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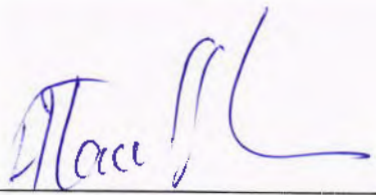
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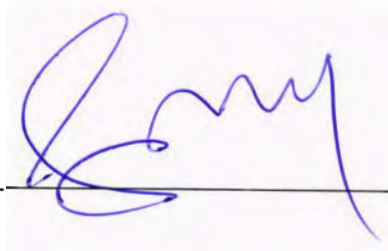
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DEDICATION

This Dissertation is dedicated to:

My Parents

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ABSTRACT

Defective Prosecution in Pakistan is considered to be the main reason behind low conviction rate and acquittal of criminals from courts despite having specific role in commission of offence. In criminal trial, onus to prove the guilt always lies on prosecution which is to prove its case against the accused beyond reasonable doubt. Accused is the favourite child of law and any reasonable doubt pricking the judicial mind is sufficient for acquittal of accused. In case of doubt, benefit must go to the accused as matter of right and not of grace.

My research will focus mainly on the issues by which accused successfully take benefit of doubt and which directly amount to defective Prosecution. For this purpose I began an extensive analysis of Pakistan's Police/Prosecution systems and gone through the case law in which it would have been critically discussed the reasons of defective Prosecution and causes of acquittal of accused. This research will also discuss in detail the role of a police officer/ investigation officer, and further highlight that how a faulty investigation affects prosecution of criminals at trial stage. This research will further discuss the issues which cause delay in registration of F.I.R. which not only diminishes the evidentiary value of F.I.R. but also creates doubts in the Prosecution case. My research will also discuss the issues which arise during trial and adversely affect the Prosecution case. My research will highlight various areas for police reforms and solutions within the Prosecution's legal framework. These recommendations are aimed at providing immediate solutions to critical issues plaguing the Pakistan prosecution system.

This research aims to comprehensively provide workable solutions to enhance all aspects of the Criminal Prosecution System in Pakistan. The research attempts to address much of the public concerns regarding delayed justice and defective prosecution. While the research aims to minimize the encroachment on fundamental rights it does keep ground realities in sight

when reviewing the Criminal Justice System in Pakistan and proposing recommendations for reform.

This research will review the Pakistan Criminal justice system and mainly focuses on causes of defective prosecution and its impact and reforms and further this research will provide the comparison of our national prosecution standards with Inter-national prosecution under the United Nations Organization and will further light up grey areas in which legislation is required to make it more effective in the light of International Prosecution Standards. This research is structured on chapters that begin with a description of the Pakistan Criminal Prosecution system and causes of defective Prosecution.

Chapter Two of this research attempts to discuss those reasons which undermine effective Prosecution at trial stage and those procedural irregularities which vitiate the proceedings and concerned provisions are required to be properly complied with by the presiding officer and prosecutor.

Chapter Three looks at International standards of prosecution. International standards maintain that the prosecutor and investigation officer must work together from day one. If prosecutors and investigation officers in Pakistan work together, conviction rates will also increase. The low conviction rate is unsurprising in a system where, investigators are poorly trained, prosecutors are not closely involved in investigation process, police has no direct access to basic data, lack of access to modern investigation tools, corruption, intimidation, external interference in trials, compromise and out of court settlement between victim and accused, absence of scientific evidence collection methods and credible witness protection programs. Therefore, prosecutors mostly rely on evidence which does not fulfil the criteria of best evidence.

Chapter Four of the research contains recommendations by which Prosecution system can be improved and issues can be removed well in time for effective Prosecution.

Further researcher will discuss how to improve the quality of investigation and collaboration between police and prosecution to convict the culprits.

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List of Abbreviations and Acronyms

ABA	American Bar Association
ADPP	Assistant District Public Prosecutor
APG	Assistant Prosecutor General
ASI	Assistant Sub Inspector
Cr.P.C.	Criminal Procedure Code, 1898
DDPP	Deputy District Public Prosecutor
DPG	Deputy Prosecutor General
DPP	District Public Prosecutor
FIR	First Information Report
HC	High Court
IAP	International Association of Prosecutors
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Tribunal of Yugoslavia
JM	Judicial Magistrate
MLD	Monthly Law Digest
P.Cr.L.J.	Pakistan Criminal Law Journal
PFSA	Provincial Forensic Science Laboratory

PG	Prosecutor General
PLD	Pakistan Legal Decisions
PPC	Pakistan Penal Code, 1860
QSO	Qanoon-e-Shahadat Order, 1984
SC	Supreme Court
SCMR	Supreme Court Monthly Review
SHO	Station House Officer
SI	Sup-Inspector
UNODC	United Nations Office on Drugs and Crime
YLR	Yearly Law Reporter

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Chapter One

Criminal Prosecution Service in Pakistan and Causes of Defective Prosecution at Pre-Trial Stage

Introduction

It is the basic duty of State to secure/make sure of inexpensive and speedy justice to its people, and bring to justice all those who are involved in commission of crime through effective prosecution.¹ Crime in Pakistan is present in various forms. The reasons behind rapidly increasing crime rate in Pakistan might be poverty, unemployment and inequality but defective prosecution is the only reason behind low conviction rate and acquittal of these criminals from courts despite having specific role in commission of offence. Initial onus to prove always lies on prosecution² and single doubt, if created in prosecution case, benefit of the same goes to accused.³ Prosecution is bound to prove its case beyond reasonable doubt. Any reasonable doubt pricking the judicial mind would be sufficient for acquittal of accused. In case of doubt, benefit must go to the accused as matter of right and not of grace.⁴ When prosecution does not prove its case against accused beyond shadow of doubt or court is of opinion that prosecution has not prove its case beyond shadow of doubt it amounts to defective prosecution.

State established Criminal Prosecution Service to conduct trials on behalf of state.⁵ But when public prosecutors conduct trials against these criminals with evidence which is not admissible then result would not be different from acquittal of these criminals, which amounts to defective prosecution. It means that prosecution service fails to present such

¹ Prosecution means *inter alia*, Prosecution means, the process showing formal charges against an offender before a Legal Court, and chasing after them to final judgment on behalf of the State or Government. Abdul Aziz v. Muhammad Jamil, 1999 P.Cr.L.J., 1831.

² Mst. Irshad Begum alias Shadan and others v. State, 2016 P.Cr.L.J., 407.

³ Abdul Hameed v. State, 2016 P.Cr.L.J., 240.

⁴ Muhammad Yousaf and another v. State, 2016 P.Cr.L.J., 373.

⁵ Section 3 of The Punjab Criminal Prosecution Service Act, 2006.

evidence in court upon which conviction of an accused could be secured. Defective public prosecution⁶ in Pakistan is the dilemma of criminal justice system on account of faulty investigation and due to lack of Police-Prosecution cooperation our investigating agencies fail to collect material evidence against the culprits, which result in the acquittal of accused even in serious cases.

Prosecution Service is not delivering due to multiple ailments in our investigation process that includes delay in registration of FIR⁷, mal-practices during the course of investigation, and non submission of police report under section 173 Cr.P.C.,⁸ in court within statutory period of 14 days.⁹ Defective prosecution has serious results for domestic and national security, because when culprits are acquitted by court then extra judicial killing and lawlessness surface in the society.¹⁰ Though prosecution is the important part of criminal justice system, but due to lack of sources and policy this very institution is unable to deliver required results in Pakistan for which certain immediate actions are required.

⁶ The term "Public Prosecutor" The term "Public prosecutor" means any person selected/hired under section 492 of the Code of Criminal Procedure, 1898, and includes any person acting under the directions of a Public Lawyer (who tries to prove someone guilty) and any person managing and doing a prosecution for the State in any High Court in the exercise of its original criminal jurisdiction as referred in Section 4(t) of Criminal Procedure Code 1898.

⁷ According to section 154 of the Code, " any information relating to the, commission of a cognizable offence if given orally to an officer in charge of a police station, will reduced to writing by him or under his direction and then read over to the informant and every such information, whether given in writing or reduced to writing as (earlier-said), will be signed by the person giving it, and the substance of it will be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf as referred in section 173 Cr.P.C.

⁸ "Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall [through the Public Prosecutor], forward to a Magistrate empowered to take cognizance of the offence on a police report, provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under Section 154, the officer in charge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public Prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial should not so commence".

⁹Sardar Hamza Ali, "An Analytical Study of Criminal Justice System of Pakistan," *Journal of Political Science*,(Summer 2015) http://pu.edu.pk/images/journal/pols/pdf_files/2/SARDARALIHAMZA_22_2015.pdf (accessed May 25, 2016).

¹⁰International Crises Group, "Reforming Pakistan's Criminal Justice System," *Asia Report* 96, <http://www.crisisgroup.org/pakistan/196/ReformingPakistanCriminalJusticeSystem.pdf> (accessed October 2, 2015).

