

## The First Information Report and Other Non First Information Reports Distinguished

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### ABSTRACT

*This article discusses the importance of the first information report. The relevant provision is found in section 107 CPC of Part 5 Chapter 12 of Criminal Procedure Code. This is the basis upon which an investigation under this chapter commences. The object of the first information report is to make a complaint to the police so as to set the criminal law in motion. The value of such first information report is that it is the first report of an occurrence to the police and as such is entitled to the most careful consideration by the courts of law. Its importance lies in the fact that it is presumed to be untutored, unplanned and unthought out version of the incident just as it reaches the police. It is therefore obvious that the object of the first information report is to enable the courts to have the information about a crime given before it could be developed or embellished in any manner. It follows that any statement recorded after the commencement of the investigation and after there has been some development, has little or no value at all as first information because it can be made to fit into the case as the case developed. Another category is non first information reports. At the moment all these appear to be lumped into section 107 Criminal Procedure Code too as well. Some examples are the arrest report and the raiding officer's report. Such reports relate to steps that are taken by the police thereafter, as follow up to the first information report. In some sense, there is a nexus between these reports but the distinction between the intended first information report as required by section 107 Criminal Procedure Code and these non FIR remains. Must there be a formal police report lodged before criminal investigation first information report commences? Whether the police could on their own initiative based on information received from their own sources start the investigation? This article surveys this aspect too. Finally, in the context of admissibility, what really is the value of such first information report and whether it carries any corroborative impact during trial? This is analysed by looking at the relevant provision in the Evidence Act 1950.*

### ABSTRAK

*Rencana ini membincangkan kepentingan laporan maklumat pertama atau first information report. Peruntukan yang relevan terdapat dalam seksyen 107 Bahagian 5 Bab 12 Kanun Prosedur Jenayah. Ini merupakan asas bagi permulaan siasatan polis di bawah Bab ini. Objektif laporan maklumat pertama ini adalah bagi membuat aduan kepada pihak polis agar proses undang-undang jenayah dapat segera digerakkan. Laporan sedemikian mempunyai nilai tersendiri. Memandangkan ini merupakan laporan pertama tentang kejadian yang berlaku kepada pihak polis maka adalah amat wajar jika laporan ini diberikan perhatian oleh mahkamah keadilan. Laporan ini penting kerana ia merupakan sesuatu yang dilaporkan secara spontan tanpa dirancang terlebih dahulu*

*dan ia mengikut apa yang telah berlaku ketika aduan dibuat kepada pihak polis. Laporan maklumat pertama ini membolehkan mahkamah mendapat maklumat awal mengenai jenayah tersebut tanpa apa jua penambahan cerita atau perkembangan yang berlaku kemudian daripada itu. Sehubungan itu, apa-apa percakapan tambahan yang direkodkan selepas proses siasatan bermula dan jika terdapat apa-apa perkembangan baru, ia boleh dianggap sebagai tidak mempunyai sebarang nilai sama sekali atau mempunyai nilai yang amat minimum sebagai laporan maklumat pertama. Ini adalah kerana kemungkinan perkembangan tambahan/terbaru kes tersebut kelak boleh disesuaikan mengikut acuan kes berkenaan dalam merangka laporan mengenainya. Satu lagi kategori laporan yang wujud ialah laporan bukan maklumat pertama. Di masa kini, laporan ini juga di kategorikan di bawah seksyen 107 Kanun Prosedur Jenayah. Contohnya ialah laporan tangkapan (yang dibuat selepas sesuatu tangkapan dibuat) dan laporan pegawai serbuan (setelah selesai sesuatu serbuan dibuat). Laporan ini dibuat oleh pegawai berkenaan sebagai tindakan susulan, setelah selesai laporan maklumat pertama direkodkan. Sungguhpun boleh dikatakan wujud satu bentuk pertalian atau nexus antara laporan maklumat pertama dengan laporan bukan laporan maklumat pertama, namun terdapat perbezaan ketara antara laporan maklumat pertami seperti yang dikehendaki mengikut seksyen 107 Kanun Prosedur Jenayah dengan laporan yang bukan laporan maklumat pertami. Adakah wajar atau mesti terdapat laporan polis dibuat sebelum siasatan rasmi boleh bermula? Bolehkah pihak polis memulakan siasatan sendiri berdasarkan maklumat dari sumber tersendiri? Artikel ini juga meninjau aspek berkenaan. Akhir sekali dari aspek admisibiliti, apakah nilai sebenar laporan maklumat pertama tersebut dan adakah ia membawa apa jua nilai sokongan di waktu perbicaraan? Semuanya turut dianalisis dalam rencana ini dengan melihat peruntukan yang relevan dalam Akta Keterangan 1950.*

