

Additional Sessions Judge, Aurangabad on 04-10-2019. Application No.3620 of 2019 has been filed by the original informant for intervention.

2. The present petitioners–original accused persons are facing charge under Section 302 read with 34 of Indian Penal Code in the said case. The prosecution has examined P.W.18 Dr. Kailash Zine who had conducted the autopsy. His examination-in-chief is complete and he is under cross-examination. It is contended in the petition that, the post mortem report is exhibited as Exhibit 216 and the diagram of injuries sketched and appended to the report are at Exhibit 217. P.W.18 Dr. Kailash Zine had brought file of treatment papers of the deceased and produced it before the Court before the commencement of cross-examination of the said witness as those papers were required by the defence. It is stated that, in post mortem report Exhibit 216 in column No.5 it is stated that the deceased was admitted to Government Medical College and Hospital, Aurangabad in unconscious state at about 12.45 hours on 14-03-2015 and during treatment he died on the same day around 16.05 hours in the hospital. It is stated that, the said fact is contrary to the file of treatment on record, and therefore, the learned defence advocate wanted to cross-examine the said witness in respect of

those papers. When the questions were asked, the learned Special Public prosecutor had taken objection that, the said witness has no knowledge about the contents of the document and he cannot depose in respect of those documents. The learned Judge has upheld the said objection and has not allowed the witness to answer certain questions. The learned Judge had surprisingly endorsed the scope of the evidence of the witness that it is restricted only to post mortem report Exhibit 216, diagram Exhibit 217, and death certificate Exhibit 218. It is stated that, the defence had not put any questions regarding treatment given to the deceased, and therefore, the learned Judge ought not to have restricted and prevented the defence from putting further questions in respect of the documents. Though the Judge may come to a conclusion that, the question is not relevant at that stage, however possibility cannot be ruled out that the said question may become relevant at the later stage, and therefore, based on the decision in *Bipin Shantilal Panchal v. State of Gujrat And Another*, reported in *(2001) 3 Supreme Court Cases 1 : 2001 Supreme Court Cases (Cri) 417*, it was requested to the Court that, all the questions be taken and subject to objections the answers be taken and then the relevancy or admissibility of the questions may be later on considered. But then rejecting the prayer of the advocate for the

defence to put certain questions will not amount to fair trial and, hence, prayer is made for setting aside the impugned order and direction have been sought to the trial Court to record all the questions ans answers given by the witness during the cross-examination.

3. Heard learned advocate Mr. S. G. Ladda for petitioners and learned Additional Public Prosecutor Mr. A. A. Jagatkar for respondent – State assisted by learned advocate Ms. Rashmi S. Kulkarni for the informant who filed application No.3620 of 2019 for intervention.

4. The learned advocate appearing for the petitioners had drawn the attention of this Court to the contents of Serial No.5 in post mortem report Exhibit 216 and also the contents of the treatment papers and submitted that, there are contradictions in these two documents, which he wanted to bring on record and wanted to ask certain questions which were definitely not in respect of what kind of treatment was given and why certain treatment was not given. The said document regarding treatment papers was brought by the concerned witness, and taking into consideration the fact that they were the treatment papers, learned advocate for the accused

wanted to put certain questions. When the question was asked as to whether there was anything to hide in the papers of treatment; the learned Special Public Prosecutor raised objection contending that the witness is not the author of that document nor he had given treatment to the deceased. The learned Judge has endorsed that the scope of the evidence of the said witness i.e. P.W.18 is restricted to the post mortem report Exhibit 216, diagram of injuries sketched Exhibit 217 and certificate Exhibit 218. Any first aid or immediate treatment was not under the supervision of the witness nor he has deposed about it in his examination-in-chief, and therefore, the objection was sustained, that means the questions were not allowed to be put. Same happened when it was asked to him as to whether he had not understood the contents of the treatment papers. The said question has then been disallowed by the learned Judge. The learned Judge cannot control the cross-examination in such a way and take away the vital right of the accused to bring truth on record by way of cross-examination. It was also requested to the learned Judge that, in view of the procedure laid down in *Bipin Panchal's case (Supra)* the evidence may be recorded even after the objection is raised so that the Appellate Court should be benefited, if it is found at a later stage that any question was or questions were relevant.