An effective mode to regulate the performance of prosecution Service as embodied in the preamble of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 which provides as under:

“Whereas it is expedient to establish an independent, effective and efficient service for prosecution of criminal cases, to ensure prosecutorial independence, for better coordination in the criminal justice system of the Province and matters incidental thereto;”

Further, Section 13(9) of the 2006 Act enjoins upon the Public Prosecutor to “perform his functions and exercise his powers fairly, honestly, with due diligence, in the public interest and to uphold justice.”

1. Criteria for ‘Successful Prosecution’

Fair and effective prosecution is extremely important for the maintenance of law and order. It leads to public confidence in the criminal justice system. Article 37 sub article (d) of the Constitution of the Islamic Republic of Pakistan, 1973 orders upon the State to secure inexpensive and fast justice.

Justice must also be delivered in terms of convictions of perpetrators of crime. But this is glaringly absent in Pakistan where accused persons are often acquitted due to faulty investigation. If we compare the conviction rates around the world, Pakistan is among the countries in the list where conviction rate is very low.

In order to evaluate the performance of a Public Prosecutor it is necessary to establish a benchmark for 'success'. One of the ordinary and accepted modes for measuring the performance of a Public prosecutor is to examine that how many criminal cases were

entrusted to him, result in conviction of the accused. This is a fairly unemotional and factual test.¹¹

2. Historical Background of the Prosecution Service:

The idea of public prosecution gets its origin from the famous saying that "crimes are acts against the state" and not simple wrongs caused upon individual victims. After independence in 1947, Pakistan received British system of criminal justice. Under section 492 of The Code of Criminal Procedure, 1898, Provincial Government is given power to appoint generally or for any class of cases in any local area one or more Public Prosecutors. Section 495 of the Code provides that any police officer who has not taken part in interrogation of the case being tried by a court, to manage and do prosecution. In the light of these provisions, the Punjab Government appointed Law Officers (District Attorneys and Deputy District Attorneys) from Law Department as prosecutors in Session Courts, whereas Police Legal Inspectors were allowed to conduct prosecution as Public Prosecutors in Magisterial Courts. In higher judiciary, prosecution was conducted by Advocate General and State Counsels. In courts of special criminal jurisdiction like Anti-Terrorism Courts, special public prosecutors were appointed on contract basis to conduct prosecution of terrorism cases. Before 2006, prosecution was scattered over different parts and people in charge with no evenness and equality, by that way badly affecting the quality of prosecution in criminal justice system.¹²

A relative analysis of administrative set up of criminal prosecution is given below;

Court	Prosecuting Officer	Department
Magisterial Courts	Police Prosecutors/Inspector Legal	Police Service
Sessions Courts	District Attorney/ Deputy District Attorney	Law & Parliamentary Affairs

¹¹ PILDAT, "Prosecution Service in Punjab and Sindh, (Islamabad: Pakistan Institute of Legislative Development and Transparency, October 2015), 11. http://www.pildat.org/Publications/publication/ROLR/ProsecutionServicesinPunjabandSindh_PositionPaper_Sindh.pdf (accessed April 17, 2016).

¹² Ibid., 12.

		Department Government of the Punjab
Special Courts (Anti-Terrorism, Anti-Corruption, Drug Courts, Environmental Tribunal, Special Judicial Magistrate, Consumer Courts)	Special Prosecutors	Law & Parliamentary Affairs Department, Provincial Government/ Home Department
High Courts	Advocate General/ Additional Advocate General/ Assistant Advocate General/ State Counsel	Office of Advocate General
Federal Shariat Court of Pakistan	Advocate General/ Additional Advocate General Assistant Advocate General	Office of Advocate General
Supreme Court of Pakistan	Advocate General/ Additional Advocate General	Office of Advocate General

Hamood-ur-Rehman Law Commission Report, published in 1971, drew attention to separation of prosecution from the Police Establishment as a result a department of Criminal Prosecution Service was established in all four provinces of Pakistan¹³, and Public Prosecution Department was relieved from the control and supervision of the Police and a separate Public Prosecution Department was established for the prosecution of criminal cases.

After the emergence of Punjab Criminal Prosecution Service, following prosecutors are liable for prosecution of criminal cases before all levels of superior and subordinate Courts.

Court	Prosecuting Officer	Department
Magisterial Courts	Assistant District Public Prosecutors	Prosecution Department
Sessions Courts	<ul style="list-style-type: none"> • District Public Prosecutor • Deputy District Public Prosecutor 	Prosecution Department
Special Courts	<ul style="list-style-type: none"> • Assistant District Public Prosecutor/ • Deputy District Public Prosecutor 	Prosecution Department

¹³ The Punjab Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2006 (Act III of 2006), Sec. 9.

High Courts	<ul style="list-style-type: none"> • Additional Prosecutor General / • Deputy Prosecutor General/ 	Prosecution Department
Federal Shariat Court of Pakistan	<ul style="list-style-type: none"> • Additional Prosecutor General / • Deputy Prosecutor General 	Prosecution Department
Supreme Court of Pakistan	<ul style="list-style-type: none"> • Additional Prosecutor General / • Deputy Prosecutor General 	Prosecution Department

The Code of Criminal Procedure, 1898 governs the conduct of the procedure pertaining to criminal cases. Prosecutorial services are managed by the provisions of Section 492 to 495 of the Cr.P.C.¹⁴

3. Causes of Defective Prosecution

There are number of causes of defective Prosecution, resulting in acquittal of accused, which not only affect Public Prosecution Department overall performance but also losing its confidence among people. Some prominent problems are as under:-

3.1 First Information Report

First information report is information regarding an occurrence to the police authorities. It is a document on the basis of which the police machinery is activated and set in motion for investigation. Purpose of F.I.R., is to bring criminal law in action and to obtain first hand spontaneous information of occurrence, in order to exclude possibility of fabrication of story or consultation or deliberation on the part of the complainant. Spontaneity of F.I.R., is the

¹⁴Criminal Procedure Code, 1898 (Act V of 1898), Sections. 492 to 495.

guarantee of truth to a great extent.¹⁵ Purpose of F.I.R., is to provide a sound basis for carrying out investigation in the right direction.¹⁶

FIR is foundation stone of a criminal case though it is not a piece of substantive evidence. It is always used for contradiction as provided under Article 140 of Qanoon-e-Shahadat Order, 1984 and for corroboration under Article 153 of Qanoon-e-Shahadat Order, 1984.¹⁷

The primary object of FIR under section 154 Cr.P.C., is to convey information about commission of a cognizable offence to a Police Officer who is competent to investigate the same as contemplated under Section 156 Cr.P.C. It is meant to set in motion investigating agency to probe into the commission of offence and unearth the truth.¹⁸ Object of FIR is to set investigating agency of the State in motion so as to collect evidence.¹⁹

In practice, at the time of final arguments in any criminal case the FIR takes on a extreme importance. The defence side relies heavily on the contents of the FIR. In case an accused has not been attributed a complete and thorough 'starring' role in the commission of the offence and in the event that the Prosecutor is unable to prove all contents of the FIR, as a result defence often is successful to secure acquittal. Though in criminal trial FIR has a great importance but there are several issues which not only diminish its evidentiary value but also in some cases delay in registration of F.I.R., is the main ground of acquittal of accused as well. Let's have a look at these issues;

3.1.1 Registration of fake cases

Registration of fake FIR is one of the big reasons of defective prosecution. First Information Report forms foundation of a criminal case and its importance is therefore paramount in

¹⁵ Mushtaq Hussain v. State, 2011 SCMR 45.

¹⁶ Umar Hayat Sajjad v. SHO Police Station Mochi Gate, Lahore, 2005 YLR 1313.

¹⁷ Nasima Bibi v. State through Advocate-General, 2008 P.Cr.L.J., 613.

¹⁸ Alimdad alias Khan v. State, 2002 P.Cr.L.J., 1785.

¹⁹ Imam Shah Advocate v. Muhammad Jamshed Kundi, Judicial Magistrate, Lakimarwat, 2004 YLR 447.

nature.²⁰ But in some cases bogus FIR gets registered on political pressure or affiliation, just to harass, humiliate, or disgrace the accused in society with only object to affect immediate arrest of accused without solid reasons/evidence and ultimate result of such fake cases is just acquittal of accused after wastage of precious time of court. In these cases, police officials prepare case files while sitting at Police Stations just to please their political patrons. In such like cases even if prosecutor during the scrutiny of report under section 173 Cr.P.C. finds that it is a case of no evidence, he has no other option but to submit said report in the court and it is prerogative of Court to decide the fate of case. Ultimate result of such fake cases is acquittal of accused. Though it is not the intention of law to convict an innocent person but statistics of conviction or acquittal don't explain whether it was a fake case or genuine case and this acquittal is considered a failure of Public Prosecution. This has led to a culture where the prosecutor is loathe to suggest or pursue a line of enquiry which differs in material particulars from the version of events recorded in the FIR which indicate that a particular offence has been committed.²¹

If we seek to measure the performance of the Prosecution Services in terms of conviction rate then the FIR takes on critical importance.²² The police are duty bound to register the case under section 154 Cr.P.C. It shall not be out of place to express that through the introduction of section 182 PPC, the legislature has placed the check and introduced the balance by making liable the complainant under section 182 PPC. Which enunciates that whoever gives to any public servant any information which he knows or believes to be false, intending thereby to use his lawful power to cause injury, will be punished with imprisonment which may extend to six months or with fine or with both. But police officials rarely initiate

²⁰ Astam Khan v. State, 1995 PCr.L.J., 459.

