



Investigation : The Law and Challenges



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Real Justice



linked with

Fair Investigation, Effective Prosecution

and just appreciation of evidence

to uphold sound Rule of Law

and spirit of Constitution and

to create Public Trust and Confidence in the
system.

OBJECTIVES OF AN INVESTIGATION



- ✓ To establish the crime actually committed,
- ✓ To identify and apprehend the suspect(s),
- ✓ to recover Crime property and case property,
- ✓ to connect the accused with the crime,
- ✓ To assist in the prosecution charged with the crime.



***"Ces-sante Ratione Legis
Cessat Ipsa Lex"***

***"Reason is the soul of the law,
and
when the reason of any particular law
ceases,
so does the law itself."***





IMPORTANT PRINCIPLES OF CRIMINAL JURISPRUDENCE IN CRIMINAL TRIALS



- ❖ **PRESUMPTION OF INNOCENCE**
- ❖ **BURDEN OF PROOF ON THE PROSECUTION**
- ❖ **PROOF BEYOND REASONABLE DOUBT**
- ❖ **MERE SUSPICIOUS IS NOT A PROOF**
- ❖ **SUSPISION** ‘May be’ and ‘Must be’



Public Confidence in the system

- People losing confidence in wings of Administration of Justice for several reasons.
- Concept of accountability has to be developed to raise the level of public confidence in the system.
- There shall be no gap between investigation and prosecution case.
- **Gaps do to**
- Serious lapses,
- Common irregularities,
- Negligent in conducting proceedings, lack of courage, morality, integrity. intentional diversions, Collusions,
- Undue influence from authorities (both higher and outside forces).

State of Gujarat v. Kishan bhai

[Cri. Ap. No. 1485 of 2008].

WHAT SUPREME COURT SAYS,



Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference that an innocent person was wrongfully prosecuted. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for,"



ACCOUNTABILITY OF THE AUTHORITIES OF JUDICAL PROCESS



Police says I have adopted best methods in investigation. The case could not be made successful; when

- No cooperation by direct witnesses**
- Prosecution not properly presented in court.**



ACCOUNTABILITY OF THE AUTHORITIES



**Prosecutor says that a case is
rarely successful;**

- without proper Investigation**
- without victim cooperation and
testimony.**



ACCOUNTABILITY OF THE AUTHORITIES



**Judge says that
the investigation is not on proper lines,
Ineffective Prosecution.**

- Existence of contradiction and material omissions**
- Testimony of material witness is doubtful.**
- Benefit goes to the accused**

the Supreme Court on Investigation: Interest of the society – Public Trust and confidence



“It is in the interest of society that the investigating agency must act

honestly and fairly and

not resort to fabricating false evidence or

creating false clues only with a view to securing conviction

*such acts shake the **Public Trust and confidence of the common man** not only in the investigating agency, but in the ultimate analysis, in the system of dispensation of criminal justice.”*

INVESTIGATION



It must be: just and fair,
done prudently, truthfully, sincerely
and without any bias
in accordance with procedural laws.



Part-III

BEST METHODS IN PROSECUTION



- Prosecution is successful only when the evidence on record is within the frame work of evidence law.
(I. E.A. and other evidentiary principles and procedures under spl. Laws)
- Evidence based prosecution is the best method having no alternative.
- Finally Real Justice is possible only with fair investigation, effective prosecution
 - and proper appreciated.

Doubt? or defective investigation?

done by parents

2 Suspicion on inmates of the flat as there were no signs of forced entry

3 Dimensions of injuries on Aarushi and Hemraj match those of Rajesh Talwar's golf club

12 and 1 am

5 Rajesh declined to identify Hemraj's body when he was asked for

6 There was just a plywood partition between Aarushi's and her parents' room



Benefit of doubt

The Allahabad High Court acquitted Rajesh and Nupur Talwar and quashed their conviction for the murder of their daughter Aarushi and domestic help Hemraj. A look at key parts of the judgment



Rajesh Talwar with his wife Nupur at their relative's house at Jalwayu Vihar in Noida on July 12, 2008. • SANDEEP SAXENA

