

## **DEFECTS IN INVESTIGATION**

**Justice(Retd) U.L.Bhat**

Sections 215 and 464 of the Criminal Procedure Code, 1973 indicate what trial courts and higher courts are required to consider in case of errors in charge framed by trial courts. Sections 460 and 461 of the code deal with the effect of irregularities committed by trial –magistrates. Sections 462 and 463 deal with certain irregularities committed by criminal courts. However the Code under which investigation of offences is conducted does not contain any provision to deal with irregularities committed by investigation officers (I.O) in the course of investigation. This omission is perhaps due to belief that defects in investigation have a role to play in appreciation of evidence by courts. Of course, in appropriate circumstances, writ jurisdiction of the High Courts could be invoked.

As a general principle, it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the accused. (Union of India vs. Prakash P. Hinduja AIR 2003 SC 2612). If the prosecution case is established by the evidence adduced, any failure or omission on the part of the I.O cannot render the case of the prosecution doubtful. (Amar Singh vs. Balwinder Singh, AIR 2003 SC 1164, Sambu Das vs. State of Assam AIR 2010 SC 3300). If direct evidence is credible, failure, defect or negligence in investigation cannot adversely affect the

prosecution case, though the court should be circumspect in evaluating the evidence (Ram Bihari Yadav vs. State of Bihar AIR 1998 SC 1850, Paras Yadav vs. State of Bihar AIR 1999 SC 644, Dhanraj Singh vs. State of Punjab AIR 2004 SC 1920, Ram Bali vs. State of U.P. AIR 2004 SC 2329).

(2) If investigation is illegal or suspicious, the rest of the evidence must be scrutinized independent of the impact of the faulty investigation; otherwise criminal trial will descend to the I.O ruling the roost. Yet if the court is convinced that the evidence of eyewitnesses is true, it is free to act upon such evidence though the role of the I.O in the case is suspicious. (Abu Thakir, AIR 2010 SC 2119). An accused cannot be acquitted on the sole ground of defective investigation; to do so would be playing into the hands of the I.O whose investigation was defective by design. (Dhanaj Singh vs. State of Punjab AIR 2004 SC 1920). Mere defective investigation cannot vitiate the trial. (Paramjit Singh vs. State of Punjab AIR 2008 SC 441).

(3) That the I.O took the eyewitnesses to the police station cannot be a reason for disbelieving them. (Dhananjaya Reddy vs. State of Karnataka AIR 2001 SC 1512). The delay on the part of the I.O in questioning witnesses does not necessarily make the prosecution version suspect. If the I.O is not questioned on this aspect, disbelieving a prosecution witness on that score is improper. If the I.O furnishes an explanation which is unsatisfactory, Court can consider it to be one of the factors which affects the credibility of the witness who was questioned belatedly.

(State of U.P. vs. Satish AIR 2005 SC 1000). It requires courage in the face of adversity for a simple man to come forward and proclaim the truth unmindful of the consequences. Delay in questioning a young boy who saw a ghastly murder being committed has to be taken into account and the court must be reasonable and should see whether the boy could have been questioned at the dead of night. In the absence of any possibility of delay affecting his statement or of any apprehension of the witness being influenced by any other person or police, his evidence could not be thrown out, more particularly, if he had faced cross examination in an efficient manner. The usual apathy to record statements quickly can also be another factor. (Mallappa Siddappa Alakanur vs. State of Karnataka, AIR 2009 SC 2959). Delay in questioning important witnesses may not necessarily lead to create doubt regarding the veracity of the prosecution case. Unless the I.O was specifically cross-examined on this aspect, defence cannot derive any advantage. In the case of delay in questioning, it is not a principle of universal application that the prosecution version becomes suspect. It would depend on several factors. If during cross-examination, the I.O had offered an explanation which is plausible, there would be no reason for any suspicion. (Abuthagir vs. State AIR 2009 SC 2797). Where there was delay in recording CD statements of three witnesses and the IO's explanation was that he was also in charge of maintaining law and order in the area that got vitiated after two murders in succession leading to a lot of commotion and communal strife, there would be no reason to reject the explanation as the delay was on account

of reasons beyond the control of the I.O. (Ibid). It cannot be said evidence of a witness should be thrown out due to the delay in recording his statement by the I.O. The language of Section 162 Criminal Procedure Code shows that the law contemplated a situation where there might be witnesses who dispose in court whose previous statements were not recorded at all. (Siddhartha Vasisht alias Manu Sharma vs. State (NCT of Delhi) AIR 2010 SC 2352)

(4) The following decisions deal with certain other kinds of defects in investigation:-

(a) That no independent witnesses were associated with recovery (discovery) under Section 27, Evidence Act is not sufficient to create doubt regarding truth of the prosecution version. (Sanjay alias Kaka vs. State (NCT of Delhi) AIR 2001 SC 979).