²¹ PILDAT, "Prosecution Services and Media in Pakistan," http://www.pildat.org/Publications/publication/ROLR/ProsecutionServicesandMediainPakistan_MediaBrief.pdf (accessed April 17, 2016).

²² Ibid., 16).

proceedings under section 182, if the information given by him ultimately found to be false during the investigation.²³ Police is under statutory duty to investigate a cognizable offence whenever a report is made to it, disclosing commission of cognizable offence without any interference but in number of cases FIR gets quashed by High Court under section 561-A Code of Criminal Procedure, 1898 when allegation in F.I.R. appears to be groundless and there is no probability of conviction. High Court has no power to interfere with the police investigation and cannot assume the role of investigator. Conduct and manner of investigation is not to be scrutinized under constitutional jurisdiction which might amount to interference in police investigation as the same cannot be substituted by Court.²⁴

3.1.2 Delay in Registration of FIR

Though it is not mentioned in section 154 Cr.P.C., but complainant should register the F.I.R. as early as possible because otherwise, it can be presumed that delay in registration of F.I.R. was caused to make the case in line and there is a possibility that Prosecution has managed to crop a story and hired witnesses just to strengthen the case. It is also duty of an officer in charge of police station to register a criminal case on receiving a report regarding a cognizable offence, but it has been witnessed in several cases that officer in charge of a police station refuses to lodge an FIR and victims are frequently forced to approach Justice of Peace under Section 22-A(6) Cr.P.C. to seek directions to the police for registration of an FIR. If such delay is not properly explained then it may arise the presumption of consultation on part of the Prosecution. It is also noteworthy to mention here that in case of delay in registration of F.I.R. some important piece of evidence may also be destroyed since police officials don't visit place of occurrence for collection of evidence, without registration of F.I.R. Delay in registration of FIR always proves fatal to the prosecution as it creates impression of deliberation and consultation on part of complainant. Unexplained delay in

²³ S.C. Subjally v. A. Hamid Khan, 1999 P.Cr.L.J., 1645.

²⁴ Ajmeel Khan v. Abdur Rahman, PLD 2009 SC 102.

registration of F.I.R. and to set the machinery of law in motion, prima facie points to fabrication of prosecution story. If the delay in lodging FIR is not explained, it diminishes the value of F.I.R. and court hardly believes the story of prosecution.

Although delay in lodging F.I.R. is not always material, however, heavy duty is cast upon Prosecution to explain the same.²⁵ If complainant fails to furnish the circumstances beyond his control or sound justification in that regard, the allegations leveled in F.I.R. would be presumed to be result of deliberations, negotiation, discussion and after thought; with ulterior motive to get accused convicted.²⁶

3.1.3 Effect of delay in registration of FIR

Delay in registration of F.I.R. always proves fatal to Prosecution and beneficial for accused. FIR was registered by delay of one hour despite the fact that Police Station was situated at a distance of one and half kilometers from place of occurrence. Police witnesses contradicted testimony of eye-witnesses. Had complainant and witnesses been present on the spot with the deceased, they could have shifted the injured to hospital or Police Station. Occurrence had not taken place in alleged mode and manner. FIR was lodged after consultation and preliminary investigation. Numerous infirmities were not required to disbelieve a witness; even a single infirmity might make the entire statement doubtful. Prosecution had to prove its case beyond shadow of doubt. Benefit of doubt had to be extended to accused.²⁷

As it was held in case of *Mst. Shopari Bibi v. State*,

“Report was lodged after a delay of 1 hour and 46 minutes. Explanation furnished by the complainant for such delay was not plausible and she failed to establish the motive. Keeping in view inordinate delay in lodging

²⁵ Muhammad Nadeem v. State, 2011 SCMR 872.

²⁶ Hajan v. State, 2014 P.Cr.L.J., 1123.

²⁷ State through Advocate-General K.P.K. v. Fazal Hakim, 2016 MLD 61.

report, coupled with non-proof of motive, it could safely be said that the time inter se the alleged incident and report, had been consumed by the complainant in deliberation and consultation. Impugned judgment of acquittal was maintained, and appeal against acquittal was dismissed, in circumstances".²⁸

Alleged occurrence was reported to the Police with delay of one day and 7.35 hours for which no plausible explanation had been furnished. Findings of the Trial Court, did not suffer from any perversity, illegality or infirmity; and same was based on sound and cogent reasons, warranting no interference by High Court. Appeal against acquittal having no substance, was dismissed, in circumstances.²⁹

Delay in reporting the matter to the Police, was not plausibly explained, and name of informer was also not disclosed by the Prosecution. Complainant, had introduced entirely different story before the court---Complainant's statement, supplementary statement of prosecution witness and deposition before the court, were all together different; and with variation of time, the complainant changed his stance, which made prosecution story highly doubtful. Grounds taken by the Trial Court for acquittal of accused persons are well reasoned, appellate court did not find any illegality in the impugned judgment. Appeal against acquittal was dismissed.³⁰

4. Defective Investigation by Police Officers

Defective investigation is a major cause of defective Prosecution as the whole case of Prosecution depends on investigation. After registration of FIR it is the basic duty of Investigation Officer to conduct investigation in the case. Investigation means only collection

²⁸ Mst. Shopari Bibi v. State, 2015 P.Cr.L.J., 1584.

²⁹ Arshad Mehmood v. Abdul Haq, 2015 YLR 1690.

³⁰ State v. Mukhtar Ahmad, 2015 MLD 1840.

of evidence.³¹ As defined in S. 4(L) of Code of Criminal Procedure, 1898, 'investigation includes all the proceedings under Cr.P.C. for the collection of evidence conducted by a police-officer or by any person, other than a Judge, who is authorized in this behalf. It would be seen from above that investigation consists of steps taken by a police officer other than a Judge to ascertain whether any offence has been committed at all and, if so, by whom and what is the evidence on which the Prosecution case can be based.³² Power to investigate a cognizable offence has been conferred under section 156(1), Code of Criminal Procedure, 1898 on any officer in charge of Police Station having jurisdiction over the local area within the limits of such police station.³³ Police under section 156 has a statutory right to investigate the circumstances of an alleged cognizable crime without requiring any permission from the judicial authority and such statutory right cannot be interfered with by judiciary.³⁴ Trial can be vitiated on the basis that an incompetent police official had conducted the investigation.³⁵

The principle object of investigation is to provide answers to certain questions relating to offence. It includes; the identification of the accused; the place of occurrence; manner in which offence was committed and how it was committed; the time of offence; the object of attack; and the identification of the victim. It also includes recording the statement of witnesses those who have acquaintance with the facts of the case. So that a complete picture of all relevant facts could be presented against the accused at the time of trial as to leave no doubt in the minds of the judges regarding the guilt or innocence of the accused.³⁶ But when Investigation Officer doesn't perform his duty diligently and honestly then Prosecution case falls under improper and defective investigation which results in acquittal of accused.

³¹ *Mehmood-Ul-Hassan Gillani v. Magistrate 1st Class, Khushab*, PLD 2008 Lahore 171.

³² *Liaqat Ali v. State*, 1999 P.Cr.L.J. 1357.

³³ *Muhammad Ashraf v. State*, 1998 P.Cr.L.J., 1656.

³⁴ *Muhammad Dildar Hussain v. Civil Judge/Judicial Magistrate, Shujabad*, 2000 P.Cr.L.J., 43.

³⁵ *Muhammad Noman Khan v. State*, 2008 YLR 1334.

³⁶ "Encyclopedia Britannica" 1768, Edition 1970 (Vol. 12).

