

Mannu and Others Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : May-10-2001

Reported in : 2001(3)MPHT105(CG)

Judge : Mr. W.A. Shishak, C.J. and; R.S. Garg, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 154, 161, 174 and 428; [Evidence Act, 1872](#) - Sections 6, 27, 32, 32(1), 145 and 157; Contempt of Courts Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149 and 302

Appeal No. : Criminal Appeal No. 253/2001 with Cr. A. Nos. 254 and 277 of 2001

Appellant : Mannu and Others

Respondent : State of Chhattisgarh

Advocate for Def. : Shri Gautam Bhaduri, Govt. Adv.

Advocate for Pet/Ap. : Shri Yashwant Tiwari, Adv.

Disposition : Appeal allowed

Judgement :

R.S. Garg, J.

1. This judgment shall disposes of Criminal Appeal No. 253/2001 (Mannu and others v. State of Chhattisgarh), Criminal Appeal No. 254/2001 (Shankar v. State

of Chhattisgarh) and Criminal Appeal No. 277/2001 (Mannu v. State of Chhattisgarh).

2. All the appellants well described in Criminal Appeal No. 253/2001 being aggrieved by the judgment dated 26-2-2001 passed in Sessions Trial No. 188/2000 by the learned First Additional Sessions Judge, Durg (Shri A.K. Samantre) convicting the appellants under Sections 147,148 and 302/149, IPC sentencing them to undergo rigorous imprisonment for one year each, rigorous imprisonment for one year each and to undergo rigorous imprisonment for life respectively and, to pay fine of Rs. 500/- each under Section 302, IPC, in default of payment of fine, to undergo further rigorous imprisonment for six months, have filed these appeals.

3. In all ten persons were prosecuted in relation to aforesaid offences. Criminal Appeal No. 253/2001 was filed by Shri Yashwant Tiwari, Advocate on 8-3-2001 for and on behalf of all the accused. Criminal Appeal No. 254/2001 was filed by Smt. Kiran Jain, Advocate and her associates on 7-3-2001 for and on behalf of accused Shankar. Criminal Appeal No. 277/2001 was filed by Shri P. Diwakar, Advocate, through Shri Utkarsh Verma, Advocate, on 15-3-2001 for and on behalf of accused Mannu. As all the three appeals arise out of the same judgment, these are being finally disposed of by this judgment.

4. The prosecution case in brief is that on 1-2-2000 at about 8.30 p.m., a message was received at Police Station, Mohan Nagar that some persons of the said locality had caused injuries to one man and left him at the spot in the injured condition. After receiving the information, Hemlal, Constable No. 971, went to the spot, with the help and assistance of Rajendra Kumar, Constable No. 672, he took the man to the hospital. After examining the person, Dr. A.P. Sawant declared him dead. Sub-Inspector J.S. Madhavi after receiving the information from Rajendra Kumar registered an inquest and thereafter registered the same at the police station as the inquest No. 6/2000. Said J.S. Madhavi went to the hospital, summoned the witnesses and prepared the panchnama of the dead body. After making the proper investigation and receiving certain information from the witnesses, the first information report was registered by said J.S. Madhavi at Ex.

P-15. During the course of investigation, certain memorandums of the accused persons were recorded and at the instance of the accused persons certain articles were discovered. The articles were sent to Forensic Science Laboratory for their report. The report was received by the police. The body of the deceased was identified by Tikaram and Ashok. A spot map was prepared by T.S. Verma, Patwari in presence of the witnesses. On completion of the investigation, armed with the circumstantial evidence and the statements of Tirohit Chouhan, Padum Bahadur and others, the prosecution agency filed the challan against the accused persons. As the accused denied commission of offence, they were put to trial. After recording the evidence of the prosecution witnesses and given proper opportunity of the defence to the accused persons, the learned Trial Court heard the accused persons through their counsel, recorded a finding in favour of the prosecution and convicted and sentenced each of the appellants as referred to above. Being aggrieved by the said findings and sentences, the appellants have come to this Court.