## INTRODUCTION

A first information report (FIR) or popularly known as police report is a report that one lodges at a police station. It can be in the nature of a complaint or an accusation or some information pertaining to a crime. It is given with the objective of putting the police machinery in motion in order to investigate the information given. This object of putting the police into motion to investigate is implied when the information relates to a seizable offence.

The FIR is to be distinguished from information which may be received or obtained by the police when actively investigating a crime. Such information received in the process of active investigations are never classified as FIR but instead known as 'information adduced from investigative process' and if recorded by the police in writing will be known as 'police statement' covered under section 112 Criminal Procedure Code (CPC).

In this article an attempt is made to discuss first information report to be distinguished from non first information report namely arrest reports, raiding officers reports and investigation reports. Whether the lodging of FIR is a must or a condition precedent to the start of criminal investigations. Also the general

admissibility aspects and evidentiary value of the FIR, if any, by looking at the relevant Evidence Act 1950 provisions as well.

In Malaysia the lodging of the FIR is governed by section 107 CPC which provides that:

1. Every information relating to the commission of an offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant;
2. Every such information shall be entered in a book to be kept by such officer, who shall append to such entry the date and hour on which such information was given and whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it.

In looking at the words 'relating to the commission of an offence' in subsection (1) of section 107 above, it is clear that this does not mean details must be given but suffice if it indicates that an offence was committed as per Wahab Patail J in *PP v. Kesavan a/l Petchaya*<sup>1</sup> in which His Lordship had stressed, at page 152 that:

A detailed first information report might be valuable evidence. However the absence of details does not render evidence of the complainant necessarily less reliable but requires it to be examined more closely.

Also section 110(1) CPC on procedure where seizable offence suspected the section provides:-

If from information received or otherwise, a police officer not below the rank of sergeant or an officer in charge of a police station has reason to suspect the commission of a seizable offence. He shall, unless the offence be of a character which the PP has directed need not be reported to him, send a report of the same to the PP....

In looking at the clear wordings of section 110(1), the obvious phrase being from information received or otherwise... Here the word otherwise denotes that the FIR could be based on other sources of information that the police may have on their own. It is submitted that the investigation therefore can commence upon the lodging of a FIR by the police themselves on their own initiative without waiting for a formal complainant.

#### RECORDING OF FIR

The law relating to the FIR under section 107 summarized therefore lays down some conditions:

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<sup>1</sup> [2001] 7 MLJ 144.

- (a) the information must relate to the commission of an offence;
- (b) given to an officer in charge of a station (OCS);
- (c) if given orally must be reduced into writing and read over to the informant;.
- (d) must be signed by informant;
- (e) date and hour received to be recorded; and
- (f) report to be entered in a book kept for that purpose;

#### SECTION 107 AND SECTION 108A

Section 108A CPC deals with the admissibility of a certified true copy of a first information report. This certified copy is admissible only as evidence of the contents of the original. In other words it will take the place of the original lodged under section 107. Its evidentiary value therefore will be on the same footing with that of the original, as per section 107. Section 108A CPC reads as follows:

In any proceeding under this Code a copy of an entry relating to an information reduced to writing under the provisions of section 107 or 108, and purporting to be certified to be a true copy by the officer in charge of the police district in which the police station where the information given is situated, shall be admitted as evidence of the contents of the original and of the time, place and manner in which the information was so recorded.

#### WHETHER FIR A CONDITION PRECEDENT TO COMMENCEMENT OF CRIMINAL INVESTIGATIONS

Although section 107 CPC does not say that there can be no investigation without a report, the question arises whether such lodging of FIR is a condition precedent before criminal investigations can actually commence? Again as seen from section 110(1) CPC above, nothing to stop the police from lodging a FIR on own initiative to commence investigation in respect of some seizable offence.

