EVIDENTIARY VALUE OF THE FIRST INFORMATION REPORT: INTROSPECTION

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ABSTRACT

Generally, FIR has no evidentiary value but in few circumstances it carries evidentiary value, as in the case of dying declaration. First Information Report cannot be used as Substantive piece of evidence. The value of F.I.R. must always depend on the facts and circumstances of a given case. FIR can only be used to corroborate or to contradict the maker of FIR. It may in certain circumstances be evidence as to the cause of informant's death or as part of the res-gestae pointing to the informant's conduct. It may be utilized by the defense to impeach the credit of the informant under Section 155 of the Code of Criminal Procedure. FIR is the earliest version of the case of prosecution and it must be placed before the Judge to weigh the truth or falsity and for corroboration and contradiction of the story of the maker of the information. It can only be used to corroborate the statement of the maker under Section 157, Evidence Act or to contradict it under Section 145 of the Evidence Act. Non-mention of name of witness in FIR is not relevant. A First Information Report is not supposed to be a detailed document. FIR is a public document prepared under Section 154 Cr.P.C.

INTRODUCTION

The statements made in the FIR are not privileged ones. They do not enjoy immunity. The prosecution can be launched for defamatory statement in the FIR. If there is difference between FIR and the version narrated in the Court, it is always a matter of gave suspicion to the Court. The FIR is a document and had to be proved like any other document. FIR is not a substantive piece of evidence. Therefore, even if the written report filed has not been duly proved the prosecution case will not fail on that ground alone and the court has to consider the substantive evidence which has been adduced by the prosecution.[2] The value of F.I.R. must always depend on the facts and circumstances of a given case.[3] In *Asharam & Anr. v.*

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[2] Kanik Lal Thankur v. State of Bihar, 2003 Cri. L.J. 375 (Pat.).
[3] Dharma Rama Bhargava v. State of Maharashtra, 1973 Cri. L.J. 680 (S.C.).

State of M.P.[4] the Apex Court held that we do not find any merit in the contentions made in this case. According to the trial court, the foundation of the investigation was not proved and, therefore all the accused were entitled to acquittal. In this connection, ***the main circumstance on which the trial court relied upon is ante-timing of the FIR. It is well settled that an FIR is not a substantive piece of evidence.*** It cannot contradict the testimony of the eye witnesses even though it may contradict its maker.

SUPPRESSION OF MATERIAL PARTICULARS

It is not correct to say that the F.I.R. is the first information of the cognizable offence that has come to the police. It is also not correct to say that an information of the commission of a cognizable offence of a hearsay nature, given orally to the officer-in-charge of the police station would be an information admissible in evidence for two purposes i.e. for corroboration of the informant or for the contradiction of the informant if and when he is examined as a witness. Any information of the commission or suspected commission of a cognizable offence, if given by a person to the officer-in-charge of the police station orally, shall be reduced to writing in a book prescribed by the State Government. Such information when so laid by the person having direct knowledge about the information would then is admissible as real information under Section 154 of the Code. Then, such information could be used either for corroboration of the informant or for contradiction if and when the informant gives evidence in court touching such information.

Moreover, the information must be first in time laid before the officer-in-charge of the police station before any step for the investigation starts upon any other either information received by the police officer whether recorded or not by the police officer in the manner prescribed. If any information sought to be admitted in evidence as F.I.R. does not satisfy the condition of Section 154, it would not be admissible as F.I.R. for the prosecution to corroborate the informant in court while deposing but it may be used by the defence to contradict the informant in the witness box while deposing. Any statement to the police after the investigation had commenced would be hit by the provisions of Section 162 of the Code. If a witness who laid the F.I.R. on his own knowledge makes a statement in court on oath different from what he had stated in the FIR that discredits the evidence of the witness in court to the extent, but does not make the statement in the FIR evidence in the case.

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[4] AIR 2007 SC 2594 Para 18.