4.1 Delayed postmortem

In murder cases delay in conducting postmortem also proves fatal for Prosecution and court infers from it that Prosecution story is an afterthought and has no sanctity in law. though post mortem report is corroboratory piece of evidence but in case of delay, court presumes that incident did not occurred as alleged by the Prosecution and Prosecution has designed the case after consultation, as this fact is apparent in following cases;

“Probable time between injury and death of deceased, was two to three hours whereas between death and post-mortem, was ten to twelve hours. No plausible explanation was available as to why post -mortem of dead body was delayed for eleven hours. Such aspect of the matter was sufficient to cast doubt about the authenticity of the FIR and had created serious doubt about the genuineness of the prosecution story. Prosecution evidence seemed to be afterthought. Prosecution had failed to bring true facts before the court. Story of incident was highly doubtful; witnesses were not trustworthy, as they had given contrary statements on material points. Impugned judgment warranted no interference, in circumstances. Appeal against acquittal, was dismissed in circumstances”.³⁷

Judgment of the Trial Court warranted no interference, in circumstances. Appeal against acquittal, was dismissed in circumstances. Alleged Offence not proved by prosecution as neither post mortem of dead conducted nor cause of death was ascertained. Acquittal of accused based on cogent reasons not suffered any irregularity, appeal dismissed in circumstances.³⁸

³⁷ Muhammad Sarwar v. Mehboob Alam, 2015 YLR 2734.

³⁸ Ghulam Shabbir v. State, 2013 YLR 806.

4.2 Illegal detention and arrest of accused

Section 60 of the Code provides that a person arrested without warrant should be produced before a Magistrate having jurisdiction without unnecessary delay. Section 61 of the Code restricts a police officer to confine a person for a period more than twenty four hours, unless he obtained a order of a Magistrate under section 167 Cr.P.C. ³⁹ In such like cases police keep accused in illegal detention and concoct a story of some subsequent date and time. Thereafter accused produces evidence in which they prove that accused was already in police custody and Prosecution case is fake and it's not so as stated by the Prosecution. Mostly accused produces petition u/s 100 Cr.P.C. by which they allege that accused was in police custody prior to this date of alleged incident and Prosecution tailored a fake case against the accused. By this way accused remains successful to mark a dent and to disbelieve the story of Prosecution. Though it is not the intention of law to convict an innocent person, but when Prosecution evidence discarded on the ground of illegal detention after conducting the trial, then we can say that it is also an issue of defective Prosecution that an innocent person faced the agony of whole trial without any evidence. Ultimately it is a defective Prosecution system which either way has to follow the whole procedure of trial even to acquit an innocent person.

4.3 Statement during investigation

An investigation officer may summon any person who has any kind of knowledge of any fact regarding case and such officer may write down his statement. Importance of such statements cannot be denied especially when persons making those statements figured as eye-witnesses in F.I.R. ⁴⁰ Though such statement is not substantive evidence, ⁴¹ but accused may use it to

³⁹ Ghulam Shabbir v. State, 2000 P.Cr.L.J. 1411.

⁴⁰ Muhammad Bashir v. State, 1992 P.Cr.L.J., 119.

⁴¹ State v. Mst. Zuhra bibi, 1992 P.Cr.L.J., 825.

contradict the witness to test the degree of his truthfulness.⁴² But in some cases lacunas in such statement become a sufficient ground for acquittal.

Statements of two prosecution witnesses were recorded under section.161, Cr.P.C. after about one month of the registration of the F.I.R., disclosed that one acquitted co-accused had directed the other co-accused to commit the murder of the son of complainant, while sitting in a hotel, which was quite unnatural and un-reliable. Said statements had been procured by the prosecution after consultations and deliberations. Appeal against acquittal dismissed in circumstances.⁴³

As it was held in the case of Muhammad Basharat v. Syed Saqib Shah

“Eye witnesses, in the present case, disclosed this fact 16 days after the occurrence. Said witnesses admitted that they remained associated with the Investigating Agency, but their statements were recorded after a period of seven days; and they did not disclose that fact immediately after the occurrence, which had created some doubt that why they remained quiet for such a long period. Last seen evidence, was the weakest type of evidence, which could not be relied upon without strong corroboration. Acquittal order upheld by Shariat Court was based on correct appreciation of evidence, which did not warrant interference in appeal. Appeal against acquittal was dismissed, in circumstances”.⁴⁴

One of the prosecution witnesses had recorded his statement with delay of ten days of the occurrence, which was sufficient to create doubt in his evidence.⁴⁵ Complainant did not disclose name of respondent/accused in his statement and alleged eye-witnesses nominated

⁴² Dilshad v. State, 1995 P.Cr.L.J., 248; Amir Bux v. State, 1990 P.Cr.L.J., 1765.

⁴³ Ghulam Shabbir v. State, 2013 YLR 806.

⁴⁴ Muhammad Basharat v. Syed Saqib Shah, 2013 P.Cr.L.J., 619.

⁴⁵ Mst. Salam Bibi v. Amanullah, 2012 YLR 2408.

accused after four days of the occurrence. F.I.R. was registered after arrival of witnesses and said witnesses admitted that, they recorded their statements after consultation and deliberation with the complainant. Presence of witnesses at the spot at relevant time being highly doubtful, their statements were ruled out from consideration. No illegality and impropriety being present in the impugned judgment, appeal against acquittal was dismissed, in circumstances.⁴⁶

“Despite the deceased having disclosed the names of the accused person who had fired upon him, their names were not mentioned. Accused were declared innocent during investigation and nothing was recovered from them. Acquittal order was not perverse or whimsical. Special leave to appeal was declined to complainant accordingly”.⁴⁷

If investigation officer records statement of prosecution witnesses with unexplained delay such evidence cannot be relied.⁴⁸ Before commencement of the trial accused must know precisely what would be deposed by a witness against him.⁴⁹ This should be done as early as possible, delay if not satisfactorily explained may give rise to an inference of the same having been consumed in deliberation.⁵⁰

4.4 Recording of confession and statement by Magistrate during investigation

Statement recorded by Judicial Magistrate during investigation is admissible under section 244-A and 265 (J), Cr.P.C., if accused was present at the time of recording statement and was provided an opportunity to cross-examination deponent. This statement can also be contradiction. Procedure for such statement is given under section 364 Cr.P.C. and any departure from the said section would make the statement inadmissible in evidence. These are

⁴⁶ Habibullah v. Ghulam Sarwar, 2011 P.Cr.L.J., 1490.

⁴⁷ Mst. Shamim Ghafar v. Ghulam Shabbir, 2010 YLR 2216.

⁴⁸ Dr. Khalid Moin v. State, 2006 P.Cr.L.J., 639.

⁴⁹ Sajjad Hussain v. The State, PLD 1996 Lahore 286.

⁵⁰ Jani v. The State, 1996 P.Cr.L.J., 656.

mandatory in nature and put a legal obligation on the Magistrate to comply with the same while recording confessional statement.⁵¹ Violation of this is an illegality which is not curable.⁵² Non-Compliance of the provision of S. 364, Cr.P.C. is not a curable irregularity.⁵² Recording Magistrate committed successive illegalities as after recording the confessions of the accused persons on oath; both were handed over to the same police officer, who had produced them in the Court in handcuffs. Recording Magistrate did not put many mandatory questions to the accused persons like duration of police custody and he also did not inform them that they would not be given back to the police whether they recorded the confession or not. Confessions of accused persons in such circumstances were of no legal worth, and had to be excluded from consideration, more so, when these were retracted at the trial. Even otherwise confessions of accused persons prima facie appeared to be untrue because the same contradicted the story set up by prosecution witnesses on material particulars of the case. Supreme Court set aside convictions and death sentences awarded to accused persons and acquitted them of the charge. Though no one can be prejudice by an act of court but at the same time there is should be no irregularity which can prejudice or misguide the accused in his defence. Confessional statement of accused was recorded with the delay of nine days, which later on was retracted. Belated confessional statement, which was recorded in violation of S.164, Cr.P.C., would be discarded and was not to be taken into consideration. Prosecution failed to prove its charge against the accused Court⁵³ therefore accused rightly acquitted from charge by the Trial Court. Therefore trial court should insist on strict compliance of the requirement of this section.⁵⁴

⁵¹ PLD 2005 karachi 213.

⁵² Gul Jehan v. State, 1998 MLD 288.

⁵³ Naheed Akhtar v. State, 2015 YLR 1279.

⁵⁴ Azeem Khan v. Mujahid Khan, 2016 SCMR 274.

4.5 Identification Parade

The conduct of identification parade is a matter of procedure which is not defined by the Qanun-i-Shahadat Order 1984. Article 22 of the Order only indicates that identification Parade is related to those facts which are declared are relevant facts, about place, name, person or date. Meaning thereby, there is no strict procedure provided under the Order for the identification of accused. A question relating to identity may arise in two ways either identity with reference to ascertain a person or identity as doer of any act. No identification parade is required, if the witness already know the accused, as the parade is conducted only when the accused is not known to witness. Identification parade has been provided by Art. 22 of Qanoon-e-Shahadat Order, 1984. It is also been discussed in Lahore High Court Rules Volume III, Chapter II-C and under section 26(32) and Form No. 26(32) (1)(e) of Police Rules, 1934.