The locus classicus on this is *Emperor v. Khawaja Nazir Ahmad*<sup>2</sup> in which Lord Porter on behalf of the Privy Council had stressed that:

If the police are in possession through their own knowledge or by means credible though informal intelligence which genuinely leads them to belief that a cognizable offence has been committed, the police can investigate on their own motion. The FIR is not a condition precedent to start criminal investigations.

In *PP v. Foong Chee Cheong*,<sup>3</sup> the FIR made to the police was oral (a verbal complaint) and never reduced into writing. It was partly due to this that the accused was acquitted without his defence being called. Gill J (as he then

<sup>2</sup> AIR (1945) 18 PC.

<sup>3</sup> [1970] 1 MLJ 97.

was) in surveying in the Privy Council decision of *Khawaja Nazir Ahmad*<sup>4</sup> above had again stressed that the receipt and recording (in writing) of an information report is not a condition precedent to the setting in motion of a criminal investigation.

INVESTIGATION STATEMENT DISTINGUISHED FROM  
FIRST INFORMATION REPORT

Some cases distinguish between FIR and information adduced during the investigative process which commonly is known as section 112 CPC statements. As early as 1939, the issue was addressed by Cussen J in *PP v. Ramasamy*<sup>5</sup> in which His Lordship distinguished between FIR and statements made in the course of police investigations, at page 164-165 stresses that:

An entry made under section 107 CPC was admissible in evidence. It was an entry made by a public servant in the discharge of his official duty. This was an entry made by a public servant bona fide in the discharge of his official duty. However once an investigation had commenced and carried on, any further statement recorded will no longer be a FIR.’

Also in *Daiman v. PP*,<sup>6</sup> a police report which was recorded some two months after the start of the police investigations was held to be inadmissible. The FIR is made by a complainant. Anyone can be a complainant including a police officer provided he is acquainted with the facts. In other words, he need not be a victim of the offence. In *PP v. Teh Cheng Poh*,<sup>7</sup> the defence had argued that PW2 was the complainant and no police report was produced. Gun Chitt Tuan J. (as he then was) disagreeing stressed at pages 252 and 254 respectively:

the facts of this case as disclosed by the evidence are that an emergency call was received by PW1, who was on desk duty at the Central Police Station and he then instructed 2 police patrol cars on rounds to proceed to the scene and PW2 was in charge of personnel in both cars which had subsequently apprehended the accused.

His Lordship continued at page 254:

I was of the view that strictly speaking the complainant here was not PW2 but instead was PW1 who had received the emergency call from a male Chinese who did not give his name. PW1 then had made the first information report.

Similarly, it is submitted that if a person sees the commission of an offence and lodges a police report he then becomes the complainant. Also where a

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<sup>4</sup> Ibid.

<sup>5</sup> [1939] 8 MLJ 163.

<sup>6</sup> (1951) MLJ 11.

<sup>7</sup> [1980] 1 MLJ 251.

police officer acts upon credible information, (such as when an informer rings to give information) and the police officer lodges that FIR, he (that officer) then will be the complainant. In *PP v. Lee Ah Ha*,<sup>8</sup> a police report lodged by the police officer was held to be first information report but not the diary in which he had reduced the same report.

Some Indian cases equally instructive that once investigation commenced based on orally received information then any further statements recorded will be investigation statements. Here the real FIR will still be that unrecorded oral information give by the informant.<sup>9</sup>

#### FIRST INFORMATION REPORT (FIR) AND OTHER NON FIRST INFORMATION REPORT (NON FIR) DISTINGUISHED

The next few cases cited below indicate the dilemma faced in construing section 107 CPC. This section is titled information and generally known as the first information report (FIR) section. Here the FIR as seen earlier is lodged with the objective of making a complaint to the police to set the criminal law in motion. In other words is to induce the police to investigate the matter.

However, as a matter of practice, lot of other types of police reports are lodged under the umbrella of this section too. These reports can simply be classified as the non FIR. Some examples will be the arrest report or the raiding officer's report. An arrest report is lodged normally after having effected an arrest and the raiding officer's report is lodged upon the completion of the raid. Such non FIR however have their own purpose to serve. These reports relate to steps that are taken thereafter, as a follow up to the FIR lodged in the first instance under section 107 CPC. Should these not be specifically distinguished from the FIR? Perhaps there ought to be some specific provision in CPC to differentiate such non FIR from FIR.