With a limited purpose that the Court should be accordingly directed, the petition has been filed.

5. Per contra, the learned Additional Public Prosecutor submitted that, the witness had specifically stated that, he had not given treatment to the deceased then questions in respect of contents of the document could not have been put to the said witness. Those papers were produced by the said witness on the request of the learned advocate for the defence. Therefore, the learned Judge was justified in upholding the objection raised by the learned Special Public Prosecutor. Learned Advocate for the accused persons can not ask any question which is not relevant. The Court has power to control the cross-examination.

6. At the outset it can be seen that, the point raised in this petition pertains to the regular work of those Courts, where the evidence of witness is recorded. As regards the recording of evidence of a witness is concerned, the Courts are mainly guided by the Evidence Act and various pronouncements of the Hon'ble Supreme Court and High Courts. It is a regular scene, mostly in criminal cases that, to the questions asked in cross-examinations, objections are raised and then Courts are required to consider those

objections. Here the examination-in-chief of P.W.18 Dr. Kailash would show that, he has stated that he had conducted the autopsy of the deceased and then during the course of his examination-in-chief the post mortem report, the sketch appended to it and the death certificate came to be exhibited. When it was the turn for the cross-examination, it appears that prior to his entry in the witness box, on the request of the learned advocate for the accused, he had produced the treatment papers. Pursis to that effect has been filed at Exhibit 222.

7. Learned advocate for the defence has pointed out Serial No.5 column of the post mortem report Exhibit 216 and then it was stated that it mentions about unconscious state of the deceased when he was brought to Mortuary of Government Medical College and Hospital Aurangabad. At the first place it is to be noted that the second column of serial No.5 states that,

> *"Substance of accompanying report from Police Officer or Magistrate, together with the date of death if known. Supposed cause of death or reasons for examination."*

That means, it was in respect of the substance to be written, of the report stated by Police Officer or Magistrate in the accompanying report together with the other particulars. It is the usual practice

that, when a dead body is sent for autopsy, it would be with a report submitted by the police to the medical officer. Therefore, in view of the said requirement stated in second column, the third column states that,

> *"As per police inquest and requisition letter, the deceased had alleged history of assault at Hrideya farm, Jatwada Road, Aurangbad on 14/03/2015 at 12.45 hrs and sustained injuries and became unconscious was brought to GMCH, Aurangabad. He was admitted in Truama ward for treatment. During treatment he died on 14-04-2015 at 16.05 p.m."*

Thus, the said answer was based on the police inquest and requisition letter.

8. It is to be noted that, though the treatment papers were produced by the said witness P.W.18 Dr. Kailash, they were not exhibited when the learned advocate for accused had started the cross-examination. But still he wanted to cross-examine the witness based on the contents of the said document. Further, it can be clearly seen from the record i.e. the deposition part, that the form of the question from where the objections began put forward by learned advocate for the accused was wrong. When the witness had brought those documents from the official custody of the hospital and if at all there was no attempt on the part of the police to seize

those documents, the witness could not have been held in any way responsible for the non production of the document. But then the question was asked, *"Is there anything to be hide from the papers which you have brought today ?"*. Learned advocate for the accused ought to have seen that if there was anything to hide, the witness would not have produced it, but then since the document was produced, there was in fact no occasion for him to ask this question. Therefore it can be said that the form of the question was wrong. The objection that was raised by the learned Special Public Prosecutor appears to be in respect of the scope of the witness on the ground that the witness had not given the treatment and he had no knowledge about the document. In fact the concerned witness should say that, he has no knowledge of that document and in any way it could not have been said by the learned Special Public prosecutor. The learned Additional Sessions Judge went on to observe that, the scope of the evidence of the witness is restricted to certain documents and when the witness has not deposed earlier about his knowledge of admission of the deceased in the hospital, then the question relating to treatment are not relevant and cannot be put to the witness. Here the learned Sessions Judge could not have put entire shutter down in respect of putting forth the questions but then he was supposed to consider the

relevancy of the question first. While deciding the relevancy of the question it could not have been travelled beyond the limits laid down by the law. In certain cases the cross cannot be limited to the contents of the examination-in-chief. It may go beyond that as the purpose of the cross-examination is to test the veracity or impeach the credit of the witnesses.