Identification parade held as soon as police arrest the accused and delay in it will diminish its evidentiary value. "The identification of the accused after 11/13 days of his arrest diminishes the evidentiary value of the test".⁵⁵

"In the case of Muhammad Sajjad, Mr. Justice Khalil-ur-Rehman Ramday held that identification Parade is not a substantive piece of evidence but only a corroborative piece of evidence". The main object of this is to judge the memory of a witness as to whether he was able to remember any particular feature of person whom he had seen at the place of occurrence and to be identified subsequently in identification test as the same person. Identification at test parade is not substantive evidence by itself. Person having been unable to recognize main features of the accused is unsafe to rely upon such type of evidence. Identification parade is not the requirement of any law but it is the rule of propriety in order to secure authenticity of identification of real culprit. Identification parade is to be held as to

⁵⁵ State v. Ghazi, PLD 1978 Quetta 191.

eliminate possibility of any mistake. Holding of identification parade is extremely important only in cases in which a witness has seen the accused and claim to identify him. If witness already knows the accused or met him before then identification of accused is of no legal value.⁵⁶

There are two objects of identification parade; one is to establish the identity of accused and second to specify his role during commission of offence.⁵⁷ Such test has only supporting value and is not a substantive piece of evidence. It only corroborates statement of witnesses, who had seen the culprit on the date, time and place of incident and subsequently identifies him to be the same culprit in identification test.⁵⁸ But in certain cases lapses in conducting the identification parade diminish its evidentiary value.

Complainant assailed acquittal of accused by Trial Court on the ground that witness rightly identified the accused during identification parade. Such exercise is of no significance when has seen the accused earlier. Even otherwise prosecution witnesses could have seen only partial glimpse of face of culprit and that too at a time when they were in the state of terror, therefore, identification test held after two months of such occurrence was not of much value. Identification without assigning any role to the accused was of no value. Trial Court had appraised relevant evidence available on record by making threadbare examination of each relevant piece of evidence, supported by reasons based on record and no prosecution evidence, incriminating in nature was misread or omitted from consideration or not appraised in its true perspective. Judgment of acquittal was unexceptionable and based on fair and legal appreciation of evidence on record with sound reasons.

⁵⁶ Aman Mai v. Nasreen, 1989 PCr.L.J. 2227.

⁵⁷ Muhammad Sajad v. State, 2008 P.Cr.L.J., 831.

⁵⁸ Muhammad Ahmad alias Danyal v. State, 2005 YLR 954.

Judgment of acquittal did not call for interference by High Court as double presumption of innocence was attached to the accused. Complainant failed to show that findings of Trial Court were perverse, illogical, artificial, and ridiculous or based on misreading of evidence leading to miscarriage of justice. Appeal was dismissed in circumstances.⁵⁹

“Prosecution gave no explanation as to why abductee, who was the best person to identify accused, did not participate in test identification parade. Credibility of son of abductee was found shattered and the same would haunt other aspects of his statement as well. One tainted piece of evidence could not corroborate another tainted piece of evidence. Prosecution was not able to bring home the charge against accused persons beyond a shadow of doubt and it would be extremely unsafe to maintain convictions in safe administration of criminal justice. High Court extended benefit of doubt to accused persons, set aside conviction and sentence awarded to them by Trial Court and they were acquitted of the charge. Appeal was allowed in circumstances”.⁶⁰

4.6 Recoveries during police custody

Though recovery effected during police custody is an admissible fact in evidence but due to some illegalities committed by police at the time of affecting such recoveries, which not only diminish evidentiary value of such recoveries but also provide a ground of acquittal in some cases. It is pertinent to mention here that joint recovery has no evidentiary value. When more than one accused arrested in a case, under the law police should affect recoveries from accused separately. But in number of cases police effect joint recoveries which is illegal and

⁵⁹ The State through Advocate-General Sindh v. Taj Muhammad, 2011 PLD 70 Karachi.

⁶⁰ Ghulam Qasim v. State, 2016 YLR 687.

no evidentiary value, because evidence of joint recovery is not admissible.⁶¹ Evidence made at pointation of several accused jointly not admissible in evidence.⁶² If two or more persons are alleged to have pointed out a relevant fact, it must be shown who pointed out the fact first and if it is not done, the evidence of pointing out will not be admissible against any one of the accused. Article 40 of the Qanoon-e-Shahadat Order, 1984 provides that statement which leads to discovery of fact is admissible.⁶³

Though recovery was affected in the presence of said witness, but he was not a marginal witness of any recovery memo. None of two witnesses had given specific statement regarding accused being the actual offender, after their statements, rest of the proceedings would have been ineffective, and wastage of time. Accused had been rightly acquitted; judgment which suffered from no infirmity or illegality could not be interfered with by Shariat Court. Appeal against acquittal, was dismissed, in circumstances.⁶⁴

“Despite recovery of weapon, bullet and empties, the most crucial evidence, i.e. report of ballistic expert had not been obtained, benefit of which had to go to the accused. Impugned judgment of acquittal required no interference and, accordingly, appeal against acquittal was dismissed.⁶⁵ Recovery of rifle of no avail to the prosecution as no empty of rifle was collected from the alleged place of occurrence. Accused having been acquitted of all the charges, double presumption of innocence was attached to him”.⁶⁶

⁶¹ Abdul Hameed v. State, 1994 P.Cr.L.J., 769.

⁶² Abdul Ghani v. State, 1976 P.Cr.L.J., 1462.

⁶³ Mujahid Hussain v. State, 1983 SCMR 654.

⁶⁴ State v. Zafar Iqbal, 2014 P.Cr.L.J., 934.

⁶⁵ Abdul Wahid v. Umer, 2013 P.Cr.L.J., 192.

⁶⁶ Khalid Hussain v. Muhammad Zahid alias Ajji, 2007 MLD 1975.

4.7 Non compliance with Section 103 Cr.P.C.

Under the provision of section 103 of the Code the officer making a search shall call upon two or more respectable inhabitants of the locality whose integrity cannot be called in question. To be "respectable" and "of the locality" are necessary qualifications of search witnesses.⁶⁷ Emphasis should be on respectability and independence. The object of associating public witnesses with the recovery process is to obviate possibility of false implication.⁶⁸

If search is conducted in violation of provision of Section 103, i.e. search conducted in presence of interested witnesses, not even belonging to locality, contravenes statutory provisions. Benefit of doubt would extend to the accused.⁶⁹ Alleged recoveries made from hotel without joining any person from public or hotel management, recoveries brushed aside.⁷⁰ No explanation was given by the prosecution for exclusion of independent and disinterested persons as witness; presumption to such recoveries is being fake.⁷¹ Incriminating article found in place in possession of more than one person, not possible to fix liability on any particular individual.⁷² Sections 101 and 102 Cr.P.C. provide safeguard against abuse of search warrant. Section 103 Cr.P.C. is of vital significance to render search proceedings both transparent and credible. The only provision in the Criminal Procedure Code which deals with search of place is section 165 Cr.P.C. deals with search for a thing necessary for investigation where there is no time for taking out a warrant under section 96 Cr.P.C. even then the compliance with requirements laid down in S. 103 Cr.P.C. is rendered mandatory.⁷³

⁶⁷ Muhammad Ameen v. State, 1990 P.Cr.L.J., 84.

⁶⁸ Muhammad Akram v. State, 1993 MLD 551.

⁶⁹ The State v. Gurmukhdas, 1980 P.Cr.L.J., 148.

⁷⁰ Ata-Ur-Rehman v. The President, Summary Military Court No. 21, Gujrat, 1980 P.Cr.L.J., 832.

⁷¹ Muhammad Hanif v. State, 1980 P.Cr.L.J., 345.

⁷² Muhammad Shafi v. The State, 1973 P.Cr.L.J., 1066.

⁷³ Riaz v. Station House Officer, PLD 1998 Lahore 35.

Dignity and privacy of man and home has been guaranteed being inviolable by Article 14 of the Constitution subject to law which in the present case meant the provisions relating to issue of search warrant under section 96, 98 and 165 of the code., which not only provide grounds for issuance of such warrants but also provide a procedure to be followed by the Magistrate for issuing the same.⁷⁴ But if proper procedure not adopted by the Magistrate in issuance of search warrants then such proceeding would be vitiated.

There must be some material available to a Magistrate to which he must apply his mind before issuance of search warrant and where he does not apply his mind, such an order would certainly stand vitiated.⁷⁵ Search warrant issued by Magistrate without giving reasons would vitiate the proceedings under S. 96, Cr.P.C.

4.8 Late dispatch of Sample to Provincial Forensic Science Agency

In narcotics cases report of Provincial Forensic Science Agency has basic importance. For this purpose when any narcotics substances recovered from the accused, Investigation Officer separate small quantity of narcotics and sends it to PFSA for chemical analysis. Report of chemical analysis is admissible in evidence under section 510 Cr.P.C. But in several cases these sealed articles i.e. blood stained earth, blood stained clothes, empties, weapon of offence etc, are kept at Police Station for onward transmission to the Provincial Forensic Science Agency. Though no time limit has been prescribed for dispatching except in narcotics cases which is seventy two hours, these parcels should be dispatched as early as possible.

