Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey



# Evidentiary value of Statements recorded during A Criminal Investigation

Saket Bhalotia[a] Amogh Dubey[b]

[a]Faculty of Law, Delhi University, Delhi, India [b]Faculty of Law, Delhi University, Delhi, India

*Received* 19 June 2022; *Accepted* 02 July 2022; *Published* 13 July 2022

*The article will mainly deal with what is the evidentiary value of statements recorded by police officers and competent judicial magistrates during the process of criminal trial/investigation. The term investigation shouldn't be constructed in a narrower sense by the readers as it includes the entire process of a criminal case trial from the filing of an FIR to the taking of cognizance by a competent magistrate. Before directly jumping into the discussions of the Code of Criminal Procedure and The Indian Evidence Act which will mainly answer our questions let us first understand the bare meaning of the word* ***'evidentiary value'*** *and* ***'statement'****. 'Evidentiary value' in my opinion and for this article can be divided into two broad categories****: Substantive and Corroborative****. Substantive evidentiary value means that the evidence, statement recorded by a police officer or judicial magistrate, is in itself sufficient for the judge to rely on and give their judgment whereas corroborative evidentiary value means that some evidence which facilitates a judge to conclude. The corroborative evidence needs to be proved using other evidence for the judge to rely on. With this understanding, it is clear that substantive evidence is a more reliable source of evidence in comparison to corroborative evidence. It has a wider scope of getting the decision in one's favour.*

**Keywords:** *evidentiary value, statement, corroborative evidence, substantive evidence, judgment.*

## INTRODUCTION

Now let us discuss the meaning of the statement in a very layman's language. When we look at its dictionary meaning then it means and acts of stating or reciting. The statement can be given by the victim of the offense, accused of the offense, or by a third party who is not a party to the offense but has witnessed the offense in one way or the other. Statements are recorded during the pre-investigation stage and at the stage of the investigation. Statements recorded during a pre-investigation stage in the context of this article refer to the statement recorded during the stage of filing an FIR (First Investigation Report) under section 154[1] of the CrPC (Code of Criminal Procedure). Statements recorded during an investigation can be recorded by agencies of our criminal justice system. As a part of police interrogation/examination statements of witnesses, accused, and the victim is recorded under section 161[2] of CrPC and the same can be recorded in presence of a judicial magistrate under section 164[3] of CrPC. This article will take you through the evidentiary value of statements recorded at these three stages respectively.

## FIR: MEANING

FIR is registered under section 154 of the CrPC (herein referred to as "code"). FIR is a report prepared by a police officer disclosing a cognizable offense and it is the most important piece of the document on which a police investigation is initiated it is through using FIR that a magistrate takes cognizance of an offense under section 190(1)(a)[4] of the code. We will not delve into the procedure and requisites for registering an FIR as that is not our concern. FIR can be lodged by a victim, accused, or any third party and the statement of the maker is recorded in it. We will discuss the importance of these statements in this section of the article. In ***AghnooNagesia v State of Bihar***[5], the Supreme Court answered the question of what is the

[1] Code of Criminal Procedure, 1973, s 154
[2] Code of Criminal Procedure, 1973, s 161
[3] Code of Criminal Procedure, 1973, s 164
[4] Code of Criminal Procedure, 1973, s 190(1) (a)
[5] *Aghnoo Nagesia v State of Bihar* (1966), AIR 119

evidentiary value of FIR according to The Indian Evidence Act, 1872. The main observations are as follows:

- The first information report is not a substantive piece of evidence.
- While the maker of the statement is called a witness then it can be used to corroborate the information under section **157[6] of the Evidence Act** or to contradict him under section **145[7] of the Act**.
- If the first information is given by the accused himself, the fact of him giving the information is admissible against him as evidence of his conduct under section **8[8] of the Evidence Act**.
- If the information is a non-confessional statement, it is admissible against the accused as an admission under section **21[9] of the Evidence Act** and is relevant.
- A confessional first information report given to a police officer is irrelevant and can not be used against the accused in view of section **25[10] of the Evidence Act**.

Let's discuss the important sections of The Indian Evidence Act to understand this intelligibly. We will start our discussion with section 157[11] of the Evidence Act which talks about the corroborative feature of the statements given by a witness at an earlier stage and then move to the other relevant sections.