9. Here the observations from the decision in *Ram Bihari Yadav v. State of Bihar and Others*, reported in *AIR 1998 SC 1850 : 1998 Criminal Law Journal 2515* are noted ;

> *"More often the expressions 'relevancy and admissibility' are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant are not admissible; so also facts which are admissible may not be relevant, for example, questions permitted to be put in cross-examination to test the veracity or impeach the credit of witnesses, though not relevant are admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case".*

Thus it is clear that, though the relevancy and admissibility are used as synonyms terms, they are different and distinct. Therefore, the relevancy and / or the admissibility will have to be judged from different angles. Relevancy of the question, generally, comes first and then admissibility is required to be decided.

10. After sustaining the first objection raised by learned Special Public Prosecutor, when cross further proceeded, the witness i.e. P.W.18 told that, he had gone through the papers i.e. the admission papers of the deceased with the hospital. But then again the question is asked, *"Do you have any difficulty to answer questions relating to these documents ?"*, and the witness answered that, *"He had not given treatment to the patient."* Then again the question is asked, *"Do you want to say that you did not understood the contents of these documents ?"*. Thereafter, the Court disallowed the said question on the ground that since the witness has already stated that he had not given the treatment to the patient, no occasion arises for him to say anything about contents of the document. It appears that, thereafter the learned defence advocate insisted that the answer that might be given by the witness be recorded and then he relied on *Bipin Panchal's* case (Supra). The learned Additional Sessions Judge observed that, the ratio in *Bipin Pancha's* case though made applicable, the question cannot be allowed and there is no question to record the answer to the said question which is disallowed. It is, therefore, necessary to consider the ratio laid down in *Bipin Panchal's* case ;

> *"13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing*

order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings."

"14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or ***item of oral evidence the trial court can make a note of such objection*** *and mark the objected document tentatively as an exhibit in the case* ***(or record the objected part of the oral evidence)*** *subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)"*

> *"15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."*
>
> *"16. We, therefore, make the above as a procedure to be followed by the trial courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence."*
>
> *(Stress supplied by me)*

11. It can be seen that the main point that was required to be addressed in the above said case of *Bipin Panchal* was in respect of question of admissibility of a document, and then while laying down the procedure that is to be followed, Hon'ble Supreme Court has stated that the Trial court can make a note of objection when an objection is raised during evidence recording or oral evidence. That means, the discretion is given to the Trial Court to take note of such objection and to record the objected part of the oral evidence. Now definitely the said discretion will have to be exercised judicially.

When the above said procedure was suggested or laid down, the Hon'ble Supreme Court has not made it compulsory that all the questions those would be put in the cross-examination, should be recorded by the concerned Court. Hon'ble Supreme Court has also used words "can make". If interpretation is to be made that it has been made compulsory, then the Courts will have no power to control the process of evidence recording, which is not the intention of the legislature. The scheme of Indian Evidence Act in respect of examination of witnesses and the powers of the Court have been aptly and correctly summarized by Hon'ble Delhi High Court (M.L.Mehta, J.) in the decision between *R. K. Chandolia v. CBI & Ors.*, reported in *2012 SCC Online Del 2047 : (2012) 3 DLT (Cri) 471*.