In several Narcotics cases sealed parcels are dispatched to PFSA after considerable delay which makes the sanctity of these parcels doubtful and chance of tempering presumed in such

⁷⁴ Muhammad Abbas alias Ajmi v. State, 2005 YLR 3193.

⁷⁵ Masood Qureshi v. Azizul Hameed, 1971 PLD Lahore 678.

cases. Due to this very reason in number of narcotics cases accused acquits, as evident from the following cases:-

It was held in a case, that "charas" was sent for chemical examination with a delay of eight days and no plausible explanation was presented for such delay and in such circumstances no sanctity could be attached to a positive report from the chemical examiner. Charas was not kept at a safe place, chance of tampering/foisting of the case property could not be ruled out. Therefore, accused was acquitted and appeal was allowed accordingly.⁷⁶ Case property, which was dispatched to the office of the Chemical Examiner, was received in the office after the delay of one month and one day. Prosecution failed to give any explanation as to where the alleged samples were kept during the period of one month and one day. Grave doubt existed if the recovered narcotic was sealed and kept in a safe custody---Such circumstances created doubt about the veracity and authenticity of the report of Chemical Examiner. Prosecution evidence was not worthy of credence. Trial Court had correctly held that the charge had not been brought home to the accused in view of unsatisfactory nature of evidence and contradictions in prosecution evidence.⁷⁷

“Delay in sending samples had not been explained which created doubt and apprehension of tampering with the same. Investigation Officer had not given explanation with regard to safe custody of the contraband during the intervening period of sending samples. Accused after acquittal from the criminal charges presumed to be innocent and court of appeal was bound to examine whether courts below had not ignored any evidence or had discarded any evidence for the reason not recognized by law. Appeal against acquittal was dismissed”.⁷⁸

⁷⁶ Muhammad Saleh Malah v. State, 2016 P.Cr.L.J., 432.

⁷⁷ State v. Muhammad Azeem alias Sohni, 2015 P.Cr.L.J., 1580.

⁷⁸ State through Advocate-General Khyber Pakhtunkhwa, Peshawar v. Amir Rehman, 2015 YLR 1786.

4.9 Consolidated sample parcels

Narcotics cases in Pakistan are another highest score among other offences and it is duty of Prosecution to secure conviction of those who are involved in narcotics business but in number of cases accused acquitted from courts due to negligence of investigation officers. In narcotics cases Ameer Zeb's case⁷⁹ is a judgment which is being followed by all courts regarding preparation of parcel of contraband, when any alleged recovery effected. But investigation officers do not follow the guidelines given in this judgment. Departure from the basic principle of this judgment regarding preparation of sealed parcel proves fatal for Prosecution, and court grants benefit of doubt to accused as evident in following cases;

Accused was allegedly found in possession of twenty bags containing narcotics. Each bag contained twenty packets and each packet weighed one kilogram. One gram narcotic was separated from each packet and after amalgamation, ten sealed parcels of twenty grams each narcotic were prepared as sample. Held, that if narcotic was recovered, then from each packet a separate sample of narcotic for chemical examination had to be prepared and sent for examination. However, in the present case only ten packets had been prepared as sample after amalgamation of the recovered narcotic, hence, keeping in view the ratio of the judgment in Ameer Zeb v. State (PLD 2012 SC 380), recovery of narcotic was proved only to the extent of ten kg. Accused in such circumstances could at most be convicted under S. 9(c) of Control of Narcotic Substances Act, 1997 for narcotic weighing ten kg. Proviso to S. 9(c) of Control of Narcotic Substances Act, 1997 provided that if quantity of recovered narcotic exceeded ten kg, the punishment shall not be less than imprisonment for life. As the quantity of narcotic recovered from accused in the present case was proved only to the extent of ten kilograms (and not more than that), hence he could not be sentenced to undergo life imprisonment. Accused had already undergone more than 14 years in jail. Supreme Court in such

⁷⁹ Ameer Zeb v. State, PLD 2012 Supreme Court 380.

circumstances converted death sentence awarded to accused to sentence already undergone by him. Appeal was disposed of accordingly.⁸⁰

4.10 Discrepancies in weight of Narcotics

In narcotics cases another factor which causes a suspicion in proceedings is discrepancies in the weight of recovered narcotics. In such situation courts are bound to give benefit of doubt to accused. This also shows defective Prosecution which can be put in order by little guidance to police officials. There are some examples of defective prosecution due to discrepancies in weight of recovered narcotics and accused was acquitted on this ground:-

“Police, allegedly recovered polythene bag from accused containing fifteen big and small pieces of charas weighing seven Kgs. Small pieces separated from recovered charas weighing ten grams were sealed in one packet for Chemical Examination. No detail or description was given to the effect that as to which sample was separated, from which piece of recovered charas. Complainant had not produced before the court, the black polythene bag which contained charas. Sample of recovered substance was sent to Chemical Examiner with unexplained delay of one week; and there was difference of weight as complainant allegedly separated ten grams charas for chemical examination, while it was just nine grams according to chemical examiner report. Statements of prosecution witnesses were not confidence-inspiring and circumstances had created serious doubt regarding the truth of prosecution story. Prosecution had failed to bring the guilt of accused. Defence had succeeded to make out its case for extension of benefit of doubt.

⁸⁰ Shaukat Ali alias Billa v. State, 2015 SCMR 308.

Impugned judgment passed by the Trial Court, was dismissed and acquitted the accused".⁸¹

Conclusion

It is duty of prosecution to investigate the case in such manner that rights of accused do not prejudice. Any irregularity or misuse of power by the investigation officer will go in favour of the accused. During collection of evidence it is duty of prosecution to be conscious that any irregularity in securing evidence may destroy the case of prosecution and evidence against accused must be conclusive which leave no probability of innocence in favour of the accused. All pieces of evidence must be so inter-connected that one end of it be at the dead body of deceased, and other round the neck of accused. But in case any defective or unreliable evidence creates suspicion and benefit of such suspicion always goes in favour of the accused.

⁸¹ Muhammad Qasim v. State, 2014 P.Cr.L.J., 119.

CHAPTER TWO:

Criminal Trial and Defective Prosecution

Introduction

Main purpose of the entire judicial proceedings is to find truth, to arrive at a correct decision and to see that no innocent person is punished. Accused must be given a reasonable opportunity of rebutting the evidence brought on record. Free and fair administration of justice is primary and essential obligation of the Court of law constituted for the purpose. Accused is blue eye child of law and he can take any plea and he will be presumed innocent unless proved guilty.¹ Accused is blue eye child of law and he can take any plea and it is basic responsibility of prosecution to prove its case against the accused positively. It is duty of court not only to provide free and fair opportunity to Prosecution to prove its case but also secure the rights of accused as provided under natural justice. Though during trial prosecution relies on evidence collected during the investigation still there are certain eventualities which obstruct effective prosecution and accused is given benefit of doubt and acquitted from charges against him. There are several causes of defective Prosecution during trial, by which Prosecution fails to bring home the guilt of accused through cogent and confidence inspiring ocular or circumstantial evidence, beyond shadow of reasonable doubt. Some prominent causes are as under:-

1. Lacuna in registration of F.I.R.

1.1 Inconsistent Evidence

Primary object of F.I.R. under this section is to set machinery of law into motion.² It is meant to set in motion investigation agency to probe into the commission of offence and unearth the

¹ Muhammad Bakhsh v. State, 2012 YLR 112.

² Mir Muhammad alias Mir v. State, 2013 MLD 1609.

truth.³ Further object of the F.I.R. is to make known what the case of the informant is against the alleged offenders at the earliest opportunity, when the occurrence took place; so, if at the trial a story is given against the alleged offenders which differs in material particulars from the one given in the information, it has always been viewed with grave suspicion and the accused has been given the benefit of doubt arising from such contradictions and discrepancies.

Though F.I.R. is not considered a substantive evidence⁴ but in number of cases complainant provides vague or unclear statement initially in FIR and subsequently try to fill these gaps during the trial and record improved statements of complainant and other eye witnesses inconsistent with story of F.I.R. with intention to bring the case of Prosecution in line. In such situation benefit of doubt goes to accused when there are discrepancies between F.I.R. and subsequent evidence. As it was held in this case, that time of occurrence in F.I.R. was stated as Zuhr Prayer time whereas in his statement before committing Magistrate informant converted it into as Asr Prayer time. Statement of informant was also containing some other material discrepancies. Statement was not believed.⁵ Inconsistent statements of prosecution witnesses which differ with story of the F.I.R. are one of the reasons that indicate defect in prosecution case and prosecution fails to convince the court. Prosecution is required to put its case from the beginning to the end in one line and any discrepancy would be presumed as an attempt to fulfill the lacunae in prosecution case.

