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(2012) 8 SCC 263

**Dayal Singh v. State of Uttaranchal**

(2012) 8 Supreme Court Cases 263

(BEFORE SWATANTER KUMAR AND F.M. IBRAHIM KALIFULLA, JJ.)

DAYAL SINGH AND OTHERS . . Appellants;

*Versus*

STATE OF UTTARANCHAL . . Respondent.

Criminal Appeal No. 529 of 2010 <sup>†</sup>, decided on August 3, 2012

**A. Public Accountability, Vigilance and Prevention of Corruption — Corruption in Criminal Justice System — Investigating officer (SI) and government doctor deliberately favouring accused and acting in conscious and deliberate violation of their duty — Disciplinary proceedings, even after retirement of officials concerned — Initiation of — Power of trial court to direct — Punishment for contempt by High Court or Supreme Court for disobedience of such orders of trial court — Contempt of Courts Act, 1971 — S. 10 — Nature and Scope — Power of superior court to punish for contempt of inferior/subordinate court**

**B. Criminal Trial — Defective or illegal investigation — Investigation and doctor's report coloured with motivation — Dereliction of duty and misconduct by investigating officer and expert witness (doctor) or other material witnesses — Power of trial court to issue directions for disciplinary and other action against them, even after retirement of officials concerned — Such directions issued by trial court, affirmed and contempt notices issued to Higher Officials for not initiating disciplinary proceedings directed by trial court — Court's approach in appreciation of evidence in such cases**

— Court should ascertain on examination of prosecution case in its entirety whether there have been acts of omission and commission by investigating agency and other material witnesses which resulted in defective investigation and whether same were intentional and deliberate and adversely affected prosecution case — If investigation is found to be motivated, court should exercise higher degree of caution and care so as to ensure that despite attempt to misdirect trial, criminal justice system is not subverted — Court must record specific finding and reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to prosecution case, in breach of professional standards and investigative requirements of law, during course of investigation by investigating agency, expert witnesses and even PWs — Further, trial court would be justified in directing disciplinary authorities to take disciplinary or other action, whether such officer, expert or employee witness, is in service or has since retired

— Directions issued by Supreme Court against investigating officer (SI, PW 6) who conducted investigation and doctor (PW 3) who conducted post-mortem, both in a manner so as to defeat prosecution case, and other officials — Directors General, Health Services of U.P./Uttarakhand issued contempt notices as to why appropriate action be not initiated against them for not complying with directions contained in judgment of trial court for initiation of disciplinary proceedings against PW 3 — Abovesaid officials

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**Page: 264**

directed to take disciplinary action against Medical Officer, PW 3, whether he was in service or had since retired, for deliberate dereliction of duty, preparing a medical report which ex facie was incorrect and was in conflict with inquest report and statement of IO, PW 6 — Bar of limitation, if any, under the Rules not to come into play because they were directed by the order of the trial court to do so — Action even for stoppage/reduction in pension can appropriately be taken by the said authorities against PW 3 — Directors General of Police U.P./Uttarakhand directed to initiate, and expeditiously complete disciplinary proceedings against PW 6 SI, whether he was in service or had since retired, for acts of omission and commission and deliberate dereliction of duty — Criminal Procedure Code, 1973 — Ss. 156 to 161, 353 and 354 — Constitution of India — Arts. 136 and 129 — Service Law — Departmental enquiry — Initiation of, even after retirement of officials concerned — Directions by court — Contempt of Courts Act, 1971 — S. 10 — Nature and Scope — Power of superior court to punish for contempt of inferior/subordinate court

(Paras 30 to 48)

**C. Criminal Trial — Fair and speedy trial — Object — Social justice — Rights of society and victim — To do justice not only to accused but also to society represented by prosecution by giving it a chance to prove its case — Aim is to ensure not only that no innocent person is punished but also that guilty persons do not escape — Constitution of India, Art. 21**

(Paras 30 to 34)

**D. Criminal Trial — Defective or illegal investigation — Investigation coloured with motivation — Acts of omission and commission committed by investigating agency and other material witnesses — Whether deliberate and adversely affected prosecution case — Medical evidence in conflict with eyewitness version**