5. Shri Yashwant Tiwari, learned counsel for the appellants, submitted that the judgment of the Court below is not bad on facts but shows absolute non-application of mind, according to him, in absence of any material evidence, the Court below in its zeal to convict the appellants has relied upon the contents of the first information report, which otherwise was inadmissible in evidence. He submits that even if the first information report is admissible in evidence, the same could not be treated as substantive evidence against the accused and conviction could not be based upon the contents of the said first information report. He also submitted that the first information report was not lodged by an eye-witness but was registered by P.W. 9 J.S. Madhavi after receiving certain informations from alleged eye-witnesses and as the said eye-witnesses have denied that they ever gave any information to said J.S. Madhavi, the contents of the said first information report could not provide a foundation for recording a finding of conviction against the accused persons. Shri P. Diwakar, learned counsel for accused Mannu, and Smt. Kiran Jain, learned counsel for accused Shankar, have supported the arguments of Shri Yashwant Tiwari, Advocate.

6. On the other hand, Shri Gautam Bhaduri, learned Govt. Advocate, appearing for the State, submitted that the Court below has given cogent reasons for relying upon the statements of P.W. 9 J.S. Madhavi and as the defence has failed to show that J.S. Madhavi had some previous enmity with the accused persons or he was to be benefitted by false implication of the accused persons, it cannot be said that the accused persons were falsely implicated. He submits that from the statements of Tirohit Chouhan and Padum Bahadur, it would clearly appear that they were won over and were suppressing the correct facts. He submits that the first information report, names the accused persons, then the prosecution would be justified in relying upon the contents of the first information report and a Court is entitled to base the conviction on such first information report. He has prayed for dismissal of the appeals.

7. We have heard the parties at length and have gone through the records.

8. P.W. 9 J.S. Madhavi was posted at Police Station, Mohan Nagar, Durg as Sub-Inspector of Police. According to him, on 1-2-2000 he received an information from Rajendra Kumar, Constable No. 672, on which he recorded an information under Section 174, Cr.P.C. Thereafter, on basis of the said information (Ex. P-12), he recorded the regular inquest at the police station at No. 6/2000 (Ex. P-13). Thereafter, he went to the hospital, issued notices to the witnesses for preparing the panchnama of the dead body. The said panchnama proceedings were recorded by him at Ex. P-3. Thereafter, the dead body was sent by him for its post-mortem. According to P.W. 9, J.S. Madhavi, he received certain information from the witnesses, which he recorded in form of their statements and thereafter registered the first information report at Ex. P-15. After recording the memorandum of the accused persons under Section 27 of the Indian Evidence Act, he discovered certain articles at the instance of the accused persons. The said articles were sent by him to the doctor alongwith his query report that whether the injuries suffered by the deceased could be caused by those articles. He arrested the accused persons and sent the seized articles to Forensic Science Laboratory through Superintendent of Police, Durg. During the course of investigation, as stated by P.W. 9 J.S. Madhavi, statements of witnesses were recorded. The dead body of the deceased was identified by Tikaram and Ashok. In the cross-

examination, J.S. Madhavi (P.W. 9) clearly admitted that in Ex. P-13 (inquest No. 6/2000) names of the accused persons were not mentioned. He also admitted that in the date column of the first information report (Ex. P-15), there was a mistake. He also admitted that there was no mention in the first information report that a copy of the report was sent to the concerned Magistrate. He however denied the suggestion that the persons whose statements were recorded under Section 161, Cr.P.C. did not give the names of the assailants. He also admitted that after receiving the information about the marpeet the police went to the spot and admitted the deceased in the hospital on the night intervening 31-1-2000 and 1-2-2000. He also admitted that the injured ran away from the hospital and thereafter his body was found in his area.

9. In Paragraph 11, he admitted that he did not know that the deceased died as a result of the injuries which were caused to him by certain inhabitants of Ganjpara area of Durg township.

10. From the statements of J.S. Madhavi, it does not appear that he was an eye-witness or has any personal knowledge about anything. It also appears from his statements that he recorded the first information report (Ex. P-15) after making certain investigations.

11. P.W. 1 Tirohit Chouhan is an Advocate by profession. The first information report (Ex. P-15) says that J.S. Madhavi (P.W. 9) was informed by P.W. 1 Tirohit Chouhan and P.W. 3 Padum Bahadur that the present appellant had caused injuries to the deceased.