As for the investigation reports, as seen earlier, once active steps are taken to investigate, such written statements recorded by the police will no longer be FIR under section 107 but instead will be investigation statement under section 112 CPC. Shankar J. in *Pendakwaraya v. Kang Ho Soh*<sup>10</sup> had stressed that the arrest report made by the police officer who had effected the arrest was not a first information report. At page 372, His Lordship stressed that:

PW2's police report which was lodged upon effecting the arrest was an arrest report, a copy of which had been supplied to the defence. The defence had used this in their cross examination of PW2 to contradict his testimony but the prosecution cannot use such arrest report to corroborate PW2.

<sup>8</sup> [1989] 1 MLJ 120.

<sup>9</sup> *S.V. Madar v. State of Mysore* (1979) Cr. LJ 1358; *Lachman v. State* (1973) Cr. LJ 1658; and *Tohal Singh v. State of Rajasthan* (1989) Cr. LJ 350.

<sup>10</sup> [1992] 1 MLJ 360.

Also *Martin Rheus v. Sher Singh*<sup>11</sup> which held that, ‘once police investigations are started any such statement recorded will not amount to a FIR but will be one covered under section 112 CPC ...’

Issue of whether an arrest report lodged was a FIR under section 107 CPC arose in *PP v. Mohd. Bandar Shah bin Noordin and Anor*.<sup>12</sup> The learned Deputy Public Prosecutor had objected to the production of the police report lodged by PW3, as contended that it was inadmissible as this was not a FIR under section 107 CPC but instead was an arrest report lodged after investigation had commenced. VT Singham J. stressed that:<sup>13</sup>

If a police report being a previous statement by a witness may be used to show consistencies with his evidence in court and may afford some ground of believing the witness then there is no reason why a police report of a witness notwithstanding that it may not be a first information report cannot be used to contradict the witness with his evidence in court.

The two accused here were charged under section 39B(1)(a) Dangerous Drugs Act 1952 read with section 34 Penal Code. Both were acquitted and discharged at the close of the prosecution case as there were material discrepancies, contradictions or omissions between the evidence given in court and the police report lodged by the policeman (PW3) upon making the arrest. There was no satisfactory explanation on these material defects by PW3.

In the case of *PP v. Mohamed Musa b. Amarullah*,<sup>14</sup> Kamalanathan Ratnam J. took the view that such arrest report lodged by the raiding officer after the arrest of the accused, Jelutong Report 84/98, was FIR. His lordship said, ‘coming back to the case before me, I have found as a fact that Jelutong Report 84/98 is indeed the first information report.’<sup>15</sup> However such investigation statement was not viewed as FIR by Dato’ Hj. Abdul Malik Hj. Ishak JC (as he then was) in *PP v. Roslim bin Harun*<sup>16</sup> in which his Lordship said that:

Once the police have taken active steps in investigation, any written statements written by them are not first information reports and consequently inadmissible in evidence and further any statement recoded after the commencement of the investigation and after there has been some development is not only not first information but has very little or no value at all as the original story because it can be made to fit into the case as the case developed.<sup>17</sup>

<sup>11</sup> [1949] MLJ 201.

<sup>12</sup> [2005] 2 MLJ 349.

<sup>13</sup> *Ibid.*, pg. 391.

<sup>14</sup> [2002] 1 MLJ 561.

<sup>15</sup> *Ibid.*, pg. 568.

<sup>16</sup> [1993] 3 CLJ 505 at pg. 510.

<sup>17</sup> *Ibid.*, pg. 510.

James Foong JC (as he then was) in *PP v. Ismail b Atan*<sup>18</sup> took similar views in which His Lordship stressed at page 1256 that:

Statements made and recorded after investigation be it in the form of a police report or otherwise is not a first information report but more of an investigation statement.

In this case the police report was only lodged by PW3 once the raid on the premises was over. PW3 was the raiding officer. Defence had objected to such report being tendered as this was not a first information report. His Lordship agreed and was of the view that the real FIR was the information that PW3 had received from his source and if that report was tendered, it would have been admissible. It never was.

