

(1973) 03 GUJ CK 0001
In the Gujarat High Court

The State of Gujarat

APPELLANT

Vs

Somabhai Lalabhai

RESPONDENT

Date of Decision : 23-03-1973

Acts Referred:

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

Citation : (1975) CriLJ 74 : (1974) 15 GLR 147

Hon'ble Judges : T.U. Mehta, J;A.N. Surti, J

Bench : Division Bench

Judgement

Mehta, J.

xx xx xx 27. The next day i.e. on 21st February, 1971 the investigation proceeded further and during the course of this investigation the accused is said to have given a cross complaint as found at Ex. 102. One of the questions which is debated in this appeal is whether this cross complaint amounts to a statement recorded by the police during the course of the investigation of this case, and if so, whether it is admissible.

xx xx xx 33. Another controversial point which is involved in this appeal is as regards the admissibility of the cross complaint" found at Ex. 102. Here the contention of the defence is that this document is really speaking a statement of the accused recorded by the investigating officer during the course of the investigation of this case, and therefore, it is not admissible in evidence. On this point, the learned trial Judge, has held in favour of the prosecution, because, according to him, this document does not amount to a statement of the accused but rather amounts to an independent cross complaint made by the accused when he was in police custody.

xx xx xx 98. The last question which remains to be considered is about the admissibility of the complaint of the accused found at Ex. 102. The question is whether this is a genuine complaint or merely a statement of the accused recorded during the course of the investigation. In other words, the objection

which is raised by the defence against its admissibility is only confined to Section 162 of the Criminal Procedure Code. Section 162 of Criminal Procedure Code says that no statement made by any person to a police officer in the course of an investigation under Chapter XIV shall, if reduced to writing, be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was recorded. This section therefore prohibits the use of a police statement at a trial if the said statement is recorded during the course of investigation of the offence in question under Chapter XIV of the Code. It is now a settled position in law that the expression "person" which is used in Section 162 includes even a person who is subsequently accused of the offence for which he is tried. Therefore, a statement made even by an accused to a police officer "in the course of investigation" under Chapter XIV of the Code, would be hit by Section 162. Therefore, if the cross complaint, in this case is found to be a statement made "in the course of investigation" of the offence for which the accused is tried it cannot be received in evidence as it would be covered by the bar contemplated by Section 162. However, if it is found to be a genuine complaint, which has nothing to do with the course of investigation undertaken under Chapter XIV of the Code, Section 162 has no application and hence it must be received in evidence. The reason is that even a person accused of an offence has a right to set the law into motion under Sections 154, 155 and 156 of the Code of Criminal Procedure, for the offences committed against him.

99. Therefore, the real controversy between the Parties is whether the document in question is a genuine complaint or merely a police statement which is given a false garb of a complaint. It need not be emphasised that a statement does not become a complaint merely because it is couched in a particular language or is given a particular form, or because it is described as such. In order to decide whether it is a genuine complaint or is a statement hit by Section 162, Criminal Procedure Code, the Court has to take into account not only the intrinsic character of the statement but also the circumstances under which it was recorded. If these circumstances show that it was recorded "in the course of investigation" of the offence under Chapter XIV then the bar contemplated by Section 162 would obviously come into operation.

100. Therefore, the crucial question which arises to be considered at this stage is what is the meaning of the expression "in course of investigation". This question assumes greater importance in this case because it is an admitted position that the statement, which in this case, the prosecution wants to be treated as complaint, is recorded by the investigating officer at the time when the investigation of this offence was actually in progress. Investigation of a cognizable case is started u/s 156, Criminal P. C. on receipt of an information u/s 154 thereof. Such an investigation was already undertaken in this case on 20th February, 1971, but the statement under dispute was given by the accused on the following day i.e. on 21st February, 1971. Can it therefore, be said that this statement was a statement recorded | "in course of investigation"? In our opinion, the expression "in course of" has a reference to the progressive stages

of investigation and not to the period of time taken in completing the investigation. In a given case the investigation of an offence may take months and even years to be completed, and so, before completing that investigation the officer concerned would be required to attend to investigations of various other offences. The statements recorded by him during the course of these intervening investigations can, therefore, by no stretch of reasoning, be considered to be the statements recorded "in the course of investigation" of the offence in question. It is, therefore, obvious that in order to be hit by Section 162, Cr. P. C. the statement in question must be one which is nothing but a step in the pending investigation. In order to decide whether it is a step in the pending investigation one important test is to consider whether, standing by itself, the statement throws any light on the offence which is being investigated. If, standing by itself, it throws no light on the offence under investigation, we get a conclusive evidence of it being quite independent of the pending investigation because, it is not designed to promote any pending investigation but to start a new one for unearthing altogether a different offence. This is not to say that the statements which throw light on the offence under investigation would necessarily be the statements recorded "in the course of investigation" of that offence because even in such cases, there would be some other circumstances which would show that the statement in question amounted to a genuine complaint which was not recorded "in the course of investigation" within the meaning of Section 162 of CrI.P.C. We, however, do not find it necessary to detain ourselves on consideration of this later aspect of the matter because the statement Ex. 102 with which we are concerned in this case, is found to be quite independent of the pending investigation, and standing by itself, it throws no light upon the offence for which the accused is tried. This statement is neither inculcator nor exculpatory and contents thereof reveal altogether a different offence at a different place committed on the accused by some unknown persons at a time when the incident for which he is tried, occurred. It is undoubtedly true that when appreciated in light of the facts admitted & proved in this case, it gives good deal of corroboration to the prosecution case, but that aspect of the matter would not render it a statement recorded "in the course of" the investigation of this offence.

101. If a reference is made to this statement, it will be found that it first makes a grievance against complainant Ratilal and witness Lain alias Laxman Govind by making an allegation that 8 to 10 days before the incident they had abused the accused and had threatened him that he would be killed through some goondas from Bombay, After making this allegation this statement makes the following relevant complaint. English version of it is as under:

Yesterday on 20-2-71 at about Section 30 p.m. I closed my shop and went to see the health of my brother-in-law Bhana Bhikha who was sick. I, however, could not meet him as he had gone to Kundiana dispensary to take medicines. When I was returning home I passed through a small street via Dhebaria Fali. At that time one man came in that street from the opposite side and struck me over my

left eye-brow, with an electric torch light, with the result that the skin over my eye-brow was broken and blood came out. I became unconscious and fell down. When after a while I regained consciousness I did not find anyone there. I felt nervous and went home. Immediately I went to Surat in my jeep car and met Rijisinghaji Saheb at Navsari Bazar Police Chowky. I thereafter went to Surat Civil Hospital along with him and have been treated there. The person who has injured me over my left eye must be Ratilal Deva-bhai or Lalu alias Laxman. I therefore lodge this complaint for further proceedings according to law.

These averments clearly show that they have absolutely no direct bearing on the facts of the incident with which we are concerned in this case. The averments on, the face of them, speak about some other independent incident during the course of which the accused was beaten by some unknown person. It is apparent that the recording of this statement is not a step in promotion of the investigation of the offence of murder for which the accused is charged. In our opinion, therefore, this statement is nothing but a complaint and cannot be treated as a statement recorded by the investigating officer u/s 162 of Cr.P.C. The document Ex. 102, therefore, can be taken into account and can be given proper appreciation.

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