In *Shashikant v. Central Bureau of Investigation & Ors.*[5] The Supreme Court decided that *Preliminary inquiry is necessary on basis of anonymous Complaint.* Whether to initiate investigation or not depends upon fact situation of each case. In the instant case, an anonymous complaint alleging corrupt practice by member of Special Police Force was received. Authorities on basis of said complaint initiated preliminary enquiry against him. Such course is permissible. Although ordinarily in terms of S, 154 of the Code, when a report is received relating to the cognizable offence, a First Information Report should be lodged, to carry out a preliminary inquiry even under the Code is not unknown. When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may for good reasons carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein. Only when a FIR is lodged, the officer in charge of the police station statutorily liable to report thereabout to a Magistrate who is empowered to take cognizable in terms of proviso to S. 157(1) of the Code. Proviso (b) appended thereto empowers the Investigation Officer not to investigate where it appears to him that there is no sufficient ground for entering into an investigation. The question therefore, as to whether an empowered officer who had made investigation or caused the same to be made in a cognizable offence within the meaning of S. 157 of the Code or had not initiated an investigation on the basis of an information which would not come within the meaning of S. 154 of the Code is essentially required to be determined in the fact situation in each case.

FIR can only be used to corroborate or to contradict the maker of FIR adduced in court provided the maker had direct knowledge of the information. FIR may in certain circumstances be evidence as to the cause of informant's death or as part of the re*s-gestae* pointing to the informant's conduct. It may be utilized by the defence to impeach the credit of the informant under Section 155 of the Code of Criminal Procedure. FIR is the earliest version of the case of prosecution and it must be placed before the Judge to weigh the truth or falsity and for corroboration and contradiction of the story of the maker of the information. If an accused lodge an FIR the non-confessional portion is admissible against him. The substance of Section 154 is therefore, that every information lodged in the police station relating to the commission or suspected commission of a cognizable offence must be reduced to writing if not already in written form and a substance of it must be entered in a book kept in the police station only that information be it recorded as in the manner prescribed by

[5] AIR 2007 SC 351.

Section 154 of the Code, or not, but on which the investigation in the case is commenced by the police, is the first FIR of the occurrence.

The law does not contemplate that when in the course of the investigation something is elicited in the information can thereupon be recorded. It is a matter of law whether an information is a first information or not, and it is not open to the officer-in-charge of police station to treat an information as such or not, according to his discretion. *There is no provision in the Code of Criminal Procedure for any preliminary enquiry prior to investigation or prior to the lodging of the information within the meaning of Section 154,* If circumstances indicate that after receiving some information, however incomplete the police officer had commenced investigation, any sub-commission of the offence by any other person cannot be regarded as FIR in the case and would not be admissible under Section 154 of the Code read with Section 157 of the Evidence Act, being hit by Section 162 of the Code of Criminal Procedure. If there is suppression of FIR and the responsibility of such suppression lies on the door of the prosecution, apart from the inference to be drawn against the prosecution under Section 114. Illustration (g) of the Evidence Act, a case of prejudice to the accused is definitely made out.[6]

When the prosecution had suppressed the earlier written report of the occurrence and had submitted a new one for the same then in such a case and when once the F.I.R. was held to be fabricated or brought into existence long after the occurrence then it was held that the entire prosecution case must collapse.[7]

F.I.R. CAN BE USED ONLY FOR CONTRADICTORY AND CORROBORATORY PURPOSES

An F.I.R. is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act or to contradict it under Section 145 of the Evidence Act. It can only be used for corroboration or contradiction purposes that too when F.I.R. was lodged by a person having direct knowledge about the occurrence.[8] In other cases[9] also the same view has been expressed. When the F.I.R. is clouded with suspicion as it was product of undue deliberation and consultation, then F.I.R. loses its corroboration

[6] Manna Lal v. State, 1967 Cri. L.J. 1272 : A.I.R. 1967 Cal. 478.
[7] Hanuman Nath v. State of Rajasthan, 1984 Raj. L.W. 486.
[8] State of Bombay v. Rusy Mistry; 1960 Cri. L.J. 532 (Cri.).
[9] Krishna Kumar v. State, (1983) Del. L.T. 442.

value.[10] F.I.R. cannot be relied upon unless it is tendered by the prosecution in accordance with Section 157. Evidence Act.[11] F.I.R. cannot be used against the maker at the trial if he himself becomes an accused not to corroborate or contradict other witnesses.[12]

In *Bhagwan Singh and Others v. State of M.P.*[13] the honorable Supreme Court decided that *non-mention of name of witness in FIR is not relevant.* A First Information Report is not supposed to be a detailed document. The F.I.R. is a document which sets the criminal law into motion, and it has to be appreciated keeping in mind the facts and circumstances of each individual case.[14] FIR can be used to discredit testimony of its maker, it cannot, however, be used to discredit or contradict testimonies of eye witnesses, if found otherwise reliable and trustworthy.[15] F.I.R. is not substantive evidence. Before it can be used its scribe or the informant must be examined in court. Hence by mere mention of name of accused in F.I.R. or number of a vehicle does connect such person or vehicle with the crime.[16]

In *Dhirendra Nath v. State,*[17] the Calcutta High Court while emphasizing the value of the F.I.R. observed as follows "I am aware that the First Information Report is at times, regarded as part of the *res-gestae* and on that basis it is sometimes used, not merely for the purpose of corroborating or contradicting the person who lodged it but also for the purpose of lending some assurance to or negativing the general account as given by other witnesses."