(b) Rejection of the prosecution case on the basis of a site plan is illegal. (State of Rajasthan vs. Bhawani AIR 2003 SC 3346).

(c) If ocular evidence is reliable, defect in investigation such as not forwarding the seized gun to FSL would not matter. (Amar Singh vs. Balwinder Singh AIR 2003 SC 1164).

(d) Doubtful nature of recovery of the fatal gun cannot render the ocular evidence unreliable. (Munna vs. State of M.P. AIR 2003 SC 3346).

(e) The fact that the IO didnot mention the street light in the site plan is not a ground to disbelieve the eyewitnesses where the injured eyewitnesses who were well acquainted with the assailants deposed that they could see them

because there was light coming from a nearby street light. (Pritvi vs. Mam Raj AIR 2004 SC 2729).

(f) There is a no legal requirement that pellets removed from the body of the deceased during autopsy should be sent to the Ballistic expert to determine whether the pellets were fired from the exhibited gun or not. On the contrary, such recovery clearly confirms the case that the deceased died of gunshot injuries. Failure to send the pellets to an expert does not render the prosecution case unacceptable. (State of H.P vs. Mast Ram AIR 2004 SC 5754).

(g) Non-mention of the size of blood stains on the seized clothes in the seizure manager is of no consequence. (GuraSingh vs. State of Rajasthan AIR 2001 SC 330).

(h) Cogent evidence of eyewitnesses cannot be rejected on account of the failure of the IO to send blood stained cloth (wrapped around the wound) for chemical examination. (Nirmal Singh vs. State of Bihar AIR 2005 SC 1265).

(i) In a case of killing by shooting, where the IO failed to collect bloodstained soil and empty shells from the scene, since the eye-witnesses deposed to the firing of shots resulting in death, which was corroborated by medical evidence, the default of the IO did not cause prejudice to the accused. (Maqbool vs. State of A.P. , AIR 2011 SC 184).

(j) Absence of recovery of pellets from the scene or from the body of the injured persons or of pistol or cartridge does not detract from the prosecution case. It does not in every case prejudice the accused or affect the credibility of the prosecution case. (State of Rajasthan vs. Arjun Singh, AIR 2011 SC 3380, Dandu Jaggaraju vs. State of A.P. , AIR 2011

SC 3387, Raj Kishore Jha vs. State of Bihar AIR 2003 SC 4664).

(k) Where eyewitnesses who knew the accused persons prior to the occurrence deposed that they saw the accused from close quarters with the aid of a torch (though on a moonless night) and there was no reason to otherwise doubt the truth of their testimony, the fact that the torch light was not seized by the I.O would not mean that their evidence is not credible. (Hari Singh vs. State of U.P. AIR 2011 SC 360).

(l) Failure to forward the allegedly bloodstained shirt worn by an eyewitness to FSL is a deficiency which, however, does not necessarily lead to the conclusion that the prosecution case is unworthy of credit. In such a case, the court is required to be more circumspect in evaluating the evidence. (Sheo Shankar Singh vs. State of Jharkhand AIR 2011 SC 1403)

(m) In a case of murder, the injured while in hospital, made a statement on the basis of which FIR was recorded. After the death of the injured, her husband reported the fact to the police and a second FIR for an offence under Section 302 IPC was registered. It was held that the SHO committed a mistake in recording a second FIR, but that would not weaken the prosecution case, especially since no prejudice had been caused to the accused by a registration of a second FIR. (Chinna Shivraj vs. State of A.P. AIR 2011 SC 604, T.T. Antony vs. State of Kerala AIR 2001 SC 2637).