> **"***14. Under the scheme of Evidence Act, Chapter X deals with the examination of the witnesses. Different kinds of responsibility are cast on the judge in different provisions of this Chapter while recording evidence. Then the Courts also have extensive powers for protecting the witnesses from the questions not lawful in cross examination as set out in Sections 146 to 153, Evidence Act. Under Section 136, the Judge has not only to satisfy that the evidence that was to be led was relevant but, in what manner if proved, would be relevant. It was only if he was satisfied that the evidence, if proved, would be relevant, that he could admit the same. If it is his duty to admit all the relevant evidence, it is no less his duty to exclude all irrelevant evidence. Section 5 of the Act also declares that "evidence may be given in any suit or proceedings of the existence or non-existence of every facts in issue and of such other*

facts as hereinafter will be declared to be relevant, and of no others. From this, it comes out to be that the Judge is empowered to allow only such evidence to be given as is, in his opinion, relevant and admissible and in order to ascertain the relevancy of the evidence which a party proposes to give, he may ask the party, in what manner, if evidence proved, would be relevant and, he may then decide as to its admissibility. In fact, the question of relevancy is of great nicety and sometimes, great difficulty is felt by the Trial Judge in deciding question of relevancy. Therefore, it is desired that in doubtful cases, he should admit rather than excluding the evidence.

15. Section 137 gives a statutory right to the adverse party to cross-examine a witness. Section 138 only lays down the three processes of examination to which a witness may be subjected. It does not deal with the admissibility of the evidence. It also provides that the examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified in his examination-in-chief. Under this Section, the cross-examination can go beyond the facts narrated in examination-in- chief, but all such questions must relate to relevant facts. It is not that under the right of cross examination, the party will have the right to ask reckless, irrelevant, random and fishing questions to oppress the witness. The "relevant facts" in cross examination of course have a wider meaning than the term when applied to examination-in-chief. For instance, facts though otherwise irrelevant may involve questions affecting the credit of a witness, and such questions are permissible in the cross examination as per Section 146 and 153 but, questions manifestly irrelevant or not intended to contradict or qualify the statements in examination-in-chief, or, which do not impeach the credit of a witness, cannot be allowed in cross examination. It is well-

established rule of evidence that a party should put to each of a witness so much of a case as concerns that particular witness.

16. It is experienced that sometimes, cross examination goes rambling way and assumes unnecessary length and is directed to harass, humiliate or oppress the witnesses. It is also experienced that the Courts often either due to timidity or the desire not to become unpopular or at times, not knowing its responsibilities and powers, allow the reckless, scandalous and irrelevant cross examinations of witnesses. In fact, in such situations, the court has the power to control the cross examination. The court has a duty to ensure that the cross examination is not made a means of harassment or causing humiliation to the witness. While allowing latitude in the cross examination, court has to see that the questions are directed towards the facts which are deposed in chief, the credibility of the witness, and the facts to which the witness was not to depose, but, to which the cross examiner thinks, is able to depose. It is also well-established that a witness cannot be contradicted on matters not relevant to the issue. He cannot be interrogated in the irrelevant matters merely for the purpose of contradicting him by other evidence. If it appears to the Judge that the question is vexatious and not relevant to any matter, he must disallow such a question. Even for the purpose of impeaching his credit by contradicting him, the witness cannot be put to an irrelevant question in the cross examination. However, if the question is relevant to the issue, the witness is bound to answer the same and cannot take an excuse of such a question to be criminating. That being so, it can be said that a witness is always not compellable to answer all the questions in cross examination. The court has ample power to disallow such questions, which are not relevant to the issue or the witness had no opportunity to know and on which, he is not competent to speak. This is in consonance

with the well-established norm that a witness must be put that much of a case as concerns that particular witness.

17. A protracted and irrelevant cross examination not only adds to the litigation, but wastes public time and creates disrespect of public in the system. The court is not to act a silent spectator when evidence is being recorded. Rather, it has the full power to prevent continuing irrelevancies and repetitions in cross examination and to prevent any abuse of the right of cross examination in any manner, appropriate to the circumstances of the case. The court could have such a power to control the cross examination apart from the Evidence Act as also the Code of Criminal Procedure. Section 146 though relaxes the ambit of cross examination and permits the putting of questions relating to the trustworthiness of the witness, but such questions also must be relevant for the purpose of impeaching the credit, though not to the issue. Under the garb of shaking credit, irrelevant or vexatious questions cannot be allowed, if they do not really impeach the credit of witness or do not challenge the evidence given in examination-in-chief relating the matter under enquiry. It is established proposition of law that if the question is directly relevant i.e. if it relates to the matters, which are points in issue, the witness is not protected to answer even it amounts to criminating him but, if it is relevant only tending to impeach the witness's credit, the discretion lies with the Judge to decide whether witness shall be compelled to answer it or not. Generally, he will not be allowed to be contradicted except in the cases under Section 153. In fact, Section 132, 146, 147 and 148 embrace whole range of questions, which can properly be addressed to witness and these should be read together.