On similar issue in *PP v. Lee Eng Kooi*,<sup>19</sup> the raiding officer here had made the police report upon return from the raid. Defence had requested for a copy of this report but objected to by the learned DPP. Vincent Ng JC (as he then was) took the view that:

No justification for refusal of the learned DPP to supply a copy of PW3's report to the defence on the ground that same is not a first information report or for any other reason, it being also a public document' by virtue of section 35 Evidence Act 1950.<sup>20</sup>

However His Lordship cautions further on the same page:

The only residual distinction that remains is that whereas a first information report maybe tendered and admitted in evidence under section 108 A CPC, if only due to its value for the purposes of comparing its material with subsequent materials derived from investigations ensuing the first information report, it is nevertheless impermissible to read subsection 35 and 157 of Evidence Act as permitting the prosecution to use statements made and recorded after investigations have commenced, be it in the form of police reports or otherwise for example non first information reports to corroborate the testimony of a witness. It is patently unfair to the accused persons and unjust to allow subsequent or non first information reports detailing and setting out materials derived from an investigation, initiated and set into motion by a first information report, to be used for corroborative purposes. The reason being that the contents of such subsequent reports would obviously be made to dovetail with materials in the case as it then had developed.

A review of some of the reported cases above would appear to reveal that the distinction between FIR and non FIR is on the purpose that these reports serve. FIR serves as a complaint to set the police investigations in motion whereas the other reports (such as arrest report or raiding officers reports) relates to

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<sup>18</sup> [1992] 2 CLJ 1253 at pg. 1256.

<sup>19</sup> [1993] 2 MLJ 322.

<sup>20</sup> *Ibid.*, pg. 330.



steps taken by the police thereafter. The distinction between both types of reports therefore still remains.

Again it is submitted that a proper FIR to set the criminal law in motion can also be made by the police themselves in the absence of an appropriate complaint based on information received from own sources to initiate such investigations. Therefore such FIR are different from the arrest reports or raid reports lodged after making a lawful arrest or raids as these reports have their own purposes to serve. The distinction between these types of reports therefore remains.

However, as to the admissibility aspects of such reports it can be argued that the FIR is made admissible as evidence of the contents of the original report by section 108A CPC. This section as mentioned earlier deals only with admissibility of a certified true copy of a FIR and its evidentiary value therefore is submitted to remain on the same footing as that of the original.

#### ADMISSIBILITY OF FIR DURING TRIAL

The central issue to be focused upon is what really if any, is the value of such information reduced into writing as directed by section 107 CPC. How best can it be utilized during trial and whether any corroborative value could be attached to it?

The FIR is not made on oath and neither subjected to cross examination when being recorded. It is usually recorded either by the complainant himself or written by a police personnel based on narration by the complainant, who eventually will be required to sign the report himself. There might be instances where the complainant will lodge the FIR soon after the alleged criminality has taken place or after the occurrence of the event. In such instances whether should there be any corroborative value attached at all?

The admissibility aspects of such FIR will therefore have to be scrutinized by looking at the relevant provisions in the Evidence Act 1950. It is submitted that the evidentiary value of a FIR is determined after having made admissible under section 108A CPC by sections 145 (to contradict) and 157 (to corroborate) of the Evidence Act 1950.

As for the arrest reports and other similar non FIR types is made admissible by sections 35, 145 and 157 of the Evidence Act 1950. The evidentiary value of a FIR (or the non FIR) can be said only to contradict the testimony of the maker of that report who is now a witness under section 145 of the Evidence Act 1950 or to corroborate his testimony under section 157 of the said Act. If to corroborate to what extent can this corroboration be?

In 2005 the evidentiary value of a first information report was commented on by Federal Court. In *Balachandran v. PP*<sup>21</sup> a police report made by PW1, the

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<sup>21</sup> [2005] 2 MLJ 301.

prosecution witness was not produced at trial and defence had argued that this non production was fatal and an adverse inference ought to have been drawn against the prosecution under section 114(g) of the Evidence Act 1950 as the case rested solely on the evidence of PW1. Augustine Paul JCA (as he then was) said that:

is clear that the need for a first information report to corroborate the testimony of a witness depends on the facts and circumstances of each particular case. Where the evidence of a single witness who has made a first information report is vague it is most desirable to tender it in evidence in order to enhance his credibility. That was the basis of the judgment in cases such as *Chin Kwing Siong v. R* (1952) MLJ 74 and *Ooi Hack Leong v. R* (1955) MLJ 229.<sup>22</sup>

His Lordship continues further on the same page by stating:

Where it is not tendered in evidence in such a situation the evidence of the witness stands to be rejected, not because it lacks corroboration but because it may not pass the test of credibility and reliability on its own. It is only to that extent can it be said that the failure to produce the first information report is fatal.