The section takes within its ambit the statements recorded by the police officer registering an FIR. This section allows a witness to be corroborated by the proof that he said the same thing on some previous occasion[12]. If the witness during the trial states that the occurrence of some fact and the same has been recorded during the lodging of FIR then the corroborating role of section 157 comes into the picture. The two conditions for bringing a statement within the ambit of this section are: (a) the statement should have been made **at or about the time** when

[6] Indian Evidence Act, 1872, s 157
[7] Indian Evidence Act, 1872, s 145
[8] Indian Evidence Act, 1872, s 8
[9] Indian Evidence Act, 1872, s 21
[10] Indian Evidence Act, 1872, s 25
[11] Code of Criminal Procedure, 1973, s 157
[12] *Ramprasad v State of Maharashtra* (1999) 5 SCC 30

the incident took place, and (b) the statement should have been made before any authority legally competent to investigate the vexed incident. The statement "at or about the time" means that statement must have been made within a reasonable time from the occurrence of the fact or incident. There is no general rule for determining the time within which this must have been done, the main essence is whether the statement was made at the earliest possible time from the occurrence of the fact in question.

Statements given by the victim or any third person while lodging an FIR come within the ambit of this section but if the FIR was lodged by the accused himself then such statement is to be read with section 25 of the Evidence Act which states that if such statement amounts to a confession, then it can't be used against such accused as such confession was made to a police officer. Section 145[13] of the Evidence Act is the next important section for our discussion and specifically the usage of the said section to contradict a witness using a statement made by the same witness at an earlier stage. The section provides that any previous statement that is used under this section to contradict a witness at a later stage shall not be used as substantive evidence during trial but only for the purpose to contradict such witness with a previous statement to prove that the statement made in the court is not true and thus it becomes less reliable in the eyes of the judge. The previous statement talked about is the statement given by a victim or any other person while filing the FIR. Statements were given by the victim or any third person that come within this rule of evidentiary value. The next important section is **section 6[14] of the Evidence Act** which envisages the principle of **res gestae**, viz., part of the same transaction. This section establishes that a fact though not in issue but is so closely connected to the fact in issue that they together become a part of the same transaction becomes relevant. The two facts can be connected to each other in terms of proximity of time, the proximity of unity of place, continuity of action, and community of purpose or design. Statements given by the victim or any third person can become relevant under this section of the Evidence Act. Let's introduce **section 8[15] of the Evidence Act** now. The section makes such facts relevant which shows or constitutes a motive for committing a crime, preparation

[13] Code of Criminal Procedure, 1973, s 145
[14] Indian Evidence Act, 1872, s 6
[15] Indian Evidence Act, 1872, s 8

for committing a crime, and previous or subsequent conduct of the accused before or after the commission of the crime. For our purpose, post-crime conduct is all that is relevant. Statements of the victim or the accused can be used to show the post-crime conduct of the accused or the motive of the accused to commit an illegal act. **Self-harming statements** of the accused in an FIR are valuable under **section 21[16] of the evidence act** as admissions but can never become confessional statements even if the accused has somehow accepted his guilt in the statement recorded in the FIR. In a case, the accused went to a police station and lodged an FIR of murder, narrating the events preceding the commission of the offense and stating further how the offense was committed. It will be held that the narrative will amount to admission as defined under the evidence act and not as a confession. Admission is a substantive piece of evidence but not a conclusive one. To sum up the discussion we can conclude that if the FIR is lodged by a victim, then his statement recorded during the lodging of the FIR are having evidentiary value under sections 6, 8, 145, and 157[17] of the Indian Evidence Act. If the FIR is by a third person who was not a party to the crime his statement will be relevant under sections 6, 145, and 157[18] of the Act and if the FIR is lodged by the accused himself then the statements will be relevant under sections 21, 8, 157[19] read with section 25 of the Act. The sections discussed and referred to are not exhaustive and there can be other evidentiary value in the statements recorded in an FIR.

It has been held time and again that FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under section 157 of the Indian Evidence Act, 1872 or to contradict him under section 145 of that Act. It can neither be used as evidence against the maker at the trial if he becomes an accused nor to corroborate or contradict other witnesses. (***Ravi Kumar v State of Punjab, 2005***[20]) However, there is an exception to the general rule that the FIR is not a substantive piece of evidence. This exception can be illustrated with the help of the decision of Allahabad High Court in ***Pancham Yadav v State of***

[16] Indian Evidence Act, 1872, s 21
[17] Indian Evidence Act, 1872, ss 6, 8, 145, and 157
[18] Indian Evidence Act, 1872, ss 6, 145, and 157
[19] Indian Evidence Act, 1872, ss 21, 8, and 157
[20] *Ravi Kumar v State of Punjab* (2005) 9 SCC 315

***U.P.***,[21]wherein the information given by the victim was recorded as FIR, and later on, the victim died. This FIR was also treated as a **dying declaration under section 32(1)[22] of the Indian Evidence Act, 1872**. The scope and relevance of the dying declaration will be discussed in the latter part of the article.