1.2 Supplementary statement

Supplementary statement is another example of defective prosecution. Supplementary statement has no legal footing and courts always reluctant to rely on such statements. Supplementary statement is recent innovation, devised by investigation officer just to cut short the process of investigation without realizing that such a short cut is generally

³ Alimdad Alias Khan v. State, 2002 P.Cr.L.J. 1785.

⁴ PLD 1979 SC (AJ&K) 23.

⁵ PLJ 1973 Criminal. Lahore 509.

destructive to the prosecution case. Investigation officer inspite of collecting evidence against the accused rely on such manufacturing and fabricating supplementary statements which do more harm instead of doing well to the oppressed. Such sort of statements cannot be considered as an integral part of the F.I.R. which contains the first hand information whereas no such qualification is attached to a subsequent or secondary statement of the complainant.⁶ Such delayed statements recorded under section 161 Cr.P.C. cannot substitute the F.I.R.⁷ Prosecution relies on supplementary statement which was recorded just to involve the additional accused and such fake improvement further provides the basis of other eye witnesses for false deposition. Such witnesses are unreliable and these defective statements prove fatal for prosecution. The latest view is that any further statement of complainant recorded during investigation by the police would neither be equated with F.I.R., nor read as a part of the same.⁸

“Names of witnesses were not figuring in F.I.R. but subsequently mentioned in supplementary statement. Testimony held, suspicious and excludes it from consideration”.⁹

Abductee in her testimony naming accused who was not previously nominated. Such statements of abductee could not be preferred over F.I.R.¹⁰

1.3 Omissions in F.I.R.

Though it is not required by law to mention minute details in F.I.R. but it is duty of prosecution to narrate all details in F.I.R., but when prosecution introduces a new fact just to fill lacunae in its case, then prosecution evidence discarded to this extent and this defect in prosecution side proves fatal and courts give benefit of doubt to accused that prosecution

⁶ Muhammad Ismail v. State, 2010 P.Cr.L.J. 1460.

⁷ Ibrahim Khan v. State, 2010 YLR 1377.

⁸ Noor Muhammad v. State, 2011 YLR 1250.

⁹ Muzaffar Ali v. State, PLD 1964 Lahore 32.

¹⁰ Abdul Rahim v. State, 1986 SCMR 221.

witnesses not only introduced a new story but also contradictory to their previous version narrated in F.I.R., which shows that either these witnesses are fake or facts are not the same as they are disclosing. These omissions prove fatal for prosecution and consequently such defective foundation will result in collapse of whole case. When important facts of occurrence were omitted from F.I.R. then version given at trial would not be worthy of credence. An omission in the F.I.R. of a clear accusation against the accused is to be considered as a prominent circumstance which may tilt the scale in favour of the accused.¹¹ All the details of the incident are not necessary to mention but at least major and important points are required to be mentioned therein.¹²

1.4 Absence of name of the accused in F.I.R.

In a criminal case, absence of names in the F.I.R., has considerable importance especially when accused is known to the victim or other person who lodged the F.I.R.¹³ Similarly, when the name of the assailant not stated in the F.I.R. on the other hand, it was stated that the deceased had been stabbed by some body and the culprits may be arrested and dealt with, the conviction cannot be sustained.¹⁴ Name of the accused was not mentioned in F.I.R. but description was given. Eye-witnesses identified the accused in identification parade. Omission of name in circumstances is of no significance.¹⁵ Names of accused were not mentioned in F.I.R. but in complaint filed three months after incident. Prosecution evidence, held, wholly unsatisfactory.¹⁶ This defect may also create doubt in prosecution case and accused be extended benefit of doubt because it is duty of prosecution to mention all details of an accused in F.I.R. which were in his knowledge.

¹¹ 1964 Cr.L.J. 45.

¹² Dr. Khalid Moin v. State, 2006 P.Cr.L.J. 639.

¹³ 1980 Cr.L.J. 1269.

¹⁴ 1980 Cr.L.J. 928.

¹⁵ 1972 P.Cr.L.J. 1334.

¹⁶ Raza Muhammad v. State, PLD 1965 Karachi 637.

1.5 When F.I.R. does not contain the names of witnesses

The absence of names of witnesses in the F.I.R. raises some suspicion about their evidence and it will have to be scanned carefully.¹⁷ The fact that eye witnesses are brought forward later on, as having witnessed the occurrence, is a suspicious circumstance against the prosecution, especially when the informant was aware of the presence of these eye-witnesses and also knew their names.¹⁸ Two witnesses who were later on introduced had claimed they had seen the occurrence and they had raised hue and cry. The first informant could not have failed to notice them if they were present at the spot. They were not believed because the probability is there that the witness had not seen the occurrence.¹⁹

1.6 Delay in lodging F.I.R.

When an occurrence is not reported for more than 20 hours it is unsafe to base conviction upon the evidence. It is therefore necessary that delay in lodging F.I.R. should be adequately explained. The inordinate delay in a registration of the F.I.R. casts a cloud of suspicion on the credibility of the entire warp and woof of Prosecution case. Unexplained delay in filing of complaint *prima facie*, points to fabrication of Prosecution story.²⁰ Inordinate delay is dangerous for Prosecution's case.²¹ The benefit of delay in lodging of F.I.R. is available to accused where identity of accused was in doubt and time was consumed in consultation to fix identity or build up a story to rope in some particular individuals.²² Unexplained delay in

¹⁷ 1988 Cr.L.J. 866.

¹⁸ Abdul Razaq v. State, 1980 P.Cr.L.J., 403; Muzaffar Ali v. State, PLD 1964 Lahore 32.

¹⁹ 1972 P.Cr.L.J. 20.

²⁰ PLJ 2003 SC 702.

²¹ Idris Ali v. State, PLD 1971 Dacca 254; PLJ 1976 Cri. (B.J.) 333; Muhammad Gul v. State, 1970 SCMR 797.

²² Muhammad Luqman v. State, PLD 1969 Lahore 257; Abdul Khalique v. State, 1983 P.Cr.L.J. 898; Khalid v. State, 1983 P.Cr.L.J. 761; Iqbal Shah v. State, PLD 1981 FSC 284.

lodging F.I.R. an inference can be drawn that during this period deliberation took place in lodging F.I.R.²³ This defect in prosecution case proves fatal for prosecution.

1.7 Omission to state important fact

Omission to state important fact in F.I.R. is of considerable significance.²⁴ Non-mention of injuries caused to the victim/accused, evidence of Prosecution witnesses to such count is not acceptable.

2. Confessional statement and contradictions

Statement under section 164 Cr.P.C. has its own importance and it is admissible in evidence but in number of cases witness either contradicts his/her version as recorded earlier. Confessional statement has its own importance and it is admissible in evidence but in number of cases witness either contradicts his/her version as recorded earlier.

“Victim had recorded her statement before the Magistrate but said Magistrate did not examine to substantiate such statement. Prosecution could not make out the case against accused persons. Impugned judgment was upheld, which did not warrant interference by Federal Shariat Court”.²⁵

Perusal of impugned order had revealed that witnesses did not support the contents of F.I.R. statements of complaint had itself shown that the dispute arose over the outstanding amount and recovery of money which was purely question of civil nature and complainant, just to create harassment for accused, had lodged said F.I.R., contents of which were not corroborated by the statement of any of witnesses. Appeal against acquittal being not maintainable and also being without merits, was dismissed.²⁶

²³ NLR 1996 SD 300.

²⁴ 1976 Cr.L.J. 1920 (Gau).

²⁵ Mst. Sajida Bibi v. Mukhtar Ahmad, 2014 YLR 2116.

²⁶ M.A. Kazmi v. Nosheen, 2004 P.Cr.L.J., 1746.

3. Improvement in statement

One of the prosecution witnesses had recorded after 10 days of occurrence, which itself was sufficient to create doubts in his evidence. No illegality or infirmity had been pointed out in the impugned findings of the court below. Findings of Court below were accordingly maintained.²⁷ Witness trying to improve his evidence at Session stage. No implicit reliance to be placed on the statement of such witness.²⁸ Complainant and other prosecution witnesses, who claimed to be the eye-witnesses of the alleged occurrence, were not the truthful witnesses, as their testimony, was full of contradictions, omissions and improvements. Appeal against acquittal was dismissed.²⁹ Complainant had given two different versions of alleged incident as to place of occurrence, number of victims of firing and specific kind of weapons used by each accused. Subsequent and afterthought version of complainant amounted to dishonest improvement just to bring his case in line with recovered empties. Time of medical examination of complainant was twenty minutes prior to time of reporting of alleged incident, which created doubt in prosecution case. Name of eyewitness was not mentioned in FIR, and the same had been introduced later on. Testimony of prosecution witnesses, not mentioned in the FIR, but introduced subsequently, had no evidentiary value. Many circumstances existed in the prosecution case, which had created serious doubts, and benefit of which had rightly been extended to the accused by trial court. No infirmity was found in impugned judgment. Appeal against acquittal was dismissed in circumstances.³⁰

4. Contradictory statements of prosecution witnesses

It is duty of prosecution to keep its case in one line and any change or contradiction would make the case of prosecution doubtful. Main reason of contradictory statements are that,

²⁷ Mst. Salam Bibi v. Amanullah, 2012 YLR 2408.