His Lordship earlier on (at pages 309, 310 and 311) discusses further the evidentiary value of a FIR and traces some earlier cases from as far back as 1952. Some of these are *Tan Chen Kooi & Anor v. PP*,<sup>23</sup> *Ooi Hock Leong v. R*,<sup>24</sup> *Public Prosecutor v. Foong Chee Cheong*,<sup>25</sup> *Ooi Hock Leong v. R*,<sup>26</sup> *Chin Khing Siong v. R*<sup>27</sup> and *Teo Thin Chan & Anor v. Public Prosecutor*,<sup>28</sup> where the appeal against conviction was allowed. His Lordship goes on to quote Sinha J. in *Vadivelu Thevar v. State of Madras*<sup>29</sup> at pages 618-619:

On the consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely stated as firmly established:

- (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.
- (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for

<sup>22</sup> *Ibid.*, pg. 311.

<sup>23</sup> [1972] MLJ 115.

<sup>24</sup> [1955] MLJ 229.

<sup>25</sup> [1970] 1 MLJ 97.

<sup>26</sup> [1955] MLJ 229.

<sup>27</sup> [1952] MLJ 74.

<sup>28</sup> [1957] MLJ 184.

<sup>29</sup> (1957) AIR SC 614.

example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary must depend upon facts and circumstances of each case and no general rule can be laid down in a manner like this and much depends upon the judicial discretion of the judge before whom the case comes.

To reiterate Augustine Paul JCA at page 311 stressed that:

It is therefore clear that the need for a first information report to be used to corroborate the testimony of a witness depends on the facts and circumstances of each particular case. Where the evidence of a single witness who has made a first information report is vague it is most desirable to tender it in evidence in order to enhance his credibility. That was the basis of the judgment in cases such as *Chin Khing Siong v. R*<sup>30</sup> and *Ooi Hock Leong v. R*<sup>31</sup> where it is not tendered in evidence in such a situation the evidence of the witness stands to be rejected; not because it lacks corroboration but because it may not pass the test of credibility of reliability on its own. It is only to that extent can it be said that the failure to produce the first information report is fatal. If indeed it contradicts the evidence of a witness it is the duty of the defence to use it in order to attack the credibility of the witness. Where that has not been done it would be contradiction in terms for the defence to ask for an adverse inference to be drawn against the prosecution for failure to adduce it in evidence. On the contrary the failure of the defence to use it as described may lead to the inference that it is not adverse to the evidence of the witness. The corollary is that an adverse inference cannot be drawn against the prosecution for failure to tender in evidence a first information report and the strength of its case it to be assessed as it stands.

In conclusion, His Lordship then stated at the same page:

As the trial judge in this case had accepted evidence of PW1 who was supported by the testimony of PW3, the need for PW1's evidence to be corroborated by his police report did not arise.

Also of interest is *PP v. Lee Kee Yak*,<sup>32</sup> in which the accused was charged with gang robbery and the only witness was a boy of 14 or 15 years of age. The boy was rescued by a police squad and on the same night had lodged a police report in which some striking appearances and good description of the accused was given in that report. The accused was arrested almost a year later and charged. However at trial the police report made by the boy was never put in evidence. The court was of the view that such non-production was fatal to the

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<sup>30</sup> [1952] MLJ 74.

<sup>31</sup> [1955] MLJ 229.

<sup>32</sup> (1923) 4 Fin SLR 1.

prosecution as the FIR would have been most valuable as the witness was a boy and the FIR would definitely had corroborated.

