

RAMSINH BAVAJI JADEJA

A

v.

STATE OF GUJARAT

MARCH 1, 1994

[K. JAYACHANDRA REDDY AND N.P. SINGH, JJ.]

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*Code of Criminal Procedure, 1973 : Sections 154 and 162—First Information Report—Commission of cognizable offence—Cryptic information given on telephone—Whether and when could be taken as First Information Report of the occurrence.*

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The appellant and two others were tried for offences punishable under Sections 302, 302 r/w 34 and 325 IPC. The Trial Court gave benefit of doubt to the accused and acquitted them. On appeal by the State, the High Court convicted the appellant for an offence under Section 302 and sentenced him to rigorous imprisonment for life. However, it did not interfere with the order of acquittal against the two co-accused.

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The convicted accused preferred the present appeal contending that the message noted in the telephone book maintained at the Police Station which was treated as First Information Report did not mention the names of the accused, and as such the evidence of the deceased's brother that it was the appellant who gave the knife blow in the chest of the victim should not have been accepted.

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Dismissing the appeal, this Court

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HELD : 1. When the information of a cognizable offence has been given on telephone, and the message is cryptic in nature and the officer in-charge proceeds to the place of occurrence on the basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be First Information Report. The object and purpose of giving such telephonic message is not to lodge the First Information Report, but to request the officer-in-charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on basis of that information, the officer in-charge, is *prima facie* satisfied about the commission of a cognizable

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A offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by Section 162 of the Criminal Procedure Code. That statement can be treated as First Information Report. But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as First Information Report. [243-G, H; 244-A-C]

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C *Tapinder Singh v. State of Punjab*, AIR (1970) SC 1566 and *Soma Bhai v. State of Gujarat*, AIR (1975) SC 1453, relied on.

D 2. In the instant case, the Investigating Officer having received the telephonic message, immediately reached the hospital and he first recorded the statement of PW6; the brother of the deceased. He sent the said statement to the city police station, for registering a case. Thereafter he held the inquest on the dead body of the deceased; sent the dead body of the deceased for postmortem; prepared the injury report in respect of the injuries on the person of PW6 and sent him for medical examination and treatment. Then he went to the scene of occurrence and collected blood-stained crust of cement plaster and examined witnesses. Under the circumstances the statement of PW6, which was recorded by the Investigating Officer, after reaching the hospital should have been treated as the First Information Report. There is no dispute, that in that statement the name of the appellant was mentioned by PW6 and details of the occurrence as disclosed by him in Court was stated by him. [245-D-F]

F 3. As such the Courts below were in error in treating the cryptic message given on telephone by the Head Constable to the office in charge, as First Information Report. [245-H; 246-A]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 563 of 1980.

From the Judgment and Order dated 23.4.80 of the Gujarat High Court in Crl. A. No. 251 of 1978.

H Yashank Adhyaru, Mrs. B.K. Brar and P.H. Parekh for the Appellant.

Anip Sachthey and B.N. Babu for the Respondent.

The Judgment of the Court was delivered by

N.P. SINGH, J. 1. The appellant, who had been acquitted, by the Trial Court, for an offence under Section 302 of the Penal Code, has been convicted by the High Court for the said offence and sentenced to imprisonment for life, on an appeal filed on behalf of the State.

The prosecution case is that on 7.5.1977 at about 5.30 p.m. Sanat Kumar (PW6) the informant, had gone to the Ambar Talkies, along with his brother, Sharad Kumar (deceased) for the evening show. Both the brothers took their cycles to the cycle stand of the appellant. PW6 was asked to pay 40 paise as the charge for keeping the cycles in the stand. Sharad Kumar (deceased), the brother of PW6, said that in other theatres only 15 paise per cycle was being charged as such why they were being asked pay 20 paise per cycle. In order to avoid a quarrel, PW6 said his brother, sharad Kumar, that they shall not keep the cycles at the said stand. They took out their cycles from the stand and placed them in charge of a hotel keeper, just on the opposite side of the theatre. As they were going inside the cinema hall, the appellant called them and asked them as to why they had not kept the cycles at his stand, whereupon PW6, told the appellant that they did not want to have a quarrel with him. The appellant asked PW6 and his brother to get out of the compound. Sharad Kumar (deceased) told the appellant that as they had purchased the tickets for the show, why they should go out of the cinema hall. The appellant gave a slap to Sharad Kumar (deceased). At that very moment, the two co-accused (since acquitted) came there. The appellant caught hold of the hand of PW6, twisted it, gave a first blow on his ribs. Thereafter a scuffle took place. The appellant took out a knife and gave a knife blow on the left chest of the Sharad Kumar, who fell down. The accused persons ran away. PW6 tried to lift his brother Sharad Kumar and tried to take him inside the Ambar Talkies, but he could not lift him. He left him on the steps of the Amber Talkies and went into the office and tried to contact the police by telephone. The persons present in the office did not permit him to talk on the telephone. Then he called a rickshaw and took his brother in rickshaw to the Irwin Hospital, Jamnagar. The doctor who examined his brother, declared him to be dead. PW6 was shocked. He sat on the bench of the hospital. Head Constable, Gopinath (PW19), who was on duty at the