The Orissa High Court also in *The State v. Makund Harijan,*[18] while holding the same view observed that "No doubt a First Information Report can, strictly speaking, be used only to corroborate or contradict the maker of it. But omissions of important facts, affecting the probabilities of the case, are relevant under section 11 of the Evidence Act in judging the veracity of the prosecution case."

It is settled law that the First Information Report is not substantive evidence. It can be used only to contradict the maker thereof or for corroborating his evidence and also to show that

[10] Kanhai v. State of U.P., 1986 All. Cr. R. 473 : 1986 All. C.C. 459.
[11] Damodar Pd. V. State of Maharashtra, A.I.R. 1972 S.C. 622.
[12] Nissar Ali v. state of U.P., A.I.R. 1957 S.C. 366.
[13] AIR 2002 SC 1621 para 13.
[14] Jhoda Khoda Rabari v. State of Gurjarat, 1992 Cri. L.J. 3298.
[15] Kapil Singh v. State of Bihar, 1990 Cri. L.J. 1248.
[16] 1972 R.L.W. 637.
[17] A.I.R. 1952 Cal. 621.
[18] 1983 Crl. LJ. 1870.

the implication of the accused was not an after-thought. Since the examination of first informant was dispensed with by consent, F.I.R. became part of the prosecution evidence.[19]

An F.I.R. recorded without any loss of time is likely to be free from embroideries, exaggerations and without anybody intermeddling with it and polluting and adulterating, the same with lies. The purpose of F.I.R. is to obtain the earliest account of a cognizable offence before there is an opportunity for the circumstances to be embellished.

Though the F.I.R. is not a substantive piece of evidence and can be used to corroborate or contradict the statement of the maker thereof, it can also be used to test and measure the trustworthiness of the prosecution story as a whole.[20] When the case of prosecution was that accused caused injury on the cheek of the informant and when the F.I.R. did not disclose such fact, then such omission in the F.I.R. would seriously impeach credibility of informant.[21]

The first information report is never treated as a substantive piece of evidence. It can only be used for corroborating of contradicting its maker when he appears in Court as a witness. Its value must always depend on the facts and circumstances of a given case. The first information report can only discredit the testimony of the maker thereof. It can by no means be utilized for contradicting or discrediting the other witnesses who obviously could not have any desire to spare the real culprit and to falsely implicate an innocent person. Prosecution case cannot be thrown out on the mere ground that in the first information report an altogether different version was given by the informant.[22]

Contents of FIR can be used for purpose of corroborating or contradicting maker of it if he was examined and under no circumstance as substantive evidence.[23] The F.I.R. can be used to discredit the testimony of the maker of the report and the prosecution case cannot be thrown out merely on the ground that entirely different version is given therein by its maker.[24]

It is trite saying that the F.I.R. can also be used to test and measure the trust-worthiness of the prosecution story as a whole.[25] The F.I.R. is admissible under Section 157 of the Evidence

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[19] Malkiat Singh v. State of Punjab, 1991(2) Crimes 191(197) S.C.
[20] Gulshan Kumar v. State, 1993 Cri. L.J. 1525 : 1993 (1) Crimes 964.
[21] Purandas Bhukta v. State of Orissa, 1991 Cri. L.J. 1388 (1389-90).
[22] State of Gujarat v. Anirudh Singh; AIR 1997 (SC) 2780.
[23] Harkirat Singh v. State of Punjab, AIR 1997 SC 3231.
[24] Barkau v. State of U.P., 1993 Cri. L.J. 2950 (All.); O.K. Bhagare v. State of Maharashtra. 1993 Cri. L.J. 680 (S.C.): A.I.R. 1973 S.C. 476 (Followed).
[25] Gulshan Kumar v. State, 1993(2) Crimes 239 (Delhi).