Some Indian cases that discusses evidentiary value of FIR are equally instructive. The object of such report was to obtain early information of alleged criminality, to record the circumstances before there is time to be forgotten or embellished and that report can be put in evidence when the informant is examined if it is desired to do so as per *Das v. Western and Others*.<sup>33</sup>

Although the FIR was not a piece of substantive evidence it can be used to corroborate the informant under section 157 Evidence Act or to contradict him under section 145 of same Act, if the informant is called as a witness at the time of the trial. It is quite obvious that the first information report can only be used for purposes of corroborating or contradicting the witness who made it and not others as in *Habib v. State of Bihar*.<sup>34</sup> The FIR will have better corroborative value if recorded before there is time and opportunity to embellish or before the informant's memory fails. Any undue or unreasonable delay in lodging the FIR gives rise to suspicion which will put the court on guard to look for possible motive and explanation and also consider its effect on the trustworthiness or otherwise of the prosecution witness.<sup>35</sup> A delay in lodging the FIR was however acceptable and held reasonable under the circumstances as in *Harpal Singh v. State of Hydra Pradesh*<sup>36</sup> and *Ramachandran v. State of Rajasthan*.<sup>37</sup>

#### SECTION 157 EVIDENCE ACT 1950

The admissibility of an immediate complaint to corroborate the witness testimony in court in Malaysia is governed by section 157 of the Evidence Act 1950 which provides that:

In order to corroborate the testimony of a witness, any former statement made by him whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

This section has seen some of the most ingenious reasoning in local jurisprudence. Some cases have recognized the fact that consequent to section 157 of the Evidence Act 1950, there is a difference in the law of corroboration at common law in England and Malaysia. Others, very much at unease at the

<sup>33</sup> 16 CWN 145.

<sup>34</sup> (1972) Cr LJ 233.

<sup>35</sup> *Joseph v. State of Kerala* (1973) Cr. LJ 185 and *Thulia Kali v. State of Tamil Nadu* (1972) Cr. LJ 1296.

<sup>36</sup> (1981) Cr. LJ 1.

<sup>37</sup> (1982) Cr. LJ 36.

thought of allowing a witness to corroborate himself, have attempted to harmonize it with the English jurisprudence on corroboration.

In analyzing section 157 Evidence Act, some three conditions need to be satisfied. These are:

- (a) firstly – a witness should have given some testimony with regard to some fact;
- (b) secondly – he should have made a statement previously with respect to the same fact at or about the time when the alleged fact took place; and
- (c) thirdly – such statement previously made was before any authority legally competent to investigate the fact.

The legislature has invested ‘a very wide discretion’ in the Trial Judge whether to accept or reject such testimony from the earlier statement with the use of the word ‘may’ in section 157. What exactly will be such statement made before any authority legally competent to investigate? The most common type of statement in issue will be the (FIR) or the police report lodged.

The local courts have strived to balance the requirements of corroboration stated therein in section 157. Some have put the label of value of such statements as to only show ‘some consistency of the witness’ and the word ‘consistency’ does not in fact seen by these courts as amounting to any corroborative value at all. Whilst others have acknowledged existence of some form of corroboration, some have succinctly stated it as a weaker type of corroboration.

The operation of section 157 Evidence Act 1950 was explained earlier by Federal Court in *Lim Guan Eng v. PP*.<sup>38</sup> The appellant here was charged with two offences. He was convicted on both. Relevant here is the second charge of sedition. The appellant argued that the Trial Judge was wrong in convicting on the second charge on the basis of uncorroborated evidence of Kpl. Stanley as section 6(1) of Sedition Act 1948 does not permit conviction of an offence under section 4 of the same Act on the uncorroborated testimony of one witness.

The prosecution however argued that by virtue of section 157 Evidence Act 1950, the evidence of Kpl. Stanley was corroborated by his own former statement. The Kpl. had listened to the speech given and took notes and later typed down what was written in his notes. This was tendered as exhibit P6. Dr. Zakaria Yatim FCJ said at page 597 stresses that under section 157 Evidence Act, a former statement made by a witness is admissible in order to corroborate his testimony and the weight depends on the facts of a particular case. His Lordship then referred to and traced some earlier cases such as *Liew Wah Ming*

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<sup>38</sup> [2000] MLJ 577.

v. PP,<sup>39</sup> *R v. Velayuthan*,<sup>40</sup> *R v. Koh Soon Poh*,<sup>41</sup> *Mohamed Ali v. PP*,<sup>42</sup> *Karthiyayani & Anor v. Lee Leong Sin & Anor*,<sup>43</sup> and *PP v. Samsul Kamar bin Mohd. Zain*.<sup>44</sup> To quote Raja Azlan Shah (His Majesty as he then was) at page 120 in *Karthiyayani & Anor v. Lee Leong Sin & Anor*.<sup>45</sup>

