

Impact of Defective Investigation and Prosecution on Trial

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Abstract: There is rising impression in the Pakistan that the accused get scot free from the Courts. This impression is not in vacuum. There are factors contributing to it. This impression finds support too from the low conviction rate in our country. In Pakistan, the conviction rate is 8.66%, while the conviction rate in India is 37.4%, in England (Crown Court) 90%, and in Japan, it is 99.9%. These figures tend to show that in Pakistan, the Justice prevails, when 91% of the accused persons, after facing the agony of trial, are acquitted by the courts. It not only encourages a criminal to dare repeat the crime, but also results in loss of faith of the victim, his family and society at large, over the Criminal Justice System of Pakistan. The low conviction rate is directly proportional to the wrongs committed during investigation, and indirectly with defective prosecution in Pakistan. However, blaming the courts for acquittal of the accused is not justifiable. The courts are deciding the cases on basis of whatever evidence and material is produced before them, which is collected by the investigating agencies. The courts are not meant for recording convictions only, but for the dispensation of even-handed justice. If the investigation is defective, the prosecution is lethargic, if there is scanty evidence, if witnesses turn hostile, whether the court is left with any other option except to give accused the benefit of doubt. The law requires proof beyond any reasonable doubt. This probative value of high degree is not possible unless the evidence is collected by the agency without leaving anything unturned. Given this backdrop, in this article, we have tried to discuss the impact of defective investigation and defective prosecution on trial. The article is also aimed at finding out as to what can be done for improving the current situation. The conclusion would show that the courts cannot be blamed for low conviction rate when the police, prosecutors and executive authorities fail to discharge their duty.

Keywords: Conviction Rate, Acquittal, Defective Investigation, Defective Prosecution

1. Introduction

Since the creation, the mankind, in every society, large or small, rich or poor, advanced or backward, has always faced disputes within the individuals. These conflicts required determination and decision by a third person. Such resolution was not possible without weighing and examining the claims of the contesting parties. This exercise on the part of the third person is legitimately considered the most elementary stage of administration of justice and the evidence is an integral part of it [1]. This concept of administration of justice has all along been intimately connected with the social aspect of the human life. In the olden days, not all laws were codified. If some laws were codified like "Law of the twelve Tables" and "The Code of Hammurabi", [2] they were not sufficient to meet the needs of the society at large. With the advent of

written laws, a system of systematic and harmonized justice system ensued. The modern justice system is based on this concept of codified law. This is how, many of the predominant justice systems of the world arose. Generally, there are considered to be five legal justice systems prevalent in the world today i.e. Adversarial Systems, Inquisitorial Systems, Customary Law, Religious (usually Islamic) Law, and Mixed Legal Systems [3]. The Justice System of Pakistan is still pursuing British laws, and it follows the Adversarial System of Justice [4]. This system has also been adopted by many countries, including Australia, Canada, New Zealand and India. In this system of justice, the role of a Judge is like a Referee or a Neutral person and the previous decisions made by higher Courts form a precedent, which are binding upon the lower Courts [5].

2. Methodology of the Study

The methodology of the research is based upon doctrinal legal research whereby, the analysis of existing legal framework in Pakistan in respect of the impact of defective investigation and prosecution on a trial, through legal reasoning, has been done. In the current study, a descriptive method is adopted for the purpose to get a clear picture of the current situation of the phenomenon; following by a diagnostic approach. For this article, both primary (Statute) and secondary data in the form of books, articles, case laws, reports and journals is analyzed to explore the issue in hand.

3. Criminal Justice System

A criminal justice system is a main aspect of the rule of law. It constitutes the conventional mechanism to redress grievances and bring action against individuals for offenses against society [6]. It is mainly based on five main components viz. (i) Police, (ii) Prosecution, (iii) Courts; (iv) Prisons, and (v) Corrections/Rehabilitation. Each of the components has its own functions under the law. In every criminal act, there is always a particular individual victim of the crime. Broadly speaking, a criminal act is legally considered as an offence against the State in criminal justice system. It must not be lost sight of that a paramount principle of the criminal justice system is that an accused is presumed innocent until he is proven guilty. There is a state backed prosecution agency. It is duty of the prosecution agency to prove the accused guilty of the crime charged. This proof must be beyond any reasonable doubt [7]. This standard is not exactly clear to a common man as to what it means. Thus, further explanation is needed in this regard. In all the justice systems, evidence is the foundation, as it is said that, "a case is only as strong as its evidence". Evidence is something, which serves to prove or disprove the existence or non-existence of an alleged fact [8].