Act. ***It is not substantive evidence***. It can be used for one of the limited purposes of corroboration or contradicting the maker thereof; another purpose for which the F.I.R. can be used is to show the implication of the accused to be not an after thought or that the F.I.R. can be used under Section 32(1) of the Evidence Act or under Section 8 of the Evidence Act as to the cause of the informant's death or as part of the informer's conduct.[26] F.I.R. cannot be used to discredit a witness.[27] Similarly F.I.R. made by one cannot be used to discredit the statement of another;[28] F.I.R. cannot be distrusted unless its genuineness is not challenged during cross-examination.[29]

Their Lordships of Supreme Court observed in *Kishan Chand v. State of Rajasthan*[30] that when witness was dead before he could give evidence in court and it is equally true that the F.I.R. was lodged by him on November 22, 1974, cannot be used as substantive Evidence nor the contents of the report can be said to furnish testimony against the accused, then such F.I.R. would not be covered by any of the clauses of Sections 32 and 33 of the Evidence Act and were not be admissible as substantive evidence. But their Lordships took a slightly different view in *Maqsoonan v. State of U.P.*,[31] wherein it was held that when a person who has made a statement, may be in expectation of death, is not dead, it is not a dying declaration and is not admissible under Section 32 of the Evidence Act. Where the makers of the statement are not only alive but they deposed in the case, their statements are not admissible under section 32; but their statements, however, are admissible under section 157 of the Evidence Act as former statement made by them in order to corroborate their testimony in court.

Further when the time of making F.I.R. is not free form doubt then F.I.R. loses its corroborative value.[32]

When the F.I.R. was recorded by father of murdered boy and omissions of important facts were left out, then such F.I.R. is relevant under Section 11 of the Evidence Act in judging

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[26] Damodar Pd. Chandrika Pd. V. State of Maharashtra, 1972 S.C. C. (Cri.) 110; A.I.R. 1972 S.C. 622 : 1972 Cri. L.J. 451 Shankar v. State of U.P., (Supra).
[27] Tehsildar v. State of U.P., A.I.R. 1959 S.C. 1012 : 1959 Cri. L.J. 1231.
[28] Ajmer Singh v. State of Punjab, A.I.R. 1977 S.C. 1078.
[29] Swaran Singh v. State of Punjab, A.I.R. 1976 S.C. 2304.
[30] A.I.R. 1982 S.C. 1511 : 1982 Cri. L.J. 1.
[31] 1983 Crl. L.J. 218 : A.I.R. 1983 S.C. 126 : 1982 All. LJ. 1524 : 1983 S.C.C. (Cri.) 176.
[32] Kanhai v. State of U.P., 1985 All LJ. 1039.

veracity of witnesses.[33] Where the prosecution fails to get the FIR lodged on behalf of the injured, exhibited and proved, it is duty of the Court to see that the same is duly proved and exhibited in the case. FIR is merely used by way of corroboration or contradiction and no further. If the FIR is not duly proved or if a statement recorded as FIR could not be used as FIR in legal Grounds. Merely for that reason the evidence of eye witnesses would not be rejected if the same is found to be otherwise reliable.[34] It is trite that an FIR is not substantive evidence unless of course it is admitted under Section 32(1) of the Evidence Act and can be used to corroborate or contradict the maker thereof and therefore, the question of corroborating P.W. 1 by his purported statements as contained in Ext. P.1 could not arise.[35]

F.I.R. AND AN ADMISSION UNDER SECTION 21 OF THE INDIAN EVIDENCE ACT

The F.I.R. is admissible under Section 157 of the Evidence Act, as corroborating the testimony of the informant or for contradicting him under Section 145 or under Section 8 of the Evidence Act as evidence of his conduct. It may also be admissible as his admission when the accused himself makes the first information report. Section 25 of the Evidence Act lays down that if it is in the nature of a confession, being made to a police officer, it is admissible, and it cannot be proved as against him. If it is not a confession, but contains admissions made by the accused, F.I.R. is admissible in evidence under Section 21 of the Evidence Act.[36]

F.I.R is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the courts under Section 21 of the Evidence Act. Admission of an accused can be proved against him.[37]

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[33] Ram Kumar Pandey v. State of M.P., A.I.R. 1975 S.C. 1026:1975 Cri. LJ 870; Ashokan v. State, 1982 Cri. L.J. 173 Bata Munda v. State, (1985) 59 C.L.R. 370.