- A Irwin Hospital, informed the P.S.I. Shimpi by telephone, that a fight had taken place in the Amber Talkies and the dead body of one Sharad Kumar had been brought to the hospital. P.S.I. Shimpi (PW21) having received the telephonic message aforesaid at about 6.50 p.m. rushed to the Irwin Hospital and recorded first the statement of PW6 and sent the same to the city police station for registration of a case. Thereafter, he held inquest on the dead body of the deceased and prepared an inquest report. Then he sent the dead body, for postmortem examination. He also prepared an injury report in respect of the injuries on the person of PW6 and sent him for medical examination and treatment to the hospital. Then, the Investigating Officer (PW21), went to the scene of occurrence and prepared a panchnama of the place of occurrence. He took possession of chapple of the deceased, blood-stained crust of cement plaster and recorded the statement of other witnesses. On 8.5.1977, the Investigating Officer, arrested the appellant. The appellant expressed his willingness to produce the knife used in the commission of an offence. He took the Investigating Officer and the panch witnesses to his house and took out the knife from the courtyard of his house.

- After investigation, charges were laid against the appellant and two others for offences punishable under Sections 302, 302 read with Section 34 and 325 of the Penal Code. The Trial Court gave benefit of doubt to the accused persons and acquitted them of the charges levelled against them including against the appellant. The High Court on appeal being filed on behalf of the State did not interfere with the order of acquittal against the two co-accused persons but set aside the order of acquittal passed against the appellant and convicted him for an offence under Section 302 and sentenced him to rigorous imprisonment for life.

- The learned counsel, appearing on behalf of the appellant, pointed out that at about 6.50 p.m., the head Constable, Gopinath (PW19), informed the Sub-Inspector Shimpi (PW21) on telephone that a fight had taken place in the Ambar Talkies and the dead body of one Sharad Kumar had been brought to the hospital; that message was noted down by PW21 in his telephone book (exhibit 58), in which names of the accused persons had not been mentioned. As that entry in telephone book has been treated as First Information Report by the Sessions Judge as well by the High Court, the evidence of PW6 in Court that it was the appellant, who gave the knife blow in the chest of the victim should not have been accepted.

According to the learned counsel, if PW6 had disclosed the names of the appellants and other two co-accused persons to the Head Constable, in normal course he should have also mentioned that fact in his telephonic message. A

From the judgments of the Sessions judge and the High Court, it appears that at about 6.30 p.m., the Head Constable (PW19) was informed by the Chief Medical Officer of the Hospital that in a fight one Sharad Kumar had died and his body had been brought to the hospital. He, accordingly, informed the P.S.I. Shimpi (PW21) by telephone, who having received the said message noted down the same in the telephone book (Exhibit 58) before leaving the police station. Head Constable (PW19) has denied that he had met PW6 before he telephoned to the police station. PW6 has also stated that neither he had any occasion to meet the Head Constable (PW19) at the hospital nor he had given any statement in respect of the occurrence to the said Head Constable. B C

Now the question which has to be examined is as to whether the cryptic information given on telephone by Head Constable can be held to be the First Information Report of the occurrence. Section 154 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') requires an officer in charge of a police station to reduce to writing every information relating to the commission of a cognizable offence, if given orally to such officer. It further requires that such information, which has been reduced to writing shall be read over to the informant and the information reduced to writing or given in writing by the person concerned shall be signed by the person giving it. Section 2(h) defines investigation to include all the proceedings under the Code for the collection of evidence conducted by a police officer or by any other person (other than a Magistrate), who is authorised by a Magistrate in this behalf. D E F

From time to time, controversy has been raised, as to at what stage the investigation commences. That has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. If the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be First Information Report. The G H