3.1. Investigation

In Criminal Justice System, law is set into motion by reporting an offence to police or investigation agency. It is then their responsibility to investigate into the matter to find out, who committed the crime. Investigation is always meant to ascertain the facts and circumstances behind and responsible for the criminal act. The evidence so collected is then produced before the Court of law, where a trial begins to find whether the accused is guilty or not. In most of the cases, the police or investigating agency fails in performance of their duties assigned by law for certain reasons [9]. Besides others, the lack of accountability of investigation officers for defective investigation and lack of professionalism in collection of the evidence by them [10]. Consequently, the criminals escape punishments due to absence of reliable evidence to establish the guilt [11]. This results in encouragement of criminals and loss of faith in criminal justice system of victim, victim's family and society at large [12]. However, the police or investigating agency, instead of improving itself, usually blame and points fingers

at the lapses committed by the other pillars of the criminal justice system.

3.2. Prosecution

After the investigation, the role of the prosecution comes into play. The prosecution occupies the middle position between the judiciary and the police. It takes the State's case to the courts. The Prosecutors do not act as counsel for any particular person or party, but their prime duty is to assist the court with all fairness. Their sole objective is to establish the truth in accordance with law given the available evidence. However, due to the defective prosecution, they routinely fails to produce reliable and quality evidence that can be made basis of conviction in a court of law. There is no denying of the fact that without effective investigation, effective prosecution cannot follow. It is therefore, that an effective investigation is a condition precedent for effective prosecution.

3.3. Effectiveness of Criminal Justice System

The conviction rate¹ is a reasonably good indicator of the efficiency and efficacy of the criminal justice system prevailing in a country [13]. In our country, there is trending criticism over Judiciary due to low conviction rate [14]. This leaves the impression that the courts are acquitting the criminals [15]. However, it must not lose sight of that the courts are not meant for recording convictions only and a high conviction rate, however, is not the primary objective of the criminal justice system. But, their sacred duty is the dispensation of justice in accordance with law. Notwithstanding the aforesaid, a high conviction rate may be indicative of methodical and painstaking investigations and effective prosecution. On the contrary, an excessively low conviction rate definitely indicates unsuccessful and ineffective prosecution. In the case of *Watan Party v. Federation of Pakistan* [16], the Supreme Court of Pakistan aptly has observed that Courts can only act upon evidence and material presented before them, which is to be collected by the investigating agencies and the courts cannot be blamed if the executive/police fail in their duty. It has also been observed that evidence collected by executive/police must be evaluated according to the laws and rules prescribed by the legislature and government have to ensure that cogent evidence to support prosecution is collected and presented in the court. In simple words, the courts have to decide the cases only on the basis of material produced before it. The material viz. evidence so produced is analyzed according to law. However, if the investigation or prosecution is defective, if there is no evidence available, if available then not reliable, or if witnesses turn hostile, then in such state of affairs, here arises a question, what really a trial judge can do? Is the trial judge left with any other option except to give accused benefit of doubt as law requires proof beyond any reasonable doubt. In the case of *State v. Abdul Khaliq, (Mukhtaran Mai*

1. The conviction rate may be taken to mean the ratio of cases convicted out of the total number of cases decided in a given year.

Rape case) [17] an appeal, in Supreme Court of Pakistan, was filed against the acquittal of the accused. In the said case, the victim alleged to have been raped. The investigating agencies collected semen from the victim's vagina, but did not proceed for D.N.A and group semen test. The court displayed its astonishment as to what prevented the investigating agency from conducting such tests and declined to accept the appeal against acquittal. However, the police or other investigating agencies seem not inclined to improve them in line with the observations of Honourable Superior Courts in like judgments.