[34] Bisnu Dhar Roulra v. Raula. 1991 Cri. L.J. 220 (221-222) Orissa.

[35] George v. State of Kerala, AIR 1998 SC 1376: 1998 SCC (Cri.) 1232: 1998 Cri. L.J. 2034: 1998(2) Crimes 27.

[36] State of Rajasthan v. Shiv Singh, 1962(1) Cri. L.J. 82 : A.I.R. 1962 Rajasthan 3.

[37] Paddi v. State of M.P., A.I.R. 1964 S.C. 1850 : 1964 Cri. L.J. 744.

EVIDENTIARY VALUE OF F.I.R. SENT WITH DELAY TO MAGISTRATE UNDER SECTION 157, CODE OF CRIMINAL PROCEDURE, 1973

Element of delay in registering the complaint or sending the same to the jurisdictional Magistrate by itself would not be fatal to the prosecution, if the evidence adduced by the prosecution was worthy of credence.[38]The extraordinary delay in sending FIR to the Magistrate is a circumstance which provides a legitimate basis for suspecting that the FIR was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduction improvements and embellishment and set up a distorted version of the occurrence. In such a case, the evidence of eye-witnesses cannot be accepted at its face value.[39] The same view was taken in another important case[40] decided by Supreme Court.

When the FIR has been received by the magistrate with inordinate delay, then the entire prosecution case must be viewed with suspicion.[41] Mere delay in holding inquest proceedings and in delivery of F.I.R. to local Magistrate cannot be said to have rendered F.I.R. ante-timed or ante-dated.[42]

In *Sarwan Singh v. State of Punjab,*[43] their Lordships of Supreme Court has observed that delay in dispatch of the F.I.R. is not a circumstance which can throw out the prosecution case in its entirety. Hence, if, prosecution had given a very cogent and reasonable explanation for the delay in dispatch of F.I.R. and the trial court was not justified in rejecting prosecution case on the ground of delay in the peculiar circumstances of the case. Further when it was found that the F.I.R. was actually recorded without delay and the investigation started on the basis of that F.I.R. and there and there is no other infirmity brought to the notice of the court, then, however improper or objectionable, the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.[44]

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[38] Mohinder Singh v. State of Punjab, 2006(4) RCR(Criminal) 273(SC).
[39] Ishwar Singh v. State of U.P., 1976 Cri. LJ. 1883 : A.I.R. 1976 S.C. 2423.
[40] Balaka Singh v. State of Punjab, 1975 Cri. LJ. 1734 : A.I.R. 1975 S.C. 1962.
[41] Hardhan Char v. State of W.B., 1981 Cri. L.J. N.O.C. 158 (Cal.) D.B.
[42] Ishwer Singh v. State, 1985 Cri. LJ. 1625 : 1984(2) Crimes 127.
[43] 1976 Cri. LJ. 1757: A.I.R. 1976 S.C. 2304: 1976 Cri. LR. S.C. 362: (1976) 4 S.C.C. 309.
[44]Pale Singh v. State of Punjab. A.I.R. 1972 S.C. 2679.

It is not that as if every delay in sending a delayed special report to the District Magistrate under Section 157, Criminal Procedure Code would necessarily lead to the inference that the F.I.R. has not been lodged at the times stated, or has been ante-timed or ante-dated that the investigation is not fair and forthright. Hence, where the steps in investigation by way of drawing inquest report and other panchnamas started soon which could only follow the handing over of F.I.R. the delayed receipt of special report by District Magistrate would not enable the court to dub the investigation as tainted one nor could F.I.R. be regarded as anti-timed or anti–dated.[45]

Where the F.I.R. was lodged without delay, late receipt of the report by the Magistrate in the absence of any other vitiating circumstances will not make the lapse fatal. This is particularly, so where there is satisfactory explanation for the delay and there is no inconsistency in the basic aspects of the case as reported by the informant and spoken to by the witness.[46]

It may be relevant to mention here that Section 157(1) of the Code of Criminal Procedure lays down that the F.I.R. in respect of cognizable offence shall be sent forthwith to a magistrate competent to take cognizance of an offence. When there is extraordinary delay in receipt of FIR in the concerned court of magistrate without any satisfactory explanation, then it provides a legitimate basis for suspecting that F.I.R. was recorded much later than the stated date and hour affording sufficient time to the prosecution. Delay in filing to FIR creates suspicion particularly when the FIR is filed after consultation with the police. Other circumstances also being insufficient to prove guilty accused was acquitted.[47]