18. Thus, it can be said that the relevancy of evidence is of a two-fold character; it may be directly relevant in the bearing on,

elucidating, or disproving, the very merits of the points in issue. Secondly, it can be relevant in so far as it affects the credit of a witness. As regard the relevancy relating to a credit of a witness, the court has to decide the same under Section 148 whether the witness is to be compelled to answer or not or to be warned that he is not obliged to answer. The Judge has the option in such a case either to compel or excuse. The provisions of Section 148-153 are restricted to questions relating to facts which are relevant only in so far as they affect the credit of the witness by injuring his character; whereas some of the additional questions enumerated in Section 146 do not necessarily suggest any imputation on the witness's character. When we talk of the relevancy of the questions relating to character, unnecessarily provocative or merely harassing questions will not be entertained in this class of questions.

19. As per Section 151 and 152, the questions which are apparently indecent or scandalous or which appear to be intended to insult or annoy or are offensive in form, are forbidden. Such questions may be put either to shake the credit of witness or as relating to the facts in issue. If they are put merely to shake the credit of the witness, the court has complete dominion over them and to forbid them even though they may have some bearing on the questions before the court. But, if they relate to the facts in issue or are necessary to determine the facts in issue existed, the court has no jurisdiction to forbid them. The court cannot forbid indecent or scandalous questions, if they relate to the facts in issue. It is because what is relevant cannot be scandalous."

The above summary of the various provisions of the Evidence Act and settled law, noted by the Delhi High Court is hereby endorsed

and would make it clear that, the Court has to control and have power to decide the relevancy and admissibility of any question that may be put to a witness.

12. Further decision in *Inder Sain v. CBI Sector 30-A, Chandigarh, (CRR No.2251 of 2018 decided by Hon'ble Punjab and Haryana High Court on 06-08-2018)* gives summary of those very provisions of the Evidence Act and the observations therein are also relevant, and are required to be endorsed which are as follows ;

> *"Different types of responsibilities are cast on the judge in different provisions of this Chapter while recording evidence. The Courts also have extensive powers for protecting the witnesses from the questions which are not lawful in cross-examination as provided under Sections 146 to 153 of the Evidence Act. Under Section 136, the Judge is not only to satisfy that the evidence which was to be led was relevant but, in what manner if proved, would be relevant. Section 137 of the Evidence Act gives a statutory right to the adverse party to cross- examine a witness. Similarly, Section 138 of the Evidence Act lays down the three processes of examination to which a witness may be subjected. It does not deal with the admissibility of the evidence. It provides that the examination and cross- examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified in his examination-in-chief. Under this Section, the cross-examination can go beyond the facts narrated in examination-in-chief, but all such questions must relate to relevant facts. It does not mean that under the right of cross- examination, the party will have the right to ask irrelevant questions to oppress the witness. The "relevant*

facts" in cross examination has a wider meaning than the term when applied to examination-in-chief. For example, facts though otherwise irrelevant may involve questions affecting the credit of a witness but only such questions are permissible in the cross- examination as per provision of Sections 146 and 153 of the Evidence Act. The irrelevant question or not intended to contradict or qualify the statements in examination-in-chief, or, which do not impeach the credit of a witness, the same cannot be allowed in cross-examination. Irrelevant cross-examination not only adds to the litigation, but wastes public time. The Court is not to act as a silent spectator when evidence is being recorded. The Court has full power to prevent continuing irrelevant questions and repetition in cross-examination and also to prevent any abuse of right of cross-examination. The Court is having power to control the cross-examination apart from the Evidence Act as also the Code of Criminal Procedure. Section 146 of the Evidence Act though relaxes the ambit of cross-examination and permits the putting of questions relating to the trustworthiness of the witness, but such questions must be relevant for the purpose of impeaching the credibility of the witness.