- A object and purpose of giving such telephonic message is not to lodge the First Information Report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on basis of that information, the officer in charge, is *prima facie* satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer "in the course of investigation", covered by Section 162 of the Code. That statement can not be treated as First Information Report. But any
- B telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as First Information Report. This can be illustrated. in a busy market place, a murder is committed. Any person in the market, including one of the shop owners, telephones to the nearest police station, informing the officer in charge, about the murder, without knowing the details of the murder, the
- C accused or the victim. On basis of that information, the officer in charge, reaches the place where the offence is alleged to have been committed. Can it be said that before leaving the police station, he has recorded the First Information Report ? In some cases the information given may be that a person has been shot at or stabbed. it cannot be said that in such a
- D situation, the moment the officer in charge leaves the police station, the investigation has commenced. In normal course, he has first to find out the person who can give the details of the offence, before such officer is expected to collect the evidence in respect of the said offence.
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- F In the case of *Tapinder Singh v. State of Punjab*, AIR (1970) SC 1566, it was said by this Court, that anonymous telephone message at police station that firing had taken place at a taxi stand; does not by itself clothe it with character of first information report, merely because the said information was first in point of time and the said information had been recorded in the daily diary of the police station, by the police officer
- G responding to the telephone call. Again in the case of *Soma Bhai v. State of Gujarat*, AIR (1975) SC 1453, in respect of an information given to the police station by telephone, it was held :-

- H "The message given to the Surat Police Station was too cryptic to constitute a first information report within the meaning of Sec.

154 of the Code and was meant to be only for the purpose of getting further instructions. Furthermore, the facts narrated to the P.S.I. Patel which was reduced into writing a few minutes later undoubtedly constituted the first information report in point of time made to the police in which necessary facts were given. In these circumstances, therefore, we are clearly of the opinion that the telephonic message to the Police Station at Surat cannot constitute the F.I.R. and the High Court was in error in treating the F.I.R. lodged in the present case as inadmissible in evidence."

Recently, in the case of *Dhananjoy Chatterjee @ Dhana v. State of West Bengal*, J.T. (1994) 1 SC 33, it was said the cryptic telephonic message received at the police station from the father of the deceased had only made police agency run to the place of occurrence and to record the statement of the mother of the deceased; the investigation commenced thereafter.

It is not in dispute that the Investigation Officer (PW21), having received the telephonic message, immediately reached the hospital and he first recorded the statement of PW6. He sent the said statement to the city police station, for registering a case. Thereafter he held the inquest on the dead body of the deceased; sent the dead body of the deceased for postmortem; prepared the injury report in respect of the injuries on the person of PW6 and sent him for medical examination and treatment. Then he went to the scene of occurrence and collected blood stained crust of cement plaster and examined witnesses. Under the circumstances mentioned above the statement of PW6, which was recorded by the Investigating Officer, after reaching the hospital should have been treated as the First Information Report. There is no dispute, that in that statement the name of the appellant was mentioned by PW6 and details of the occurrence as disclosed by him in Court was stated by him. This is apparent because during the cross examination of PW6, his attention has not been drawn to his statement recorded by PW21, saying that he did not name the appellant as the assailant of his brother during his statement to the Investigating Officer. As such it has to be held that PW6 immediately after the occurrence, made a statement before the Investigation Officer (PW21) and named the appellant, as the person who gave a knife blow in the chest of his brother Sharad Kumar (deceased). According to us, the Sessions Judge as well as the High Court were in error in treating the cryptic message given

A on telephone by the Head Constable (PW19) to the officer in charge, as First Information Report.

B PW6 has asserted throughout that he knew the appellant by name and face. He has been fully corroborated by PW11, who brought the victim Sharad Kumar and PW6 on his rickshaw from the Ambar Talkies to the hospital. PW11 was known to PW6 from before. He has stated that PW6 had told on the way to the hospital that the appellant had inflicted a knife blow to his brother, who was in serious condition. The presence of PW6 at the time of the occurrence cannot be disputed because he has also suffered a fracture at the same occurrence, which had been proved by the orthopaedic surgeon (PW5). The appellant also produced the knife during the investigation before PW21, by which he had stabbed Sharad Kumar. On behalf of the appellant no motive on the part of PW6 has been suggested for falsely naming the appellant as the assailant of his brother.

D The High Court, in the facts and circumstances of the case, was perfectly justified, in setting aside the acquittal of the appellant by the Sessions Judge. We find no reason to interfere with the said judgment of the High Court. Accordingly the appeal filed on behalf of the appellant is dismissed. It appears, the appellant had been enlarged on bail by this Court. Now he should be taken in custody to serve out the remaining period of his sentence.

G.N.

Appeal dismissed.