

“EVERY ACQUITTAL SHOULD BE UNDERSTOOD AS A FAILURE OF THE JUSTICE DELIVERY SYSTEM” A COMMENTARY ON *STATE OF GUJARAT V. KISHANBHAI 2014* BY MS. NAINA*

Introduction

During the year 2012, the conviction rate was only 38.4% of the total number of criminal cases in which trials were completed as recorded by the National Crime Record's Bureau,¹ and the rate at which trials were conducted was extremely slow. The Apex Court has time and again shown its concern over such a situation of miscarriage of justice. On 7th January, 2014, the Apex Court came up with yet another landmark judgment considering a Criminal Appeal by the State of Gujarat showing its concern towards the existing broken criminal justice system.² While dismissing the appeal, the Supreme Court felt “crestfallen, heartbroken and sorrowful”³ as they were unable to serve the cause of justice, to an innocent child. The recent judgment shows the anguish of the highest court of the land, when the investigation officials and the prosecution agency miserably failed in discharging their duties.

Case Background

It was in 2003 that a six year old girl child Gomi was kidnapped/ abducted. Later her dead body was found from nearby fields. She was brutally raped and murdered by inflicting head and body injuries, further in order to steal a silver anklet which she wore, her feet were chopped off. Gomi was last seen in the company of Kishanbhai. A charge-sheet was framed by the police against the accused Kishanbhai under Sections 363, 369, 376, 394, 302 and 201 of the Indian Penal Code, and Section 135(1) of the Bombay Police Act. Later the trial court passed a conviction order based on circumstantial evidence and sentenced Kishanbhai to death by hanging. It was contended by the learned counsel for the appellant that no link in the chain of circumstantial evidence was missing, so as to render any ambiguity in the matter.⁴ The Gujarat High Court declined to confirm the death sentence and he was given the benefit of doubt and acquitted. The High Court was of the opinion that since the guilt of the accused in the instance case is to be based on circumstantial evidence, it is essential for us to determine whether or not a complete chain of events stand established from the evidence produced by the prosecution. It pointed out to the lacunae/ deficiencies during the course of investigation and prosecution.⁵ Non-examination of vital prosecution witnesses, improper use

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¹ National Crime Records Bureau, *Cases Registered and their Disposal by Police and Courts during 2012*, CRIME STATISTICS IN INDIA 2012, viewed 17th February, 2014 <<http://ncrb.nic.in/>>

² *State of Gujarat v. Kishanbhai*, decided on 7th January, 2014, viewed on 26th December, 2014 <<http://judis.nic.in/supremecourt/imgst.aspx?filename=41139>>

³ *Ibid* ¶ 16

⁴ *Ibid* ¶ 9 (g)

⁵ *Ibid* ¶ 11

of scientific and medical advancements and a lot of discrepancies found in the evidence produced by the prosecution⁶ lead to the inference that important links in the chain of events were missing.⁷ The state went into an unsuccessful appeal and this High Court's judgment was affirmed by the Supreme Court.

Every Acquittal Is the Failure of Justice Delivery System

The apex court is of the opinion that every time there is an acquittal, the consequences are just the same, the purpose of justice is not achieved. If an accused is acquitted giving him the benefit of doubt, there are two sides of the story. Either he is truly innocent or he has succeeded because of the lapses committed by the investigating/prosecuting agencies. If despite being guilty, he has escaped the investigating and the prosecution agencies must be deemed to have seriously messed it all up and if the accused was wrongfully prosecuted, his suffering is unfathomable. Here, both the agencies are blameworthy.

An innocent person does not deserve to suffer the turmoil of a long drawn litigation. The expenses incurred by an accused in his defence can dry up all his ancestral or personal financial resources. Also an accused can be expected to be under a financial debt, by the time his ordeal is over.⁸

The Apex Court seemed to be shattered at the fact that the perpetrators of a horrendous crime have remained unpunished. 'A criminal on the move'- they call it.⁹ He is more fearless and fearsome now. His actions would now know no barriers.

Fair Investigation: Backbone of Fair Trial

The Constitution of India which is cornucopia of all the laws provides that right to speedy investigation and fair trial is an integral part of very soul of Article 21 of the Constitution.¹⁰ In the case of *Nirmal Singh Kahlon v. State of Punjab*,¹¹ the Supreme Court stated that it is not only the accuse who has the right to fair investigation under Art. 21 but also a victim of a crime, is equally entitled to a fair investigation. In another landmark judgment, *Babuhai v. State of Gujarat*¹² the Apex court was of the opinion that investigation must be fair, transparent and judicious. Tainted and biased investigation and consequent prejudice and harassment to nay party cannot be permitted to continue. A fair and proper investigation is always conducive to the ends of justice and for establishing the rule of law and maintaining proper balance in law and order. There are very vital issues in a democratic set up which must be taken care of by the Courts.¹³

Speedy and fair investigation by police which is the legal capacity of sovereignty is to uphold the dignity of the rule of law which is the core issue of the Constitution of India. If the police fails to perform its duties, the rule of law is in danger. Defective investigation and total lack of professional knowledge erodes the credibility of police and public has no faith in the system of investigation carried out by the police. It is well perceived jurisprudence that only the prodigious investigational ability brings the public closer to police but in the recent past

⁶ *Ibid* ¶ 12 (a) to (j)

⁷ *Ibid* ¶ 11 points (a) to (k)

⁸ *Ibid* ¶ 17

⁹ *Ibid* ¶ 15

¹⁰ *Dharmendra Kirthal v. State of U.P. and Anr.* (2014)1 SCC 280 ¶ 7(a)

