Mer Vas Deva Vs. State of Gujarat

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Court : Gujarat

Decided On : May-01-1964

Reported in : AIR1965Guj143; 1965CriLJ696

Judge : B.J. Divan and; J.B. Mehta, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 154 and 162; ;Indian Panel Code, 1860 - SectionS 224 and 302; Evidence Act, 1872 - Sections 145

Appeal No. : Criminal Appeal No. 445 of 1963

Appellant : Mer Vas Deva

Respondent : State of Gujarat

Advocate for Def. : A.D. Desai, Asst. Govt. Pleader

Advocate for Pet/Ap. : D.C Trivedi, Adv.

Judgement :

Divan, J.

(1-8) (Paras 1to 8 of the judgment contain facts of the case and discussion of evidence.)

(9)Telephone message was received and he made entry No.7 in the police station diary of Porbandar Police Station and that entry is in these terms: Entry No.7,

Ex.41, shows that driver Hamir rang up from phone No.99 that one man was assaulted by means of an axe at Sudama Chawk and the police should be sent immediately. There upon the person making the entry i.e., the police station officer handed over charge to head constable Moti Juma and head constable Abakadar immediately started for investigation. It is true that the police station diary does not mention the nature of the injury which was caused to the injured person near Sudama temple; but it did mention that injury had been caused by means of an axe and hence at least an offence under S. 324 of the Indian Penal Code was disclosed by this telephone message. As shown pausing here, it is important to note that in the instant case, F.I.R.Ex. 5 is not a statement giving information regarding the commission of a cognizable offence as contemplated by section 154, Criminal Procedure Code. It is well settled law that if the statement has been recorded by the police as contemplated by Section 154, Criminal Procedure Code that statement cannot be said to be recorded in the course of the investigation of the case, and therefore, would not be hit by the provisions of section 162, Criminal Procedure Code as such a statement is not a statement recorded in the course of investigation. Such statements recorded in accordance with the provisions of Section 154 are popularly referred to as first information reports. In the instant case what we find is that head constable Abrader received a telephone message at about 1.20 P.M. on February 13, 1961. This head constable was in charge of the police station at the time when the by Schedule II of the Criminal Procedure Code an offence punishable under S. 324 is a cognizable offence and the assailant concerned can be arrested without a warrant from the Magistrate. Under these circumstances, the telephone message sent by Hamir from phone No.99 was the first information report contemplated by Section 154, Criminal Procedure Code and all other things which transpired subsequently must have been done in the course of investigation.

(10)P.S.I.Nanavati, P.W.No.22, Ex.46, has stated in his evidence that on the day of the incident he himself was on patrolling duty in the town. At about 1.25 P.M. he was near Khadi Bhandar and he saw a crowd of persons collected near Mama Kotha whereupon P.S.I Nanavati along with the police party went in that direction and he reached the scene of the offence and he saw s man lying on the ground having injuries on his had and feet and is delirious condition and he was

unconscious. The P.S.I asked P.C.Ratigar who was present at the scene of the offence, to fetch a taxi or any other vehicle for removing the injured person to the hospital and in the meanwhile Hamir Vikram came there and made a statement which P.S.I.Nanavati subsequently recorded at the hospital. This P.S.I. had already visited the scene of offence. After the above statement was made to him by Hamir he had started asking questions at the scene of offence and had made arrangements for removing the injured person to the hospital. Under these circumstances, Ex.5 cannot be said to be a statement recorded otherwise than in the course of the investigation and in our opinion, that document was wrongly admitted on the record as the first information report.

(11) We have come across many cases recently when in the subordinate Courts documents which are not found on a closer scrutiny to be first information reports contemplated by Section 154, Criminal Procedure Code are wrongly admitted on the record as such first information reports. We wish to draw the attention of all subordinate Courts that before admitting such a document on the record of the case as first information report, the Court should be satisfied from the evidence of the person whose statement is so recorded and the evidence of the investigating officer that the investigation had not commenced at the time when that very statement, purporting to be the first information report, was recorded. In some cases the prosecution case is likely to suffer because a document which was admitted as first information is subsequently found at the stage of appeal to have been a statement recorded in the course of the investigation. In some cases injustice may be done to the accused because the defence council may not put certain questions to the witness whose statement is being treated as a first information report at the time of cross-examining him and rests content with the fact that the entire statement of that witness is brought on the record. It has been pointed out by the High Court in the case of State v. Hiralal, 1964-5 Guj LR 255: (AIR 1964 Guj 261), that even in the case of a first information report must be confronted in the course of the cross-examination with the contradictions and if that is not done, it cannot be said that the contradictions and the omissions in the statement have been properly proved. In any event, therefore, it would be the duty of the defence counsel whether a statement has been recorded as a first information report or is treated as a treatment recorded in the course of the

investigation contemplated under Section 162, Criminal Procedure Code, to confront the witness concerned with the omissions or contradictions from the statement. The proper course to be followed is to make the statement of the complainant concerned for identification at the stage when that very complainant is examined as a witness for the prosecution and after recording the deposition of the investigating officer and after being satisfied that the statement was not recorded in the course of the investigation, to mark that document as a regular exhibit in the case. It may happen that in a particular case the circumstances of the case are such that the complainant is the very first person who goes to the police station and gives information about the commission of a cognizable case to the officer in charge of the police station and before doing anything else the police officer record the statement of the complainant. In such a case, the statement can be straightly marked as an exhibit on the record without marking it for identification in the first place and then marking it as a regular exhibit after the evidence of the investigating officer is recorded. But unless these facts clearly emerge from the record, it would be advisable for the trial Court to adopt the procedure of marking a statement first for identification and then as a regular exhibit. We have made these observations because in numerous cases we have come across, statements which are recorded in the course of the investigation, being treated as first information reports without any objection having been taken by the defence counsel or without the trial Court considering the question whether the statement was recorded in the course of the investigation or whether it was recorded before any investigation commenced. (12-18) (Paras 12 to 18 contain further discussion of evidence and the finding arrive

(12) HH/RMG/D.V.C.

(13) Appeal allowed.