Where the investigating officer had gone to the village of occurrence where there was no electricity on the basis of some vague information of violence having broken out there, has categorically denied having questioned the witnesses or recorded their statement, the FIR recorded in police station after reaching there is not hit by S. 162 Cr.P.C. Receipt of FIR by the Magistrate by two hours cannot be said to be inordinate delay or giving room for suspicion.[48]

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[45] State of U.P. v. Gokaran, A.I.R. 1985 S.C. 131.
[46] State of Kerala v. Dasan, 1986 Cri. L.J. 345.
[47] Bresham Singh v. State of U.P., (2000) Cri LJ 2250 (All).
[48] Pattad Amarappa v. State of Kerala, AIR 1989 SC 2004.

The delay in FIR reach the Magistrate may put the Court on guard and the Court may have to be cautious in making its approach to the evidence, but there are no laws that on this score alone otherwise reliable and truthful evidence should be discarded.[49]

When in a murder case of District Banda of U.P.,[50] special report was sent a day after the occurrence and prosecution plea of the non-availability of transport was found unreliable. In the case of *Nazir Ahmed* v. *Emp.***.**[51] honorable court decided that as a document showing the story at first blush of events FIR though not essential in every case, must be regarded as a valuable piece of evidence.

Inordinate and unexplained delay in sending report by police is fatal to prosecution.[52]When delay in sending copy of F.I.R. to the concerned Magistrate is satisfactorily explained, then delay of 7 hours in sending said copy to the Magistrate would be fatal.[53] Mere delay in sending copy of F.I.R. to the Magistrate would not be a ground to throw out the case of the prosecution out of the court.[54]

Sending the copy of the special report to the Magistrate as required under Section 157 of the Criminal Procedure Code is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the Court on guard to find out as to whether the version as stated in the Court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157, Cr. P.C. is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to

[49] Siddalingappa v. State, 1993 Cri. LJ 397 (Kant.) DB.
[50] State of U.P. v. Anis. 1992(3) Crimes 360 (363) DB.
[51] 40 C.W.N. 1221 (PC) 46 Cr.L.J. 413. (PC.)
[52] Nalli alias Nallianna Gounder v. State, 1993 Cri. L.J. 1409 (Mad.); 1993 L.W. (Cri.) 154.
[53] Swaminathan v. State, 1993 Cri. LJ. 2399.
[54] Rajdeo Paswan v. State of Bihar, 1993(2) Crimes 378.

explain such a delay and if reasonable, plausible and sufficient explanation is tendered. No adverse inference can be drawn against it.[55]

The expression 'forthwith' used in Section 157(1) would undoubtedly mean within a reasonable time and without any unreasonable delay. In the case on hand, distance from the police station to Magistrate's court was about 20 to 25 kms. P.W. 11. Constable was entrusted with the first information report by the then Sub-Inspector of Police for being made over to the Magistrate. In any view of the matter, even if Magistrate's court was close by and the first information report reached him within six hours from the time of its lodgment, in view of the increase in workload, we have no hesitation in saying that even in such a case it cannot be said that there was any delay at all in forwarding the first information report to the Magistrate. Thus, we do not find any substance in this submission as, according to us, the first information report was promptly dispatched to the Magistrate and received by him without any delay whatsoever.

A question that now arises is that where first information report is shown to have actually been recorded without delay and investigation started on its basis, if any delay is caused in sending the same to the Magistrate which the prosecution fails to explain by furnishing reasonable explanation, what would be its effect upon the prosecution case. In our view, *ipso facto* the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chance of manipulation in the first information report by falsely roping in the accused person after due deliberations.[56]

FIR CAN BE USED FOR THE FOLLOWING PURPOSES

(a) It can be used to corroborate the maker under S. 157 of Evidence Act, but not to corroborate the other witnesses.[57] Apex Court has gone so far to say that the prosecution case cannot be thrown out on the mere ground that if the first information

[55] Bijoy Singh v. State of Bihar, 2002 Cri. LJ 2623 (SC).
[56] Alla China Apparao v. State of A.P., 2000(3) 1 Crimes 23 (SC).
[57] Nisar Ali v. State of U.P.; 1957 Crl. L.J. 550 SC.

reports an altogether different version was given by its maker. This position has not, however been maintained *in toto* in subsequent cases of the apex court.