1 The CBI failed to prove beyond reasonable doubt that the Talwar couple murdered their daughter and domestic help

2 The benefit of the doubt should go to the accused, in this case the Talwars, when you rely on circumstantial evidence

3 The CBI failed to prove that no one else entered the flat during the night of the murder

4 Chain of events and evidence presented by the CBI not conclusive

5 No clinching evidence against the Talwars, shortcomings in CBI court's conclusion

1. No clinching Evidence that the parents committed the crime.
2. Only circumstantial evidence
3. No strong conclusion as to that the parents committed the murder.
4. Benefit of doubt should go to the accused

Benefit of Doubt in Criminal Cases

Case law: *Satpal Singh v. State of Punjab*, 2006 Cri LJ 3468 (P)



The following grounds may be considered:

1. When evidence is not consistent with guilty of accused.
2. When motive is not proved.
3. When common object or common intention is not proved.
4. Involvement of accused is not proved beyond doubt.
5. When testimony of witnesses is doubtful or reliable.
6. Prosecution version is not consistent with guilt of accused.
7. When identification evidence is inconsistent
8. When recovery is doubtful.
9. When dying declaration is not reliable.
10. When participation of accused is not proved.
11. When time of assault is doubtful.
12. When place of occurrence is doubtful.

Benefit of Doubt in Criminal Cases



13. When presence of witnesses at place of occurrence is doubtful.
14. When post-mortem report is inconsistent or false.
15. When injury is not explained or is not consistent with guilt of the accused.
16. Other miscellaneous grounds.

Case Law: **Krishnan And Anr Vs State (2002)**

A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case.



MISSING LINKS



1. Age determination: Date of birth to establish age of the victim and accused
2. Medical evidence
3. Caste Certificates when it is necessary.
4. Explanation for delay in FIR
5. Material objects - failure to seize properly and forwarding Property Change of material objects.
6. Collections of documents - Call list and data from departments in schedule time
 1. Medical certificates from other institutes when the victim was treated in different Hospitals
7. Obtaining Sanction Orders from competent authority.
8. Jurisdictions and competency points - Section 177 to 189 Cr.P.C.- IT Act

COMMON DEFENSES IN CRIMINAL CASES



- **A. Identity is not established**
(denying the participation of the accused)
- **B. Bad Testimony of witness.**
 - Dacoity case and
 - Bad ground of a woman witness, Unchastely, Easy woman, bad character etc.,
- **C. The prosecution failed to prove its case:**
 - 1. There is a “lack of evidence”
 - No corroborating physical or scientific evidence
 - The evidence is not credible or trustworthy:
- **D. Generation of Benefit of doubt**



DEFECTS IN INVESTIGATION



1. Delay in registration of FIR – no reasons.
2. Improper recording of 161 statements
3. Interested witnesses
4. **IMPROPER RECORDING OF PROCEEDINGS:** such as suicide notes and letters or dairies written by the victims and witnesses.
5. Non-failing to file necessary notifications and G.Os, sanction orders
6. Restricting investigation to the violations taken place within their jurisdictions. Like kidnapping or abduction.
7. Clubbing of several incidents of various nature under one FIR and file one charge sheet. (Section 181 cr.P.C)



Use of Evidentiary Principles and Procedures

- **Relevancy of facts**
- **Admissibility**
- **Burden of Proof**
- **Presumptions**
- **Examination of witnesses**



Evidence Based Prosecution



- Evidence-Based Prosecution.
- Relevant and admissible evidence
- Use of evidentiary principles and procedures



DEFECTS IN INVESTIGATION



- No required knowledge about collecting the evidence related to the electronic records as per the procedures laid down to that effect for its admissibility during trials.
- Mostly police file CD disk by coping the images and audio or video clippings which are not admissible in law. Even as to procedures relating to voice records also.

less reliable data.
Less tools and skills
Limited access to use of right technology.
Thus the problems of agency are complex,
Important key challenges currently plaguing law enforcement agencies are

Challenges common to investigations

- **Witness / Victim co-operation,**
- **Staff turnover and the potential impact of rank.**
- **Self-regulation,**
- **External oversight,**
- **Media pressure and**
- **Political interventions**

Challenges common to investigations

- **Problems of agency are complex**
- Roles are many, responsibilities are increasing,
- Need to work more with less tools and resources
- less time,
- Less tools and skills
- less reliable data,
- less budget,
- Limited access to use of right technology.