## STATEMENTS RECORDED UNDER SECTION 161 CRPC

Interrogation is an important aspect of the investigation. The power to do an investigation is given to the investigating officer is essentially one of the earliest steps toward providing justice and such power becomes even more important when the offense is of serious nature. In such cases, oral testimonies provided by the witnesses, if recorded properly keeping the due process of law, can go a long way in helping prosecutions secure convictions. Conversely, failure to take proper steps and procedures can prove detrimental to the victim/informant as the evidentiary value of the statement can be reduced making the defense counsel's case stronger. Once investigation commences one of the foremost things that need to be done by an investigating officer is to call upon any person who appears to be acquainted with the facts and circumstances of the case.

Such power is given by the authority of **Section 160[23] of CrPC**. Essential ingredients of the section are-

- Any police office through a written order may require the attendance of any person acquainted with the facts and circumstances of the case.
- It is immaterial if the said person comes under the jurisdiction of the police station of the investigating officer.

**Proviso -**

- No male below 15 years or above 65, women, shall be required to visit the police station, and the examination and recording of their statements can be done at their residence.

[21] *Pancham Yadav v State of U.P.* (1994) CriLJ 848
[22] Indian Evidence Act, 1872, s 32(1)
[23] Code of Criminal Procedure, 1973, s 160

On a plain reading of the section, it is clear that the code provides the police officer extensive power to record statements of any person that is acquainted with the facts and circumstances of the case being investigated. Such power will be redundant if it is not backed by some punitive measures. This lacuna has been removed by making it a legal obligation of the person so called upon to comply with such a notice provided that they escape the proviso of the same section. IPC Section 174[24] states that failure to comply with such an order of public servant will attract incarceration for one month or fine or both.

Till now we have talked about the power of interrogating officers to require the attendance of persons. Now once the attendance notice has been served and the witness has come to the police station, the investigating officer has the power to orally examine such a person under section 161[25]. Such a person, the section says, is bound to answer these questions truthfully. Refusing to answer, intentional omission, or giving false information are the acts punishable in IPC under sections 179, 202, and 203[26] respectively. Essential ingredients of section 161 are-

- An investigating officer may orally examine any person acquainted with the facts and circumstances of the case.
- Such a person being examined is bound to answer all the questions truthfully.

Proviso -

- Such a person is excused from answering those questions which may incriminate him.

The proviso of the section gives a safeguard against self-incrimination enshrined as a fundamental right under article 20 subsection 3[27] of the Indian constitution. The said article states that any person accused of an offence can not be compelled to be a witness against himself. The accused may remain silent or may refuse to answer when confronted with incriminating questions. In a landmark judgment of *NandiniSatpathy vs P.L. Dani*[28], Supreme

[24] Indian Penal Code, 1860, s 174
[25] Indian Penal Code, 1860, s 161
[26] Indian Penal Code, 1860, ss 179, 202, and 203
[27] Constitution of India, 1950, art.20(3)
[28] *Nandini Satpathy v P.L. Dani* (1978), AIR 1025

Court held that the accused cannot be forced to answer questions. He is entitled to keep his mouth shut if the answers sought have a reasonable prospect of exposing him to guilt.

In ***Sewaki v State of Himachal Pradesh***[29], it was held that statements recorded by investigating officer under section 161[30] are neither recorded under oath nor are cross-examined as laid in section 145[31] of the Evidence act, and hence such statements, according to the law of evidence, are not the evidence of facts stated therein and therefore no substantive pieces of evidence.