It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that trial Judge is the best Judge to decide the relevancy of questions put by the defence counsel during cross-examination of a witness."

Thus, it has been reiterated in *Inder Sain's* case above that, the trial Court is the best judge to decide the relevancy of the questions put up by the defence counsel during cross- examination of a witness. In addition to what has been covered in the above decisions One more

fact that is required to be considered is that, some times intentionally vague questions are put or they are asked in loud voice so that the witness would answer it in fear. Then definitely the control of the cross-examination will have to be in the hands of the Trial Judge. There may also be misleading questions or the questions are not understood due to language barrier. It is the duty of the Court to see that the witness understands the questions and then it should be left to the witness to answer the same.

13. In, *Annubeg Mukimbeg Musalman and another v. Emperor*, reported in *1944 SCC OnLine MP 78 : AIR 1944 Nag 320 : 1945 Cri LJ 601*, it is observed that,

> *"8. The cross-examination of a witness is always a difficult matter. The counsel thinks out before hand on what point the cross-examination will be directed, but the cross-examination can never follow a prearranged plan. The cross-examination has to be mounded according to the nature of the answers given by the witness and the type of the witness a cross-examiner has to deal with. It requires great skill and resourcefulness on the part of counsel. If he is not permitted to cross-examine freely then the effectiveness of the cross-examination is marred……."*

14. Decision of this Court in *Yeshpal Jashbhai Parikh v/s. Rasiklal Umedchand Parikh,* reported in *1954 SCC OnLine Bom 145 : (1955) 57 Bom LR 282,* is also relevant on the point involved in the petition. Note of

certain earlier decisions right from Privy Council were taken. In *Vassiliades v/s. Vassiliades*, reported in *[1945] AIR PC 38* it was observed that ;

> *"No doubt cross-examination is one of the most important processes for the elucidation of the facts of a case and all reasonable latitude should be allowed, but the Judge has always a discretion as to how far it may go or how long it may continue. A fair and reasonable exercise of his discretion by the Judge will not generally be questioned".*

15. In *Yeshpal's case (Supra)* it has been observed that,

> *"While Courts will not ordinarily interfer with the proper exercise of the right of cross-examination the Courts have the power and authority to control the cross-examination of a witness".*

This Court is not agreeing with the submission by learned Advocate for petitioners that, the Court cannot control the cross-examination or he has free hand at the time of cross-examining the witness of the prosecution; but then agree to the submission that the cross-examination need not be restricted to what the witness has stated in his examination-in-chief. A balance has to be struck here while issuing directions to the learned Additional Sessions Judge that he has to decide the relevancy of the question which he may get explained from the learned advocate for the accused orally and then allow him to put the said question to the witness. On any count

learned Additional Sessions Judge will not be justified in entirely putting the shutter down while disallowing of the questions and asking the defence advocate to restrict himself while cross-examining P.W.18 to the post mortem examination report Exhibit 216, sketch Exhibit 217 and certificate Exhibit 218. It is, therefore, again clarified that neither the learned advocate for the accused has unfettered right to put any question to the witness in the cross-examination but at the same time the learned Additional Sessions Judge shall also not restrict him in putting questions in the cross to the above referred documents only. There might be certain questions which would be beyond those documents and as an expert they are required to be elucidated from him. No straight jacket formula can be laid down as to what should be permitted and what should not be permitted as it depend upon the question that would be put and the relevancy and admissibility of the same and / or of the admissibility will have to be decided at that time. Definitely the learned Additional Sessions Judge is guided by the procedure laid down in *Bipin Panchal's case (Supra)*, and it is specifically laid down that, it may be advantages for the Appellate Court in future. He has to bear those advantages which have been laid down in para No.15 of the case, in mind while recording the evidence.

16. Application for intervention stands allowed and with the above-said observations the writ petition is disposed of and also with the direction that, henceforth the learned Additional Sessions Judge would be guided by the above said decisions in recording the evidence.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.