4. Conclusion

There is no denial of the fact that the conviction rate in Pakistan is very low. This is evident from the report of PILDAT published in February, 2016, [18] showing that in the year 2010, the conviction rate in Pakistan was 8.66%. In the same year, the conviction rate in India was 37.4% and in South Africa it was 39%. If we look into conviction rates of technologically advanced countries, these were very high i.e. in Australia; the conviction rate was 85%, in U.S (Federal) 85%, in U.S (States) 87%, in England (Lower Court) 98%, in England (Crown Court) 90%, while in Japan, the conviction rate was as high as 99.9%. These figures show that in Pakistan, the Justice prevails, when 91% of the accused persons faced trials are acquitted by the Courts. This is the worst impact of the defective investigation and prosecution on a trial. This stigmatizes the courts with the impression that it is the courts that acquits the criminals. No doubt, judgments are delivered by the courts but no one had ever thought of going through the reasons recorded therein for such acquittals. The low conviction rate is also testament as to what is wrong with the investigation and prosecution in Pakistan [19]. It leaves the impact on the society that if the perpetrator of the crime escapes punishment, the criminals and like-minded persons would attempt to commit crime more frequently. The impact of it is not less than the injustice in the society. This badly affects upon the society in large. Low conviction rates are contributors to the high crime rate. However, for all this havoc, the public is blaming the courts unjustifiably.

5. Way Forward

As sequel to above, following are few suggestions for improving the current situation:

- 1) Public Prosecutors must have some supervisory role in activity of evidence collecting. They must have an effective in-put in analyzing, examining and evaluating the evidence collected by the investigation agency in order to determine whether the said evidence is worthy of trial.
- 2) The prosecutors should examine the draft report under Section 173 Cr.P.C and point out deficiencies of investigation directing them to remove the same. In case of non-compliance, the case should not see the

light of the trial.

- 3) In case of defective investigation, the District Public Prosecutors should report the matter to the Senior Superintendent of Police of the district, and in case of defective prosecution, to the Prosecutor General.
- 4) In order to make the prosecutors responsible, binding guidelines for prosecutors must be developed by Prosecutor General for improving the current situation.
- 5) Guidelines/SOPs should be developed to foster coordination between the prosecution and the police.
- 6) F.I.Rs should be recorded in simple language and must be factual and for this purpose, the concerned police officer should be bound to record the same himself, instead of getting it recorded by a Mohrar and required training should be given to them.
- 7) It has also been observed that the investigation and prosecution always look and collect direct evidence and do not bother to collect circumstantial evidence, or evidence that may have become available due to modern devices; like DNA profiling, C.C.T.V footage, digital and/or electronic evidence etc. It is therefore, suggested that the Investigating Officers should be trained, equipped and bound in this regard.
- 8) It is common knowledge that the police official, who reaches the crime scene firstly, is usually not trained for preserving the crime scene. It is suggested that until the trained officials reach the crime scene, the untrained persons should not be allowed to disturb the crime scene.
- 9) Forensic science and modern technology must be used for investigation, right from the commencement of the investigation. A cadre of Crime Scene Officers (CSO) should be created for preservation of crime scene and collection of physical and biological evidence therefrom.
- 10) The police usually send the exhibit, sample and/or incriminating article to the forensic lab, according to the police rules, as well as other relevant laws and rules. It is suggested that the photograph of the exhibit, sample or incriminating article should be affixed on the report of the forensic lab, so that the question of proof of identity of the articles may be solved.
- 11) The prosecution and police officials should go through the judgments recording reason acquittal. In this way, they can apprise themselves of aspects of defective investigation and defective prosecution so that they can take measures to overcome the faults highlighted in judgments. Moreover, Prosecution and police officials should invite the leading criminal lawyers for guidance/consultation, if needed.
- 12) The Prosecutor General and Inspector General of Police should establish a mechanism to pursue the cases till their logical conclusion and fix liability upon the officials, who are responsible for the failure of the prosecution or for the acquittal of the culprit, due to the defective prosecution and/or defective investigation.

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