12. P.W. 1 Tirohit Chouhan stated before the Court that he knew the accused persons by their face but did not know their names. At about 2.00 in the mid-night when he was sleeping at his place, certain persons came to his house and informed him that some thief was apprehended by the public, therefore, a telephonic information be given to the police. He however tried to contact the police station but nobody lifted the phone at the police station. On the next day, when he was preparing to go to the Court, J.S. Madhavi, Town Inspector and the Additional Superintendent of Police, alongwith the force, came to him. He also stated that he did not know anything about the incident. He also stated that as

street-lights were closed, he was unable to say whether the accused persons had come to his house or not. He was later on informed that telephone number of Police Station, Mohan Nagar had changed, therefore, he was unable to contact at police station. Neither the witness was declared hostile nor leading questions were put to him. From his statements, it does not appear that he was a witness to the incident or he knew the accused persons by their names. It also does not appear from his statements that when his statements under Section 161, Cr.P.C. were recorded, he never gave any details about the incident or participation of the appellants.

13. P.W. 3 Padum Bahadur is the Night-Watchman. In the very first line of his statements, he stated that he did not know the accused persons. He denied the suggestion that he knew that some thief was apprehended by the residents of the said area. He also stated in the Court that he was unable to identify the accused as he had seen them in the Court for the first time. He further stated that he never informed the police that present appellants beat the deceased or he himself gave the names of the accused persons as the assailants. He was however declared hostile but in his cross-examination by the Public Prosecutor he did not speak even a single word in favour of the prosecution. P.W. 1 Tirohit Chouhan and P.W. 3 Padum Bahadur were in fact the star witnesses of the prosecution.

14. P.W. 2 Man Bahadur was also examined as an eye-witness. Unfortunately, he did not support the prosecution and was declared hostile. He denied in the Court that the statements marked as 'A to A' in his case diary statements (Ex. P-1) were given by him. From the statements of P.W. 2 Man Bahadur, the prosecution cannot seek any assistance.

15. P.W. 4 Tikaram Dote had identified the body of the deceased saying that deceased Ashwani was his younger brother. P.W. 5 T.S. Verma is the Patwari, who had prepared the map of the spot. P.W. 6 Hemlal, Head Constable No. 971, stated before the Court that on 1-2-2000 when he came to the office he was informed by Constable No. 355 Vishnuram that the members of the public had beaten somebody who was lying unconscious. Thereafter, this witness went to the spot with Constable Rajendra Kumar and they took the injured to the hospital

where they were informed that the person had already died.

16. P.W. 7 Dr. V.S. Baghel had assisted Dr. V.R. Meshram when the post mortem of the body was conducted. P.W. 8 Prakash Khandelwal was examined as a witness to prove the seizures, etc., but he also did not support the prosecution and was declared hostile. He clearly stated before the Court that nothing was seized from the accused persons and on being asked by the Police Officers he simply signed Exs. P-8, P-9, P-10 and P-11.

17. But for the above nine witnesses, the prosecution did not examine anybody in support of its case. The learned Trial Court has considered the merits of the matter relating to complicity of the accused persons in the alleged crime, between Paragraphs 13 and 17 of the judgment.

18. In Paragraph 13, the learned Trial Judge observed that P.W. 1 Tirohit Chouhan was suppressing the truth. He also observed that the other witnesses were not supporting the prosecution. In last lines of Paragraph 13 of the judgment, the learned Trial Judge recorded that Padum Bahadur and Man Bahadur were also suppressing the material facts. There is no Paragraph 14 in the judgment. In Paragraph 15, the learned Judge discussed the statements of P.W. 9 J.S. Madhavi. The learned Trial Judge observed that the alleged incident took place between 1.30 and 2.30 a.m. and the first information report was registered at 14.25, therefore, there was no delay in registration of the first information report. The learned Judge ultimately observed that there were no contradictions in the statements of P.W. 9 J.S. Madhavi. On the foundation of the statements of J.S. Madhavi (P.W. 9), and as the names of the accused persons were well mentioned in the first information report, the learned Trial Judge held that complicity of the accused persons in commission of the crime was proved.