— According to eyewitness version, accused persons inflicted lathi-blows on deceased which resulted in his death on the spot — Presence of eyewitnesses at the scene of occurrence not in doubt and their testimony found to be natural and trustworthy — Investigating officer (SI, PW 6) also found, in presence of panchas, injuries on the person of deceased and prepared inquest report recording his opinion that deceased died on account of those injuries — But doctor (PW 3), who conducted post-mortem, reported no external or internal injury and could not ascertain cause of death — No reason mentioned by IO also for non-disclosure of cause of death by doctor — Deceased's viscera handed over to police but either not sent to FSL or if sent, report thereof neither called for nor proved before court — Held, post-mortem report was prepared in a perfunctory manner deliberately, to misdirect prosecution and IO also acted in a negligent and designed manner with a view to shield accused which adversely affected prosecution case — But merely because of investigation being defective and motivated, it should not enure to the benefit of accused to the extent of his acquittal — Hence, in present case concurrent conviction of accused by courts below under Ss. 302/323/34 IPC, confirmed — Criminal Procedure Code, 1973 — Ss. 156 to 161 — Evidence Act, 1872 — S. 45 — Penal Code, 1860, Ss. 302/34 and 323/34

(Paras 18 to 26 and 40)

**E. Criminal Trial — Defective or illegal investigation — Investigation coloured with motivation — Acts of default/omission and commission by investigating officer and expert witness — If found to be so flagrant that**

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Page: 265

intentional and irresponsible attitude become apparent, investigation must be regarded as coloured by motivation and an attempt to save the accused

(Paras 21 and 40)

**F. Criminal Trial — Defective or illegal investigation — Intentional acts of default/omission and commission by investigating officer (IO) and medical officer (MO) of government hospital — Dereliction of duty and misconduct — What would amount to — To be determined in the context of service to which such officers belong — Police officers and doctors are required to maintain duty decorum of high standards — Hence, whether their acts constituted dereliction of duty and misconduct should be determined on basis of such standards — Disciplinary proceedings to be initiated on directions of trial court in such cases, even after retirement of officials concerned — Service Law — Misconduct**

(Paras 18 to 40 and 47)

**G. Evidence Act, 1872 — Ss. 45, 59 and 60 — Medical evidence — Expert report (post-mortem report) in conflict with eyewitness version — Which one should be given precedence — Manner in which court should appreciate evidence — If expert report found to be perfunctory, incorrect and outcome of deliberate attempt to misdirect prosecution case, whereas eyewitness version found to be trustworthy and credible and establishes prosecution case beyond reasonable doubt, eyewitness version should be preferred over expert report (post-mortem report) — Hence, in present case**



**concurrent conviction of accused by courts below under Ss. 302/323/34 IPC, confirmed — Penal Code, 1860, Ss. 302/34 and 323/34**

(Paras 35 to 40)

**H. Evidence Act, 1872 — S. 45 — Expert report — Should be well authored and convincing — Report, duly proved, has evidentiary value — But it is not binding on court — Court should analyse report, read it in conjunction with other evidence and then decide whether it is reliable or not**

(Paras 35 to 40)

**I. Criminal Trial — Witnesses — Related witness — Testimony of, if found to be natural and truthful, cannot be discarded merely because of his relationship with deceased/victim and being interested witness**

(Paras 13, 14, 45 and 46)

**J. Penal Code, 1860 — Ss. 302/34 or S. 304 Pt. II r/w S. 34 and Ss. 323/34 — Common intention to cause death — Accused persons armed with lathis came with premeditated mind and started assaulting deceased without any provocation, till his death on the spot, and when PWs came to deceased's rescue, accused inflicted injuries on them also — Held, conviction under Ss. 302/34 for causing death of deceased and under Ss. 323/34 for causing injuries to PWs justified**

(Paras 13, 14, 45 and 46)

The trial court found the accused persons guilty of offences under Section 302 read with Section 34 IPC for murder as well as under Section 323 read with Section 34 IPC for causing voluntary hurt to PWs 2 and 4. The court also commented adversely upon the professional capabilities and/or misconduct of the medical officer PW 3. It observed that since the doctor "had conducted in a manner not befitting the medical profession and prepared the post-mortem report against facts for reasons best known to him and was negligent in his duty in ascertaining the injuries on the body of the deceased, hence it is just and proper that the Director General, Medical Health, U.P. be informed in this regard for

**Page: 266**

taking necessary action and for eradicating such practices in future". The High Court dismissed the appeal against the judgment of the trial court and affirmed the conviction and sentence recorded by the trial court.