(n) Two witnesses who spoke about "Last seen with deceased" were strangers to the accused. Their statements were recorded under Section 164 Criminal Procedure Code four months after the incident and no "test identification

parade” was conducted. Another witness, claiming to be an independent witness, identified the accused for the first time in court two and a half years after the incident, it was held that their testimonies did not inspire confidence. (Dandu Jaggaaraju vs. State of A.P. AIR 2011 SC 3387).

(5) If a Police Officer in charge of a police station, having reason to suspect the commission of a cognizable offence, (Section 157 CrI. Pr. Code) proceeds to the spot without preparing and sending a report to the magistrate concerned, that does not mean that his proceeding to the spot was not for investigation. It is not necessary that a formal registration of a case should have been made before proceeding to the spot, in order to bring inquest proceedings within the ambit of investigation. It is enough that he has some information to afford him reason to suspect the commission of a cognizable offence. Any step taken by him, pursuant to such information, towards detection of the said offence, would be part of such investigation, even though the formal registration of the FIR takes place only thereafter. That an FIR loses its’ authority if it is lodged after the inquest report is recorded is not a general proposition of universal application. The object of inquest is only to ascertain whether a person has died under unnatural circumstances and if so, what the cause of death is, (Sambu Das vs. State of Assam AIR 2010 SC 3300, State of U.P. vs. Bhagwant Kishore Joshi AIR 1964 SC 221, Maha Singh vs. State (Delhi Administration) AIR 1976 SC 449).

5) While considering the delay in FIR reaching the jurisdictional Magistrate, Court has to bear in mind the credit worthiness of the ocular evidence adduced by the prosecution and see if such ocular evidence is worthy of acceptance; the element of delay in registering FIR or sending FIR to the magistrate by itself, would not in any manner weaken the prosecution case. (Balram Singh Vs. State of Punjab AIR 2003 SC 2213). Where the FIR contained only a brief statement of events, the delay in sending the FIR to court could not have been to concoct a false case against the accused. If the FIR had been cooked up after the inquest and autopsy were over, many more matters or details could have been incorporated in the FIR. The delay, in these circumstance, cannot, by itself, throw out the prosecution case in its' entirety; such delay cannot be the sole reason for discarding the prosecution version as being fabricated, if reliable evidence has been produced against the accused. Delay in sending FIR to court may provide basis for suspicion that the FIR was recorded much later, to set up a distorted version. The purpose of Section 157 Crl. Pr. Code is to ensure fair trial without there being any occasion for falsification or introduction of facts belatedly. (Sahdeo Vs. State of UP AIR 2004 SC 3508, Sunilkumar Vs. State of Rajasthan AIR 2005 SC 1096, Sarwan Singh Vs. State of Punjab AIR 1976 SC 2304, Ishwar Singh Vs. State of UP AIR 1976 SC 2423, Rabindra Manto Vs. State of Jharkhand AIR 2006 SC 887). In a case where there was delay of four days in sending FIR to court, factors such as immediate holding of inquest, removal of deadbody to police premises, obtaining authorization by

DMO to conduct autopsy during the same night etc were held to suggest spontaneity of FIR sufficient to reject plea of anti-timing of FIR. (Paramjit Singh Vs. State of Punjab AIR 2008 SC 441). Delay in sending the FIR to court would not dislodge the other evidence. (Sarvesh Narain Shukla Vs. Dasroga Singh AIR 2008 SC 320).

6) There are no rigid rules regarding appreciation of evidence. Effect of shortcomings on the part of the officer registering a case or the I.O. are part of the task of judge in appreciation of Evidence; it is the judges who has to appreciate the evidence, and while doing so, assess the effect of such defects. Such defects become marginal in case where the main testimony of eyewitnesses or witnesses proving circumstantial (or basic or primary) facts inspire confidence and appears truthful. If such evidence is of a shabby nature or doesnot inspire confidence, such assessment of evidence is strengthened by serious defects in FIR or investigation. An accused cannot be acquitted merely the ground of such defects; such defects do not the affect the decision adversely if the evidence in the main is credit worthy. Of course, serious defects which, in the assessment of the court, have lead to serious prejudice to the accused or to failure of justice stand on a different footing.

This note refers to quite a number of decisions of the Supreme Court. To know the background in which various decisions were reached Judges would do well to study the facts of those cases since any principle laid down by a

superior court has to be understood and appreciated in the light of the factual background of each case.