

Action against I.O. and Doctor

It has been held by the Hon'ble Supreme Court in, **Sahabuddin Vs. State of Assam**, Criminal Appeal No. 629 of 2010, decided on **13-12-2012**, that where the Investigating Officer has conducted investigation in a suspicious manner and the Doctor has also failed to discharge his professional obligations in terms of the professional standards expected of him, then the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

SUPREME COURT OF INDIA

Bench

Hon'ble Mr Justice Swatanter Kumar, J.
Hon'ble Mrs. Justice Gyan Sudha Misra, J.

Per Swatanter Kumar, J.

Held:

“27. The Investigating Officer has conducted investigation in a suspicious manner and did not even care to send the viscera to the laboratory for its appropriate examination. As already noticed, in his statement, PW11 has stated that viscera could not be examined by the laboratory as it was not sent in time. There is a deliberate attempt on the part of the Investigating Officer to misdirect the evidence and to withhold the material evidence from the Court.

28. Similarly, PW1, the doctor who conducted the post mortem of the corpse of the deceased was expected to categorically state the cause of death in which he miserably failed. He is a doctor who is expected to perform a specialized job. His evidence is of great concern and is normally relied upon by the Courts. For reasons best known to him, he made his evidence totally vague, uncertain and indefinite. Given the expertise and knowledge possessed by a doctor PW1, was expected to state the cause of death with certainty or the most probable cause of death in the least. According to PW1, the black spots noticed on the deceased may be because of poisoning or it could be because of suffocation, although he also mentioned in his report that the symptoms described above may occur due to epilepsy. It is not

possible to imagine that there would be no distinction whatsoever, if such injuries were inflicted by assault or suffocation or be the result of an epileptic attack.

29. In our considered view, the doctor has also failed to discharge his professional obligations in terms of the professional standards expected of him. He has attempted to misdirect the evidence before the Court and has intentionally made it so vague that in place of aiding the ends of justice, he has attempted to help the accused.

30. In our considered view, action should be taken against both these witnesses. Before we pass any direction in this regard, we may refer to the judgment of this Court in Gajoo (supra), where the Court had directed an action against such kind of evidence and witnesses;

“In regard to the defective investigation, this Court in the case of Dayal Singh and Others. v. State of Uttaranchal [Criminal Appeal 529 of 2010, decided on 3rd August, 2012] while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases held as under:-

22. Now, we may advert to the duty of the Court in such cases. In the case of **Sathi Prasad v. The State of U.P. [(1972) 3 SCC 613]**, this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in the case of **Dhanaj Singh @ Shera & Ors. v. State of Punjab [(2004) 3 SCC 654]**, held, “in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

(Emphasis supplied)

23. Dealing with the cases of omission and commission, the Court in the case of **Paras Yadav v. State of Bihar [AIR 1999 SC 644]**, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. In the case of **Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors. [(2006) 3 SCC 374]**, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that

witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The courts have a vital role to play.

(Emphasis supplied)

24. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

27. In **Ram Bali v. State of Uttar Pradesh [(2004) 10 SCC 598]**, the judgment in **Karnel Singh v. State of M.P. [(1995) 5 SCC 518]** was reiterated and this Court had observed that ‘in case of defective investigation the court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective’.

28. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a ‘fair trial’, the Court should leave no stone unturned to do justice and protect the interest of the society as well.

29. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt

the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In **Kamaljit Singh v. State of Punjab [2004 Cri.LJ 28]**, the Court, while dealing with discrepancies between ocular and medical evidence, held, “It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.”

30. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert’s opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. {**Plz. See Madan Gopal Kakad v. Naval Dubey & Anr. [(1992) 2 SCR 921: (1992) 3 SCC 204]**}.”

“The present case, when examined in light of the above principles, makes it clear that the defect in the investigation or omission on the part of the investigation officer cannot prove to be of any advantage to the accused. No doubt the investigating officer ought to have obtained serologist’s report both in respect of Ext. 2 and Ext. 5 and matched it with the blood group of the deceased. This is a definite lapse on the part of the investigating, officer which cannot be overlooked by the Court, despite the fact that it finds no merit in the contention of the accused. For the reasons afore-recorded, we dismiss this appeal being without any merit. However, we direct the Director General of Police, Uttarakhand to take disciplinary action against Sub-Inspector, Brahma Singh, PW6, whether he is in service or has since retired, for such serious lapse in conducting investigation. The Director General of Police shall take a disciplinary action against the said officer and if he has since retired, the action shall be taken with regard to deduction/stoppage of his pension in accordance with the service rules. The ground of limitation, if stated in the relevant rules, will not operate as the inquiry is being conducted under the direction of this Court.”

31. In view of the above settled position of law, we hereby direct the Director General of Police, State of Assam and Director General of Health Services, State of Assam to take disciplinary action against PW1 and PW11, whether they are in

service or have since retired. If not in service, action shall be taken against them for deduction/stoppage of pension in accordance with the service rules. However, the plea of limitation, if any under the relevant rules would not operate, as the departmental inquiry shall be conducted in furtherance to the order of this Court.