¹¹ 2008 Cri LJ 4096 ¶ 27

¹² (2010) 12 SCC 254

¹³ *ibid*

there is no accountability of the police and prosecutor to gain conviction. Hence the judiciary in the case of Kishanbahi has finally come forth to issue certain directions to the State Governments of the country as a mechanism to secure conviction in criminal case.¹⁴

Directions by the Court

The system which is created for the administration of the justice is responsible for having deprived justice to the justice-seekers. The court expresses its concern over remedying the above so mentioned situation and the foremost suggestion is to adhere to a simple procedure. Accordingly the Court in the case of Kishanbhai has given the following directions:

Prosecution to apply its independent mind

The Supreme Court directs that once the investigation is complete in a criminal case, the prosecuting agency should apply their independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. Further by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of the case, it should be ensure that evidence gathered during investigation is truly utilized.¹⁵

Standing Committee of Senior Officers of Police and Prosecution Departments

In furtherance of the above purpose, the Home Department of every State has been directed to constitute a standing committee of senior officers of police and prosecution departments to examine all orders of acquittal and to record reasons for the failure of each prosecution case. The considerations at the hands of the above committee should be utilized for crystallizing mistakes committed during investigation or prosecution or both.¹⁶

To incorporate the considerations in Training Programmes

The considerations drawn from the above examination of the standing committee should be incorporated as content-course of training programmes for junior investigation/prosecution officials and refresher senior officials. Judgments like the present one and similar others shall form part of the course. The responsibility to prepare such programmes is vested with the above said committee and the Apex Court directs it to be put in place within 6 months.¹⁷ This is to ensure that if any lapse is committed by the officials, they would not be able to feign innocence, when they are made liable to suffer departmental actions, for their lapse as now they are already being trained to handle sensitive matters concerning investigation/prosecution.

Annual Revision of the Course Content

On the basis of fresh inputs, emerging scientific tools of investigation, judgments of courts and the experience gained by the standing committee while examining failures, the course content will be reviewed annually.¹⁸

¹⁴ A. Romen Kumar Sigh, *Supreme Court of Failure to Secure Conviction in Criminal Cases*, IMPHAL FREE PRESS, 7th February, 2014, viewed on 27th December, 2014, < at <http://www.ifp.co.in/nws-19479-supreme-court-of-failure-to-secure-conviction-in-criminal-case/>>

¹⁵ *Supra* 2 ¶ 19

¹⁶ *ibid* ¶ 20

¹⁷ *ibid* ¶ 20

¹⁸ *ibid* ¶ 20

Identification of the Investigating and Prosecution Official in case of an Acquittal

Once an order of acquittal comes, the concerned investigating/ prosecuting official(S) responsible for such acquittal must necessarily be identified. In each case a finding needs to be recorded as to whether the lapse was innocent or blameworthy. Each such erring officer must suffer the consequences of his lapse, by appropriate departmental action. Further the Court directs that depending purely upon his culpability; the concerned officer may be withdrawn from investigative responsibilities, permanently or temporarily.¹⁹

State Government to Formulate Procedure for taking Actions

The Supreme Court in the impugned judgment further directs the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.²⁰

Analysis

All the States though take acquittal very seriously but no state has empowered the prosecutors, equipped them to take independent decisions. Worldwide the prosecution of criminal case seems to have improved many folds. Prosecutors actively participate in the investigation. They lay down guidelines and give directions to the investigators regarding the lines of investigation to be taken.²¹ But in India there is a mark of reluctance. Pre 1947 we are running a police dominated system wherein the Constitutional safeguards are kept in ignorance. Way back in 1958 the Law Commission already observed that police exercised too much control over the prosecution. Later the above sentiments were reiterated in the 14th Law Commission Report. But the Fourth Police Commission and the Malimath Commission (2003) observed otherwise. Even the standing committee suggested by the Apex Court would not be able to bring many changes as the committee is itself police dominated.

Taking action against investigators and prosecutors after the acquittal has been recorded is like closing the stable doors after the horses have bolted.²² Most of the directions under Kishanbhai's Case are for taking actions against the erring officials but that would merely serve the ends of justice as the ruthless criminal have remained unpunished.

The need of the hour is to draw some standard operating procedure (SOP) to coordinate powers, functions and duties of investigators and prosecutors, giving primacy to prosecution to take prosecution decisions.

Further to ensure that prosecuting agency performs its functions faithfully, a code of ethics should be enacted based on Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors (1996).²³

¹⁹ *ibid* ¶ 21

²⁰ *ibid* ¶ 21

²¹ K.S Garewal, Justice, *Repairing a Broken Justice System*, THE TRIBUNE, 19th February, 2014, at 11

²² *ibid*

²³ International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors-1996* (23rd April,1999), viewed on 27th December, 2014, <http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/IAP1999_EN.pdf>

Conclusion

The fate of any case depends upon many important decisions taken by the prosecuting agencies; the evidence collected; the witnesses called etc. and how a prosecutor will develop its case depends upon the kind of investigation carried on by the police. Hence to develop a strong case against the accused, both the prosecution as well as the investigating agencies should work in coordination. Kishanbhai has given a time of 6 months to the State Home Departments to formulate committees and procedures to deal with the badly conducted trials. Though this can be regarded as the first step towards repairing a broken justice system, we still have a long way to go in strengthening the law regarding the working of the investigating and prosecution agencies. This is an era of Judicial Activism and the Judiciary should not hesitate to lay down clear directions for the investigation and prosecution teams if least is done to prepare and enforce such law.

Law Mantra