19. The question for consideration is that whether the first information report which was not recorded by an eye-witness and none said that the first information report was recorded by the police on his information, can such a first information report provide a foundation for recording a finding of guilt against the interest of the accused ?

20. Section 154 of the Code of Criminal Procedure talks about an information in cognizable cases. Section 154, Cr.P.C. reads as under:--

'154. Information in cognizable cases.-- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced in writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of a police station in relation to that offence.'

21. The objection of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilt party.

22. A first information report is extremely vital and valuable piece of evidence for corroborating the oral evidence adduced. The first information report is of considerable value as it shows on what materials the investigation commenced and what was the story originally told and what were the facts given out immediately after the occurrence before there is time to forget or embellish. The question whether the first information report is substantive evidence or not and for

what particular purpose it can be used is not res-integra. There is catena of the authorities which say that the first information report is neither substantive evidence nor a statement recorded in the first information report can provide a ground for recording the conviction of the accused, the first information report can be used only for contradiction or corroboration. The first information report can only be used to discredit the testimony of the maker of the first information report. It cannot be used to contradict or discredit the other eye-witnesses if their testimonies are found to be worthy of reliance and in such cases the evidence of such eye-witnesses has to be scrutinised. The first information report and facts stated therein are not substantive piece of evidence but can be used to confront and contradict maker at trial.

23. In the matter of Damodar Prasad and others v. State of Maharashtra (AIR 1972 SC 622), the Supreme Court clearly observed that the first information report is not substantive evidence; it can be used for one of the limited purposes of corroborating or contradicting the makers thereof. Another purpose for which the first information report can be used is to show the implication of the accused to be not an afterthought or that the information is a piece of evidence res gestae.

24. In the matter of Hasib v. State of Bihar (AIR 1972 SC 283), the Supreme Court observed that the object of first information report from the point of view of the informant is to set the Criminal Law in motion. Such a report does not constitute substantive evidence, though it is important as conveying the earliest information about the occurrence. The Supreme Court further observed that the first information report can be used only as a previous statement for the purpose contemplated under Section 157 or Section 145 of the Evidence Act i.e., for corroborating or contradicting its maker and not of other witnesses.

25. In the matter of Apren Joseph v. State of Kerala (AIR 1973 SC 1), the Supreme Court again observed that first information report under Section 154, Cr.P.C. is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in Court.

26. In the matter of Dharma Ram Bhagare v. State of Maharashtra (AIR 1973 SC 476), the Supreme Court again considered the value and importance of the first

information report and observed that the first information report is never treated as a substantive piece of evidence. It can only be used for corroborating or contradicting its maker when he appears in Court as a witness. Its value must always depend on the facts and circumstances of the case. The first information report can only discredit the testimony of its maker. It can by no means be utilised for contradicting or discrediting the other witnesses who do not have any desire to spare the real culprit and to falsely implicate him.

27. In the matter of Nanhku Singh v. State of Bihar (AIR 1973 SC 491), the Supreme Court in para 7 of its judgment again observed that the first information report is not a substantive piece of evidence, it is an information of a cognizable offence given under Section 154 Cr.P.C. and if there is any statement made therein, it can only be used for the purposes of contradicting and discrediting a witnesses under Section 145 of the Evidence Act.

28. In the matter of George and others v. State of Kerala, (1998) 4 SCC 605, the Supreme Court again had an occasion to consider about the importance of and the role of the first information report. Para 30 of the judgment reads as under:--

'That bring us to the dying declaration made by the deceased before P. W.s 3 and 4 which has been pressed into service by the prosecution to corroborate the ocular version of P.W. 3. Before proceeding further we must confess that we have not been able to fathom how the Trial Court could rely upon the contents of Ex. P-1, lodged by P.W. 1, and that too for the purpose of discarding the evidence of P.W.s 3 and 4. P.W. 1 turned hostile and testified that he did not make any statement before the police but signed on the dotted lines. It is trite that an FIR is not substantive evidence (unless of course it is admitted under Section 32(1) of the Evidence Act) and can be used to corroborate or contradict the maker thereof; and, therefore, the question of corroborating P.W. 1 by his purported statements, as contained in Ex. P-1, could not arise. In spite thereof the Trial Court observed : '..... the first informant's statement is further supported by the evidence of P.W. 1 and used the statements contained therein (Ex. P-1) as substantive evidence to discredit P.W.s 3 and 4. It must, therefore, be said that the approach of the Trial Court in dealing with the FIR was legally impermissible. We are also surprised to

find that the Trial Court disbelieved P.W.s 3 and 4, relying upon the statements contained in the inquest report (Ex. P-8). Statements contained in an inquest report, to the extent they relate to what the Investigating Officer saw and found are admissible but any statement made therein on the basis of what he heard from others, would be hit by Section 162, Cr.P.C.'