It is settled law that a person cannot corroborate himself but it would appear that section 157 of the Evidence Act enables a person to corroborate his testimony by his previous statement. The section adopts a contrary rule of English jurisprudence by enacting that a former statement of a witness is admissible to corroborate him, if the former statement is consistent with the evidence given by him in court. The rule is based on the assumption that consistency of utterance is a ground for belief in the witness' truthfulness, just as inconsistency is a ground for disbelieving him. As for myself, although the previous statement made under section 157 is admissible as corroboration, it constitutes a very weak type of corroborative evidence as it tends to defeat the object of the rule that a person cannot corroborate himself. In my opinion the nature and extent of corroboration necessary in such a case must depend on and vary according to the particular circumstances of each case. What is required is some additional evidence rendering it probable that the story of the witness is true and that it is reasonably safe to act upon it. If a witness is independent, ie, if he has no interest in the success or sources which are likely to be tainted. If there are circumstances tending to affect of a case and his evidence inspires confidence of the court, such evidence can be acted upon. A witness is normally to be considered independent unless he springs from sources which are likely to be tainted. If there are circumstances tending to affect his impartiality, such circumstances will have to be taken into account and the court will have to come to a decision having regard to such circumstances. The court must examine the evidence given by such witness very carefully and scrutinize all the infirmities in that evidence before deciding to act upon it.

Dr. Zakaria Yatim then goes on to say at page 598:

The question to be considered here is whether section 157 applies to the present case. In our opinion it does because the provision contained in s 157 is not contrary to s 6(1) of the Sedition Act 1948. We, therefore, agree with the submission of the learned deputy that the statement (exh P6) corroborates Kpl Stanley Liew's evidence. The weight of the statement for the purpose of corroborating Kpl Stanley Liew's evidence is a question of fact. The trial judge had considered the value of the statement and made a finding of fact that the statement alone was not sufficient corroboration to convict the appellant. He said, however, that Stanley Liew's evidence was corroborated by the evidence of Zakaria Budin (PW7) and Inspector Lok Yoke Choy (PW13). He added that the credibility of

<sup>39</sup> [1963] 2 MLJ 82.

<sup>40</sup> [1935] MLJ 277.

<sup>41</sup> [1935] MLJ 120.

<sup>42</sup> [1962] 2 MLJ 230.

<sup>43</sup> [1975] 1 MLJ 119.

<sup>44</sup> [1988] 2 MLJ 252.

<sup>45</sup> [1975] 1 MLJ 119.

Kpl Stanley Liew's evidence was enhanced when Insp Lok confirmed as correct the content of the statement (P 6). The Court of Appeal accepted the finding of the trial judge when it said that although the two other witnesses could not recall every work spoken by the appellant, they confirmed that evidence of Kpl Stanley Liew in material particulars. The court said, 'This is sufficient corroboration in the eyes of the law. We entirely agree with the Court of Appeal. The prosecution had therefore satisfied the requirements of the law as contained in s 6(1) of the sediton Act 1948'.

Some references were also made to section 73A of the Evidence Act 1950 and in reading the section as a whole and not in isolation, His Lordship at page 596 expresses the view that the whole section refers to question of admissibility of statement made by a person in civil proceeding's and further at page 597 stresses again that subsections (6) and (7) of section 73A relates only to documentary evidence in civil cases.

### CONCLUSION

The very basis of the first information report is to maintain a proper record in relation to the commission of a crime and this report is different from the other non first information reports namely the arrest reports, raiding officers report or investigation reports. Courts have held in the past that the accused has rights to obtain copies of the first information report or the arrest report but are slow in granting such rights to investigative reports or section 112 police statements. As for the evidentiary value of such FIR from as far back as 50 years ago, the courts have generally viewed this as not a piece of substantive evidence at all. It can be used to corroborate or contradict the witness. As to corroboration it is generally seen as merely to show consistency and some courts have literally said such consistency do not amount to any corroborative value at all. Others have viewed this as a weaker type of corroboration. This is as the courts are generally inclined to be influenced by the English jurisprudence on corroboration.

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