Dismissing the appeal filed by the accused both on merits and on quantum of sentence, the Supreme Court

*Held :*

***Court's approach in cases of motivated investigation and bought over expert witnesses***

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. 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 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 subverted. 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.

(Paras 30 and 34)

*Sathi Prasad v. State of U.P., (1972) 3 SCC 613 : 1972 SCC (Cri) 659; Dhanaj Singh v. State of Punjab, (2004) 3 SCC 654 : 2004 SCC (Cri) 851; Paras Yadav v. State of Bihar, (1999) 2 SCC 126 : 1999 SCC (Cri) 104; Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8; NHRC v. State of Gujarat, (2009) 6 SCC 767 : (2009) 3 SCC (Cri) 44; State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715 : 2000 SCC (Cri) 61; Ram Bali v. State of U.P., (2004) 10 SCC 598 : 2004 SCC (Cri) 2045; Karnel Singh v. State of M.P., (1995) 5 SCC 518 : 1995 SCC (Cri) 977, relied on*

In this case, the trial court has rightly ignored the deliberate lapses of the investigating officer SI PW 6 as well as the post-mortem report prepared by PW 3 the medical officer. The consistent statement of the eyewitnesses which were fully supported and corroborated by other witnesses, and the investigation of the crime, including recovery of lathis, inquest report, recovery of the pagri of one of the

accused from the place of occurrence, immediate lodging of FIR and the deceased succumbing to his injuries within a very short time, establish the case of the prosecution beyond reasonable doubt. These lapses on the part of PW 3 and PW 6 are a deliberate attempt on their part to prepare reports and documents in a designedly defective manner which would have prejudiced the case of the prosecution and resulted in the acquittal of the accused, but for the correct approach of the trial court to do justice and ensure that the guilty did not go scot-free. The evidence of the eyewitness which was reliable and worthy of credence has justifiably been relied upon by the court.

(Para 41)

It is declared and directed that it shall be appropriate exercise of jurisdiction as well as ensuring just and fair investigation and trial that courts return a specific finding in such cases, upon recording of reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of

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**Page: 267**

the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution. Further, the courts would be fully justified in directing the disciplinary authorities to take appropriate disciplinary or other action in accordance with law, whether such officer, expert or employee witness, is in service or has since retired.

(Para 47.5)

**Directions**

The Directors General, Health Services of U.P./Uttarakhand are hereby issued notice under the provisions of the Contempt of Courts Act, 1971 as to why appropriate action be not initiated against them for not complying with the directions contained in the judgment of the trial court. The abovesaid officials are hereby directed to take disciplinary action against the Medical Officer, PW 3, whether he is in service or has since retired, for deliberate dereliction of duty, preparing a report which ex facie was incorrect and was in conflict with the inquest report and statement of PW 6. The bar on limitation, if any, under the Rules will not come into play because they were directed by the order of the trial court to do so. The action even for stoppage/reduction in pension can appropriately be taken by the said authorities against PW 3. The Directors General of Police U.P./Uttarakhand are hereby directed to initiate, and expeditiously complete, disciplinary proceedings against PW 6 SI, whether he is in service or has since retired, for the acts of omission and commission, deliberate dereliction of duty in not mentioning reasons for non-disclosure of cause of death as explained by the doctor, not sending the viscera to the FSL and for conducting the investigation of this case in a most callous and irresponsible manner. The question of limitation, if any, under the Rules, would not apply as it is by the direction of the Court that such enquiry shall be conducted.