Current Key Challenges

- **Time constraints:**
- Outdated and inefficient time consuming investigative techniques.
- Use of latest technology can greatly help to save time to find and verify information.
- They help to complete investigation within the time limit specified in various laws

Enhancement of skills

- To come over the first challenge investigation agencies need to enhance their skill suitably.
-
- They need of access to timely and accurate information by use of right tools.
- Suitable trainings should be provided to enhance skills to deal with those tools to improve quality.

. Maintenance of Transparency

- **Do not rely largely on information found via the web or Google or on line.**
- **Published content may be incorrect, may be old, outdated, sometimes unreliable and dangerous.**
- **So investigators need insight into data sources.**
- **the best and most reliable data shall be used in official investigations.**

Budget Constraints

- A big problem facing is No Required budget”.
- Such cuts are affecting everything from hiring and training to equipment reserves.
- The result?
- stretching many to their limit.
- Encourage the officials for corruption too.
- **Use technology to aid in investigations is the best solution.**

Digital Evidence



- Data acquisition, recovery, preservation and examination
- **Computer** – Email – Document file...
- **Mobile phone** – Call history – Contact list – Short message – Email – Photo – WhatsApp.
- **Call detail records** Cellular service providers use derived information in call detail records for use in their billing, coverage and analytics, such as:
 - fThe date the call was made or received
 - fThe time the call was made or received
 - fThe number called/calling
 - fUsage type(voice, data, SMS, MMS)



- **Acquisition** The process of actually collecting electronic data, such as seizing a computer at a crime scene or making a forensic copy of (“acquiring” in the forensic language) a computer hard drive.
- It is the first step in the forensic process and is critical to ensure the integrity of the evidence, since it is the moment where evidence is most likely to be damaged or destroyed.
- **Preservation** The process of creating a chain of custody that begins prior to collection and ends when evidence is released to the owner or destroyed. It includes keeping the evidence safe from intentional destruction by malicious persons or accidental modification by untrained personnel.

- **Analysis** The process of locating and collecting evidentiary items from evidence that has been collected in a case. It includes the identification of target information (such as financial records, for example) as well as the use of specific forensic tools.
- **Presentation** The activity of presenting the examiner's findings is the last step in the process of forensic analysis of electronic evidence. This includes not only the written findings or forensic report, but also the creation of affidavits, depositions of experts, and court testimony. (Sec. 65-B of the I.E.A.)



INDICATORS FOR QUALITY OF A LEGAL EVIDENCE



Expectations from Public and Govt.

1. Public Trust and Confidence in the due and effective discharge by Police and prosecutors

- Proper use of Infrastructure
- Optimum utilization of resources
- Identify the “gaps” and fill in adequately
- Enhance facilities like tools and techniques and scientific methods.

2. Protection of rights of victims and assistance

- *Identification crime and victim*
- *Rights of the victims and witnesses*
- Proper assistance during collection of evidence and protection of their rights.



INDICATORS FOR QUALITY OF A LEGAL SYSTEM

Expectations from Public and Govt.

3. Core System Values

- **Individual values** : Integrity; Competence; Propriety (Build Image)
- **Fair Investigation values** : Independence; Fair Procedures; Impartiality
- **Institutional values** : Faith in the system and law; Transparency and Accountability;

4. Expedition, Efficiency and Efficacy of Investigation and trial proceedings

- **Identification crime and victim**
- Time Standards given to Proceedings and
- Speedy collection of evidence and
- **Rights of the victims and witnesses**
- **Proper assistance during collection of evidence and protection of their rights.**
- Implement “Best Practices”

THINK about

**THE ROLE OF EVERY ONE OF US
IN CRIME PREVENTION
AND**

**ACCOUNTABILITY TOWARDS SOCIETY
TO PROTECT
TO GIFT HEALTHY ENVIRONMENT
FOR NEXT GENERATION**