(b) F.I.R. can be used to contradict only the maker of it under section 145 and Section 155 of Evidence Act and not other witnesses.[58]

(c) FIR can be used by the defence to impeach the credit of the maker under section 155(3) of the Evidence Act.[59]

(d) A non-confessional First Information Report lodged by the accused can be used against him to prove his admissions in regard to certain facts under Section 21 of Evidence Act.[60]

(e) Certain portion of confessional First Information Report lodged by the accused can be used against him if they lead to the discovery of a fact within the meaning of Section 27 of Evidence Act.[61]

(f) FIR can be used as substantive evidence on the death of the informant if it relates to the cause of informant's death or circumstances of the transaction resulting in informant's death within the meaning of section 32(1) of Evidence Act.[62] In other case, it cannot be used as substantive evidence.[63]

Where the accused himself gives the First Information the fact of his giving the information is admissible against him as evidence of his conduct under section 8 of Evidence Act.[64]

F.I.R. AND DYING DECLARATION

Omission of important facts like a Dying Declaration in F.I.R. would be relevant under Section 11 of the Evidence Act to judge the veracity of prosecution case.[65]

When the declarant who was also the maker of the F.I.R. had died and there was no direct enmity between the deceased and accused and scribe had already stated that the had scribed the F.I.R. in the words as stated by deceased and when F.I.R. was dictated by the deceased unaided from any quarter and F.I.R. had implicated the accused in unambiguous terms, then it

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[58] *Ibid*.
[59] Shanker v. State of U.P.,1975 Cr. L.J. 634 SC; AIR 1975 SC 757.
[60] Nisar Ali v. State of U.P., 1957 Cr. L.J. 550 SC.
[61] Aghnoo Nagesia v. State of Bihar , 1966 Cr. L.J. 100 SC.
[62] Damodar Prasad v. State of U.P., 1975 Cr. L.J. 634 SC; AIR 1975 SC 757.
[63] Nisar Ali v. State of U.P., 1957 Cr. L.J. 550 SC.
[64] *Ibid*.
[65] Rusi Behara v. State. 1984(2) Crimes 349.

was held that such F.I.R. had to be regarded as Dying Declaration and is sufficient by itself to fix the guilt upon the accused.[66] It is desirable to have mention of dying declaration in F.I.R.[67] After the registration of the case, the rest of the story has to be reconstructed or logically worked out to establish the entire chain of events, *corpus delicti* i.e. the body of the murder. This means a continuity of the chain from contemplation to culmination, has to be established, and in cases of murder, from motive to death.[68]

WHEN THE F.I.R. WAS, LODGED OR RECORDED AFTER PREPARATION OF INQUEST REPORT

F.I.R. loses all authenticity if it is written after inquest report.[69] When there is discrepancy of distance in F.I.R. and inquest report. Then it must give rise to an inference that the F.I.R. is ante-timed and attached to the statement of F.I.R. and eye-witnesses whose names find place in F.I.R.[70]

DEATH OF INFORMANT – VALUE OF FIR

There is no law that the FIR cannot be taken into consideration on the death of Informant. The FIR cannot be thrown out on the death of Informant. The case will have to be proved on the basis of evidence collected by the Prosecution during the course of investigation and FIR is no evidence in the case, it is only a piece of information with the police records with which the system comes into motions and investigation is stopped it. *A.P. High Court in Edgia Jagannath Goud and others v. State,*[71] held that FIR is only used for the purpose of corroborating or contradicting if the person who has complained is examined. In a case where the first informant died before he could depose before the Court at best the purpose of corroborating or contradicting its contents by the persons would not be possible.

Keeping that in view, that the accused could not cross-examine the first informant the other evidence produced can be looked into. As the FIR is not a substantial piece of evidence it should not have any effect on the prosecution case if its contents were not proved by the

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[66] Munshi v. State, 1985 All. Cr. R. 485.
[67] Ram Kumar Pandey v. State of M.P., .A.I.R. 1975 S.C. 1026.
[68] Crime Investigation and Medical Science, by R.M. Jhala, Ch.-2, The Lawyers Home-Indore, Raipur, 1987, p.5.
[69] Balaka Singh v. State of Punjab . A.I.R. 1975 S.C. 162.
[70] Shyama Charan v. State of U.P., 1984(2) Crimes 782 : 1984 All. L.J. 1303 (All.).
[71] 2004(2) ALD (Crl.) 241 (A.P.)

person who gave it because of his death. In view of the judgment of the Supreme Court in *Hakirath Singh v. State of Punjab,*[72] this court felt that non-examination of the complainant on account of his death would not be factual on its own to the prosecution case and it will depend upon facts of each case. If the prosecution story as revealed by the witnesses in the Court is directly contradictory to the contents of the FIR it may have one effect and on the other hand if the contents of FIR are in conformity with the evidence adduced during the trial it may have altogether a different effect.