(Para 47.2 to 47.4)

*Dharnidhar v. State of U.P.*, (2010) 7 SCC 759 : (2010) 3 SCC (Cri) 491; *Mano Dutt v. State of U.P.*, (2012) 4 SCC 79 : (2012) 2 SCC (Cri) 226; *Satbir Singh v. State of U.P.*, (2009) 13 SCC 790 : (2010) 1 SCC (Cri) 1250, followed

*Jayabalan v. UT of Pondicherry*, (2010) 1 SCC 199 : (2010) 2 SCC (Cri) 966; *Ram Bharosey v. State of U.P.*, AIR 1954 SC 704 : 1954 Cri LJ 1755; *Har Prasad v. State of M.P.*, (1971) 3 SCC 455 : 1971 SCC (Cri) 703; *Gudar Dusadh v. State of Bihar*, (1972) 3 SCC 118 : 1972 SCC (Cri) 438, cited

**Acts of omission and commission on part of investigating officer and medical officer**

Dereliction of duty or carelessness is an abuse of discretion under a definite law and misconduct is a violation of indefinite law. Misconduct is a forbidden act whereas dereliction of duty is the forbidden quality of an act and is necessarily indefinite. One is a transgression of some established and definite rule of action, with least element of discretion, while the other is primarily an abuse of discretion. The ambit of these expressions had to be construed with reference to the subject-matter and the context where the term occurs, regard being given to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires maintenance of strict discipline. An investigating officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. The consequences of these defaults should normally be attributable to negligence. Police officers and doctors, by their profession, are required to maintain duty decorum of high standards. The standards of investigation and the prestige of the profession are dependent upon the action of such specialised persons.

(Paras 26 and 21)

*State of Punjab v. Ram Singh*, (1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 A TC 435; *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402, relied on

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**Page: 268**

The investigating officer, as well as the doctor who are dealing with the investigation of a criminal case, are obliged to act in accordance with the police manual and the known canons of medical practice, respectively. They are both obliged to be diligent, truthful and fair in their approach and investigation. The Police Manual and even the provisions of CrPC require the investigation to be conducted in a particular manner and method which, stands clearly violated in the present case. PW 3 the medical officer concerned not only



breached the requirement of adherence to professional standards but also became instrumental in preparing a document which, ex facie, was incorrect and stood falsified by the unimpeachable evidence of the eyewitnesses placed by the prosecution on record. This results in shifting of avoidable burden and exercise of higher degree of caution and care on the courts. If primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law enforcement agency but also in the administration of justice.

(Paras 21 and 26)

*Awadh Bihari Yadav v. State of Bihar, (1995) 6 SCC 31, relied on*

**Expert opinion vis-à-vis eyewitness version**

The skill and experience of an expert is the ethos of his opinion, which itself should be reasoned and convincing. Not to say that no other view would be possible, but if the view of the expert has to find due weightage in the mind of the court, it has to be well authored and convincing.

(Para 39)

The purpose of expert testimony is to provide the trier of fact with useful, relevant information and to assist the court in arriving at a final conclusion. Such report is not binding upon the court. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the limitations prescribed and with careful examination by the court. The court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not.

(Paras 38 and 40)

Where contradictions and variations between medical and ocular evidence 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. There can be reports which are, ex facie, incorrect or deliberately so distorted so as to render the entire prosecution case unbelievable. In this case PW 3 the medical officer was expected to prepare the post-mortem report with appropriate reasoning and not leave everything to the imagination of the court. He created a serious doubt as to the very cause of death of the deceased. His report apparently shows an absence of skill and experience and was, in fact, a deliberate attempt to disguise the investigation. 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. Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

(Paras 35, 40, 39 and 36)

*Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204 : 1992 SCC (Cri) 598, followed*

*Kamaljit Singh v. State of Punjab, (2003) 12 SCC 155 : 2004 SCC (Cri) Supp 343, relied on*

*B.R. Sharma: Forensic Science in Criminal Investigation & Trial (4th Edn.); The New Wigmore: A Treatise on Evidence—Expert Evidence (2004 Edn.), relied on*

**Page: 269**

*Zuchowicz v. United States, 140 F 3d 381 (2d Cir CA 1998), cited*

R-D/50327/CVRL

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**Chronological list of cases cited**

**on page(s)**

- |   |        |
|---|--------|
| 1. (2012) 4 SCC 79 : (2012) 2 SCC (Cri) 226, <i>Mano Dutt v. State of U.P.</i>      | 275f   |
| 2. (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402, <i>C. Muniappan v. State of T.N.</i> | 276e   |
| 3. (2010) 7 SCC 759 : (2010) 3 SCC (Cri) 491, <i>Dhamidhar v. State of U.P.</i>     | 274e-f |
| 4. (2010) 1 SCC 199 : (2010) 2 SCC (Cri) 966, <i>Jayabalan v. UT of Pondicherry</i> | 274f-g |