29. From the above judgments of the Supreme Court, it is clear that the first information report even if is lodged by an eye-witness cannot be used as a substantive piece of evidence except unless it is admitted in evidence under Section 32 of the Indian Evidence Act.

30. In the present case, we are shocked and surprised to see that the learned Court below has based the conviction only on the first information report. We are astonished that a first information report which is recorded by Police Officer after gathering certain information from certain witnesses was used for recording the findings against the interest of the accused, especially when the said witnesses did not speak in the Court that they had ever given such statements to the Police Officers.

31. It is not the case of the prosecution that P.W. 9 J.S. Madhavi was an eye-witness. The eye-witness did not support the prosecution. Unless somebody says that he had given certain information to the police or on basis of his information the police officer had recorded the first information report, such first information report would not assume any importance because the said statements would be hearsay and will have the limited importance under Section 6 of the Indian Evidence Act. The learned Court below unfortunately relied upon the first information report and its contents to make uncharitable observations against P.W. 1 Tirohit Chouhan. The Court below did not try to read the statements of Tirohit Chouhan in full. Tirohit Chouhan had clearly stated that certain persons had come to his house but as the street-lights were off, he could not identify those persons. Condemning this statement of the witness, the Trial Court had observed that Tirohit Chouhan was suppressing material fact. Unfortunately, the learned Court below lost the sight of the fact that Tirohit Chouhan was neither declared hostile nor with the permission of the Court leading questions were put to him. Be that as it may, the Trial Court

was not justified in making unnecessary remarks against a witness.

32. The Court below has simply observed that as the names of the accused persons were shown in the first information report, therefore, complicity was proved. In view of the above legal position, the said finding is contrary to law and cannot be upheld. It is not expected of a Court of Law that contrary to the settled legal position and misreading the statements of the witnesses, it would record a finding against the interest of the accused just for nothing. It is expected of a Court of Law that it knows law and while applying the said law it is acting freely without pressure or coercion.

33. The findings recorded by the Court below being contrary to law, settled principles of law and contrary to the facts available on the record, cannot be upheld. The same deserve to and are accordingly set aside. It is held that the prosecution failed to bring home the guilt. Each of the appellant is acquitted of the charges.

34. This Court had been repeatedly asking the subordinate Trial Courts to give the details of the period of detention in the judgment so that the Appellate Court at the first glance of the judgment may gather the knowledge that for how many days the accused had remained in jail and to what period he is entitled as a set-off under Section 428, Cr.P.C.

35. In the present case, the learned Court below in para 18 of its judgment contrary to the directions of this Court has simply observed that period of detention be set-off against the sentence and a separate certificate be annexed. This conduct of the learned Trial Court can not be approved. When the law says that something is to be done in accordance with law, then the same must be done in the said particular manner or not at all. The Trial Court has ignored the mandatory directions issued by this Court. It has not cared to see that the records do not contain any separate certificate showing the period of the detention suffered by each of the accused. Just below the judgment from pages 68 to 79, the records of the finger print slip are annexed. We are sorry, to record that the Court below did not care to discharge its duties in accordance with law.

36. It is hereby directed that each Trial Court while convicting an accused shall be obliged to give a detailed statement of the period of detention of the accused for which he is entitled to a set-off under Section 428, Cr.P.C.in the judgment itself. We request the Trial Courts to observe these directions of the High Court and not to compel the High Court to take an action against the erring Judges under the provisions of Contempt of Courts Act.

37. The appeal is allowed. The accused persons, who are said to be in jail, be immediately set at liberty, if not required in any other case.

38. Criminal Appeal allowed.

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