

(1964) 04 GUJ CK 0006
In the Gujarat High Court

Case No : Criminal Appeal No. 617 and 689 of 1963 and Criminal Revision
Application No. 30 of 1963

Mulu Laxman

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-04-1964

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 154, 162

Citation : AIR 1965 Guj 319 : (1965) CriLJ 762 : (1964) GLR 591

Hon'ble Judges : N.K. Vakil, J;B.J. Divan, J

Bench : Division Bench

Advocate : C.N. Shah and D.D. Vyas, for the Appellant; A.N. Surti, Asst. Govt.
Pleader, for the Respondent

Judgement

Divan, J.

(1) In the instant case, Alubha Bawaji has been treated as the first informant and his first information report has been brought on the record as Ex. 8 is not the first information report contemplated by S.154 of the Code of Criminal Procedure. P.S.I.Patil, P.W.39, Ex.84, has clearly stated in his evidence that at about 2 A.M. on October 9, 1962, he received information from a Police Constable in connection with this case. He was informed that Rathuba and others of Kharkharabela, who had received injuries, had been brought to the dispensary and that their condition was serious. P.S.I Patil then sent a Yadi to the Taluka Magistrate for recording their dying declarations. After sending the Yadi, P.S.I.Patil left his quarters at about 2-10 A.M. and went to the dispensary. There he received information that Ratubha had already expired and he ascertained for himself going to the cart of Ratubha that Ratubha was dead. In the meanwhile, the Taluka Magistrate arrived and went inside the dispensary. P.S.I.Patil remained outside and arranged for police bandobast over the dead-body of Ratubha. The public carrier with Narubha and Balubha arrived within about 15 minutes thereafter and P.S.I.Patil requested the Taluka Magistrate to record the dying

declarations of Narubha also. At about 2-30 or 2-35 A.M. the Medical Officer of Paddhari dispensary left for Rajkot in the public carrier to go with Narubha, Sidhubha and Devubha. P.S.I.Patil then sent the cart containing the dead body of Ratubha to the post mortem and thereafter he recorded Ex. 8 and this was done at about 2-30 A.M. at Paddhari dispensary. The inquest panchnama regarding the dead body of Ratubha appears to have been recorded at about 7-15 A.M. the next morning. But it is clear that P.S.I.Patil had received information in connection with the commission of a cognizable offence at his quarters. Thereafter, he proceeded to the dispensary, had seen the dead body of Ratubha for himself and had also requested the Taluka Magistrate to record the dying declaration of Narubha. Under these circumstances, P.S.I. Patil had taken steps in the investigation of the case prior to the recording of Ex. 8 and hence Ex. 8 cannot be said to be the first information report as contemplated S. 154, Cr.P.C.

(2) We have come across many cases, where we find that the trial Court have not paid sufficient attention to the question whether the so-called first information report in a particular case is or not the report contemplated by S.154, Cr.P.C. It is obvious that if investigation has already commenced by the time so-called first information report comes to the recorded, then the statement even though referred to by the police authorities as the first information report is nothing more than a statement recorded in the course of the investigation and would be governed by the provisions of 162, Cr.P.C. In such a case it cannot be used for the purpose of corroborating the maker of that statement. It is true that in many cases, it is only when the Police Sub-Inspector who has recorded the statement, is examined in the course of the trial that it becomes obvious whether the investigation had commenced or not at the time when the statement of the so-called first information was recorded. It is, therefore, desirable that unless it becomes apparent from the facts of the prosecution case that the so-called first informant had initiated the investigation, the so-called first information report of the case but should be marked for identification and it should be taken on the record as an exhibit only if from the evidences if the Investigating Officer it becomes clear that the so-called first information report was in fact the report contemplated by S.154, Cr.P.C. By adopting this procedure, that we are indicating in this judgment, no prejudice is like to be caused either to the accused or to the prosecution. In the case of State of Gujarat and Others Vs. Hiralal Devji and Others, , it has been pointed out that even if there is a first information report recorded under the provisions of S.154, Cr.P.C. recorded by an officer in charge of a Police Station, it is not substantive evidence but is a previous statement in writing of the maker of that statement and can be used to corroborate or contradict the maker of the first information report. It has further been pointed out in that judgment that by reason of the provisions of S. 145 of the Indian Evidence Act. in any part of the first information report is to be used for the purpose of contradicting the maker of the statement, recorded as the first information report, the attention of the maker must be before the writing can be proved, be to those parts of the statement which are to be used for the

purpose of contradicting him and in that judgment it has been pointed out that this provision for confronting the witness with those part of this earlier statements by which it is proposed to contradict him is a fair and proper provision and is in accord with the sense of fair play to which Courts are accustomed. In the light of this judgment in State of Gujarat and Others Vs. Hiralal Devji and Others, it makes no difference so far as the defence is concerned whether the first information report is taken on the record as an exhibit immediately when the maker of the it is examined s a witness or is brought on the record as an exhibit at the time when the Investigating Officer is examined. In either case, he defence counsel must confront the maker of the statement with those portions of it by which it is proposed to contradict him. In the instant case, as pointed out above, Ex.8 is not the report contemplated by S. 154, Cr.P.C and in our opinion, was wrongly admitted on the record s a first information report.

* * * * * (3) Order Accordingly.