

Ramsinh Bavaji Jadeja vs State Of Gujarat on 1 March, 1994

Equivalent citations: 1994 SCC (2) 685, JT 1994 (2) 135, 1994 (2) JT 135, 1994 AIR SCW 2042, 1994 (2) SCC 685, 1994 CRI. L. J. 3067, 1994 CRILR(SC MAH GUJ) 303, 1994 CRIAPPR(SC) 156, 1994 (2) UJ (SC) 48, (1994) 2 SCR 239 (SC), (1994) 2 ALL WC 717, 1994 UJ(SC) 2 48, 1994 CRILR(SC&MP) 303, (1994) 2 JT 135 (SC), (1994) IJR 224 (SC), 1994 ALLAPPCAS (CRI) 95, 1994 SCC(CRI) 609, (1994) 1 LS 47, (1994) 7 OCR 610, (1994) 2 PUN LR 671, (1994) 1 ALLCRILR 851, (1994) 1 CRIMES 729, (1994) 2 CHANDCRIC 124, (1994) 2 EASTCRIC 164, (1994) 2 SCJ 143, (1994) ALLCRIC 319, (1994) MAD LJ(CRI) 598, (1995) 1 GUJ LR 322, (1994) 2 RECCRIR 158, (1994) 2 CURCRIR 409, (1994) 2 CRICJ 176, (1994) SC CR R 660, 1995 (1) KLT SN 51 (SC)

Author: N.P Singh

Bench: N.P Singh

PETITIONER:
RAMSINH BAVAJI JADEJA

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT 01/03/1994

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1994 SCC (2) 685 JT 1994 (2) 135
1994 SCALE (1) 785

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- 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.

2. The prosecution case is that on May 7, 1977 at about 5.30 p.m. Sanat Kumar (PW 6) 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. PW 6 was asked to pay 40 paise as the charge for keeping the cycles in the stand. Sharad Kumar (deceased), the brother of PW 6, said that in other theatres only 15 paise per cycle was being charged as such why they were being asked to pay 20 paise per cycle. In order to avoid a quarrel, PW 6 said to 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 PW 6, told the appellant that they did not want to have a quarrel with him. The appellant asked PW 6 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 PW 6, twisted it, gave a fist 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. PW 6 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 Ambar 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. PW 6 was shocked. He sat on the bench of the hospital. Head Constable, Gopinath (PW 19), who was on duty at the 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 (PW 21) having received the telephonic message aforesaid at about 6.50 p.m. rushed to the Irwin Hospital and recorded first the statement of PW 6 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 PW 6 and sent him for medical examination and treatment to the hospital. Then, the Investigating Officer (PW 21), went to the scene of occurrence and prepared a panchnama of the place of occurrence. He took possession of chappals of the deceased, bloodstained crust of cement plaster and recorded the statement of other witnesses. On May 8, 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.

3. After investigation, charges were laid against the appellant and two others for offences punishable under Sections 302, 302 read with Sections 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.

4. The learned counsel, appearing on behalf of the appellant, pointed out that at about 6.50 p.m., the Head Constable, Gopinath (PW 19), informed the Sub-Inspector Shimpi (PW 21) 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 PW 21 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 PW 6 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 PW 6 had disclosed the names of the appellant and other two co-accused persons to the Head Constable, in normal course he should have also mentioned that fact in his telephonic message.

5. From the judgments of the Sessions Judge and the High Court, it appears that at about 6.30 p.m., the Head Constable (PW 19) 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 (PW 21) 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 (PW 19) has denied that he had met PW 6 before he telephoned to the police station. PW 6 has also stated that neither he had any occasion to meet the Head Constable (PW 19) at the hospital nor had he given any statement in respect of the occurrence to the said Head Constable.

6. 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.

7. 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 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 cannot 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. 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 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 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.

8. In the case of *Tapinder Singh v. State of Punjab*¹ 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 responding to the telephone call. Again in the case of *Soma Bhai v. State of Gujarat*² in respect of an information given to the police station by telephone, it was held : (SCC p. 271, para 19) "The message given to the Surat Police Station was too cryptic to constitute a first information report within the meaning of Section 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 1 (1970) 2 SCC 113; 1970 SCC (Cri) 328:

AIR 1970 SC 1566 2 (1975) 4 SCC 257: 1975 SCC (Cri) 515:

AIR 1975 SC 1453 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 FIR and the High Court was in error in treating the FIR lodged in the present case as inadmissible in evidence."

Recently, in the case of *Dhananjay Chatterjee alias Dhana v. State of W.B.*³ 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.

9. It is not in dispute that the Investigating Officer (PW

21), having received the telephonic message, immediately reached the hospital and he first recorded the statement of PW 6. 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 PW 6 and sent him for medical examination and treatment. Then he went to the scene of occurrence and collected bloodstained crust of cement plaster and examined witnesses. Under the circumstances mentioned above the statement of PW 6, 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 PW 6 and details of the occurrence as disclosed by him in Court were stated by him. This is apparent because during the cross examination of PW 6, his attention has not been drawn to his statement recorded by PW 21, 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 PW 6 immediately after the occurrence, made a statement before the Investigating Officer (PW 21) 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 on telephone by the Head Constable (PW 19) to the officer in charge, as first information report.

10. PW 6 has asserted throughout that he knew the appellant by name and face. He has been fully corroborated by PW I 1, who brought the victim Sharad Kumar and PW 6 on his rickshaw from the Ambar Talkies to the hospital. PW I 1 was known to PW 6 from before. He has stated that PW 6 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 PW 6 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 (PW 5). The appellant also produced the knife during the investigation before PW 21, by which he had stabbed Sharad Kumar. On 3 (1994)2SCC220:JT(1994)ISC33 behalf of the appellant no motive on the part of PW 6 has been suggested for falsely naming the appellant as the assailant of his brother.

11. 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.