F.I.R. IS A PUBLIC DOCUMENT

Whenever there is a *bona fide* requirement, the Court to which F.I.R. is forwarded by the Police, can grant certified copy of F.I.R. or payment of legal fee by the accused as it is a certified copy of a public document.[73]

FIR is a public document prepared under Section 154 Cr.P.C. A certified copy of the FIR can be given in evidence (getting of FIR can be by the accused – accused is entitled to get a copy of the FIR only under the orders of the Court after the Court has taken cognizance of the case and not before but the accused can get a copy of FIR on payment from the Court). The officer-in-charge of a Police Station is not authorized to give copy of FIR to the accused. If he gives copy of the FIR to the accused he will be liable under Section 29 of the Police Act, 1961.

Section 74 of the Indian Evidence Act reads:–

"74 Public documents: - The following documents are public documents,-

(1) Documents forming the acts or records of the acts-

(i) of the soversign authority,

(ii) of official bodies and Tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Common Wealth, or of a foreign country.

(2) Public records kept in any State of private documents."

DIFFERENCE BETWEEN FIR AND ACTUAL EVIDENCE TENDERED IN THE COURT

[72] AIR 1997 SC 323(para 11).
[73] Jayanti Bhai Lalu Bhai Patel v. State of Gujarat, 1992(2) Crimes 253 (Gujarat).

If there is difference between fir and the version narrated in the Court, it is always a matter of gave suspicion to the Court. Where there is no mention of certain important facts in the FIR which are later brought to the Court as substantial evidence, the Court would be right in disbelieving that part of the evidence. There is no consequence on account of minor discrepancies between the statements of the case as given in the FIR and appearing in the evidence of eye witnesses. Where the facts stated in the FIR are based on hearsay much importance cannot be attached to the discrepancies which are to be found in it. The statements of the FIR which in many cases are given under circumstances of haste and at times without proper knowledge of the true facts, ought not to be reviewed too narrowly.

DEFENCE AND CROSS-EXAMINATION OF FIRST INFORMATION REPORT

Before conducting the cross-examination, the original complaint and the printed FIR has to be studied carefully. The following points of the FIR must be examined thoroughly for the purpose of cross-examination.

1. The date and the time of the lodging of the complaint to the Police Officer.
2. The name of the complainant.
3. The name of the Police Officer who recorded the FIR.
4. The date and time of dispatch of FIR from the Police Station to the Magistrate.
5. The date and time of the receipt of the FIR by the Magistrate.
6. When the informant was given a copy of FIR.

The defence in the cross-examination may vary according to the circumstances, nature and facts cases.

The following points are to be examined carefully by the defence during cross-examination:

1. The delay in lodging complaint.
2. The delay in recording the FIR.
3. The delay in dispatching the FIR by the Police Officer to the Magistrate.
4. Recording the FIR by an incompetent Police Officer.
5. The FIR was signed by informant.
6. The FIR recorded on the basis of telephone or telegram massage.
7. The Substance of the FIR was not entered in the general diary.
8. The original information given to the police officer was suppressed.
9. The Police Officer recorded the FIR after commencement of the investigation.

10. Omissions of names of the accused, witnesses place of occurrence.
11. FIR was vague.
12. The serious discrepancies between the FIR and the evidence produced by the witnesses in the Court.
13. Contradicts in the statements of the informant in the FIR and later made in Court.

PROVING OF FIR

The FIR is a document and had to be proved like any other document. The informant must be produced in the court during the trial and must be examined by the prosecution and cross-examined by the defence and FIR should be marked as exhibit. When the maker of the FIR was examined in the court, but the FIR is not tendered by the prosecution in accordance with the provisions of Indian Evidence Act. A court is debarred from relying on it.

CONCLUSION

Thus, FIR has no evidentiary value and it is used for corroboratory and contradictory purpose as has been envisaged in Indian Evidence Act. In some situations, it is taken as evidence as in case of dying declaration.