Subsection 1 of 162[32] states that no statement made to a police officer during an investigation needs to be signed by the maker of the statement when the same has been reduced into writing. The objective of the section is to protect both overzealous police officers and untruthful witnesses[33]. The statement cannot be used either as substantive or as a corroborating piece of evidence against the accused. However, the accused can use the past statements made by the witness during the investigation to contradict them during cross-examination. This right has been given to defence counsel in **section 145 of the evidence act** which states that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing. It should, however, be noted that such statements can only be used for the benefit of the accused i.e., to contradict the prosecution witness, and not to his detriment i.e., as corroborative evidence. This stems from the belief that during police investigation, the witness can be under duress, the threat of mental or physical injury, and that the police cannot be trusted. This can further be established from section 163[34] of CrPC which strictly forbids police officers from using any form of threat, inducement, or promise to record a statement. However, there are two exceptions to the above-laid down rule. The statements were made under section 32(1) and section 27[35] of the Evidence act. Subsection 1 of section 32 is a Dying declaration. When a statement is made by a person in relation to his death, cause of

[29] *Sewaki v State of Himachal Pradesh* (1981) CriLJ 919
[30] Indian Evidence Act, 1872, s 161
[31] Indian Evidence Act, 1872, s 145
[32] Indian Evidence Act, 1872, s 162(1)
[33] *Khatri v State of Bihar* (1981) SCR (2) 408
[34] Code of Criminal Procedure, 1973, s 163
[35] Indian Evidence Act, 1872, ss 32(1) and 27

death, and circumstances surrounding the same, such statements are relevant irrespective of the fact that they were not made under oath. The maxim behind this is ***Nemo moriturus praesumitur mentire*** which means "a man will not meet his maker with a lie in his mouth". Such statements have a greater evidentiary value and can be used as substantive evidence during a trial even though they have not been cross-examined. **Section 27[36] of the Evidence Act** talks about discovery statements. Such statements, made to the investigating officer during the investigation by the accused, that lead to a discovery of a material fact can be used as a piece of evidence during a trial and hence has a higher evidentiary value. But if no discovery is made which is relevant to the trial then the statement would be of no evidentiary value to the trial.

Thus, it can be concluded that the statements recorded under section 161[37] CrPC by the police officers serve mainly the purpose of making a case against the accused persons, and the magistrate takes cognizance based on these statements as they form an important part of the documents sent to the magistrate after the police investigation is completed.

**STATEMENTS RECORDED UNDER SECTION 164 CRPC**

The power to record confessions has been explicitly given to judicial magistrates under the said section. Section 164(1)[38] confers power on the magistrate to record confessions and statements during the investigation before the commencement of trial. Subsection 2 and 3[39] of the same section provides a safety valve meant to muzzle involuntary confessions and the act of recording confession under section 164 is a solemn act and in discharging his duties under the section, the magistrate must take care to see that the requirements of law under section 164 must be fully satisfied[40]. Subsection 2 puts the onus on the magistrate to explain to the accused that he is not bound to make the confession and to make sure that such confession is being made voluntarily without any undue influence. The mode of recording confession is elaborate

[36] Indian Evidence Act, 1872, s 27
[37] Code of Criminal Procedure, 1973, s 161
[38] Code of Criminal Procedure, 1973, s 164(1)
[39] Code of Criminal Procedure, 1973, s 164(2) and (3)
[40] Kuthu Goala v State of Assam (1981) CriLJ 424

to ensure that it is made out of the free will of the accused party. Furthermore, according to subsection 3, if at any point in time the accused is unwilling to make any such statement, he is allowed to redact and excuse himself from making any such self-incriminatory statement and after such redaction, the judicial magistrate is disallowed to send the accused back to police custody. Confessions thus recorded have high evidentiary value and can be used as substantive pieces of evidence. However, they standalone cannot be used as a sole piece of evidence for prosecution and corroborative evidence is indispensable to secure a conviction. Subsection 5 of section 164[41] allows the magistrate to record non-confessional statements as well and such statements unlike the ones recorded by police under 161 have high evidentiary value as they are recorded under oath and hence admissible in trial. If the maker of a non-confessional statement recorded under this section is called a witness in the trial, then his earlier statement can be used for corroborating or contradicting his testimony in the court under sections 145 and 157 of the evidence act[42].

## CONCLUSION

When we analyze the evidentiary value of these statements then a conclusion can be drawn that in some way or the other, intentionally or unintentionally CrPC has given less value to the statements recorded by a police officer than compared to the statements recorded by a judicial magistrate. It paints the picture of a police officer as less trustworthy when compared to a magistrate and in the contrast, it states that the cognizance of an offence can is taken by a magistrate on the basis of the FIR filed by a police officer under section 190 of CrPC. This issue also highlights the force and undue influence exercised by police officers while conducting investigations and puts a big question mark on it. We would conclude our article with this question for the readers to think about and analyze.

[41] Code of Criminal Procedure, 1973, s 164(5)
[42] Ramprasad (n 12)