²⁸ PLJ 1981 Cr.C. Lahore 429.

²⁹ Riaz Ahmad v. State, 2016 P.Cr.L.J., 114.

³⁰ Haji Bashir Khan v. Rehmat Gul, 2016 P.Cr.L.J., 568.

either prosecution introduced fake witnesses or witnesses give contradictory evidence in connivance with accused. Prosecution witness had not supported complainant's version. Said contradiction is indicated that either those witnesses were not present together at time of alleged incident, or the incident had not occurred as alleged by prosecution. Prosecution case was not free of doubt. No positive material had been brought on record to reverse the acquittal judgment. Appeal was dismissed accordingly.³¹ Statement of complainant was full of doubts, contradictions and improvements, which created serious doubts about its veracity. Ocular account of complainant was disbelieved as the same was not trustworthy and was further contradicted with the medical evidence. Statement of Investigating Officer did not support the prosecution version. Impugned judgment of acquittal was maintained and appeal against acquittal was dismissed in circumstances.³² In view of medical evidence and material contradictions in the statements of witnesses. Prosecution version was replete with many grave contradictions which struck at the very roots of the case. No case having been made out by the appellant for reversal of impugned judgment of acquittal. Appeal against acquittal being devoid of any substance, was dismissed in circumstances.³³ In number of cases Prosecution witnesses declare hostile by the prosecution due to their non-supporting deposition. Though evidence of hostile witness is admissible and conviction can be based on such testimony but for safe administration of criminal justice in such a case adequate and necessary corroboration is need of the hour without which no conviction could be recorded against an accused.³⁴

5. Delay in trial

It is the fundamental right of an accused that his trial should be concluded expeditiously. Though in every case delay cannot be attributed to accused or prosecution but delay in trial

³¹ Sirajuddin v. Allah Bux, 2016 P.Cr.L.J. 726.

³² Mst. Shopari Bibi v. State, 2015 P.Cr.L.J., 1584.

³³ Gul Din v. State, 2015 YLR 2666.

³⁴ Tahir Khan v. State, 2016 P.Cr.L.J., 924.

ultimately affects the prosecution. Due to rush of work judges remain under huge pressure and very little time could be assigned to each case. This is why number of prosecution witnesses have to go back without recording of their statements in spite of waiting all the day long. Prosecution witnesses lost their interest under these circumstances. Accused also approached the witnesses and in absence of any protection of witnesses practice, they give false evidence. Delayed trial in our judicial system is disturbing factor which amounts to conviction without trial and same should be discouraged to save the rights of accused.³⁵ Excessive postponement in cases is unfair which demands early consideration to save it from abuse of law.³⁶

6. No probability of conviction and groundless charge.

It is the right of an accused that he should be prosecuted on a valid charge. Where there is no valid charge against the accused he deserves to be discharged from the charge. But it is the agony of defective prosecution that an accused is forced to face trial even on a groundless charge. When case is of no evidence or registration of case is proved to be mala fide or case is purely of civil nature or when there is unexceptional delay in disposal of case causing deplorable mental, physical and financial torture to the person proceeded against. High Court while exercising inherent jurisdiction corrects a wrong by quashment of F.I.R. and proceedings emanating there from to prevent the abuse of process of law. Powers so vested can be invoked directly without resorting to decision by Trial Court under Ss. 249-A and 265-K, Cr.P.C. to avoid abuse of process of Court. In appropriate cases, an aggrieved person can seek redressal of his grievance by filing criminal proceedings and civil proceedings simultaneously if provided under relevant statute. Where dispute is purely of civil nature and

³⁵ Dost Muhammad v. State, PLD 1991 Lahore 415.

³⁶ 2004 SCJ 121.

element of mens rea/criminal intention is missing, a party cannot be allowed to be dragged in criminal proceedings by converting a civil dispute into criminal dispute.³⁷

It is worth to mention here that if prosecutors finds during the scrutiny of report under section 173 of the Code that there is deficient evidence against the accused or it is a false case he may opine that this case is not fit for prosecution and will send the report to the concerned court for further appropriate order. But there is no provision which binds the court to act upon such opinion. Prosecutor himself has no power to dispose of that false case but to forward the same to the court for a judicial order. Thereupon aggrieved party may further challenge or accept the order accordingly.

7. Dismissal for non prosecution

Prosecution is required to produce its witnesses when court summons them to prove its case against the accused but due to acute shortage of police officials and extra security duties assigned to police officials most of the time they remain absent from attending the courts or due to rush of work courts are unable to record the evidence of witnesses in attendance. Hence the prosecution witnesses came from remote places after facing a lot of agony of travelling and consumption of time feel so embarrassing when they have to go back without recording their evidence. On the other hand accused takes benefit of absence of witnesses and in some cases accused granted bail if court finds that his case falls under the ambit of statutory clause of section 497 Cr.P.C.³⁸ Otherwise defence also seeks acquittal for reason that prosecution has fake case and due to this reason prosecution witnesses are hesitant to attend the court, and there is no probability of conviction. As held in a case that respondents/accused having appeared on eighty dates. Only four witnesses recorded their statements on two dates of hearing. Appellant nor his counsel, nor any witness appearing when case was called on date fixed for recording of evidence. No affidavit of any of his two

³⁷ Yasmin Gul Khanani v. Tariq Mehmood, 2013 YLR 2716.

³⁸ Criminal Procedure Code, 1898 (Act V of 1898), Sec. 497.

counsels having been filed in support of his contention. Impugned order having been passed under S. 247, Cr.P.C. held, could also be justified under S. 249-A, Cr.P.C. because continuous non-production of evidence could lead to inference of fake case was registered against the accused. Accused was acquitted and appeal against acquittal dismissed.³⁹ Accused acquitted due to non-appearance of complainant. Second complaint filed on same grounds. Accused having once been acquitted, held, could not be retried for same offences. Proceedings quashed in circumstances.⁴⁰ This shows the defective side of prosecution which is unable to produce witnesses against the accused in time. Though it is duty of State to bring the accused to justice but due to lack of interest of police and prosecution they just execute the court summons in arbitrary manner and show no personal interest in adopting all coercive measuring to bring the witness in court.

8. Resiling statement of witness

One of the reasons identified for resiling witnesses is the lengthy nature of criminal trials. The witnesses incur a multitude of expenses to travel to court for numerous dates of hearing in which no proceedings take place and witnesses are thus discouraged to participate in trials due to monetary costs as well as time lost. During the course of investigation the police are empowered to examine and record the statements of witnesses. However, such statement not required to be signed by said witness. Therefore, it has been observed that witnesses resile from their statements once trial commences. There are a number of reasons for this including frequent adjournments, witnesses are absent account of one reason or the other which causes loss of time and money. Witnesses may be intimidated by the accused and are offered little or

³⁹Muhammad Munir-uddin Bhatti v. Ashfaq Mirza, 1986 P.Cr.L.J., 744.

⁴⁰Haibat Khan v. State, 1989 MLD 207.

no protection. This problem is especially acute in the ATCs.⁴¹ Some time prosecution witnesses being relative of accused or interested witnesses give false evidence just to save skin of accused from punishment. When court summons a prosecution witness to record his evidence in support of prosecution case, when turn against it, prosecution has no other option but to declare him hostile and to cross-examination such witness with the permission of court. Prosecution cannot confront its own witnesses with his statement not be treated as substantive evidence and same could be used under Art. 145 of Qanun-e-Shahadat, 1984. Witnesses in the present cases had not supported the prosecution case. Conviction and sentence were set aside.⁴² Witness resiling from the material parts of his earlier statement would be declared hostile and it would not be safe to rely upon his statement.⁴³ Prosecution cannot take any benefit from the evidence of a hostile witness. On the other hand evidence of such hostile witness cannot merely discarded because he has been declared hostile by prosecution but court can take it into consideration in favour of accused if it has been corroborated by other evidence. Such lapses on part of prosecution further weaken the case of prosecution which shows that prosecution fails to prove its case not because it was a fake case but due to several defects which surface at the stage of investigation and trial and the same defects were not properly removed during investigation.

9. Case property issues

Case property is produced in court during recording of evidence and if prosecution fail to produce case property at the time of recording evidence then court don't consider such evidence in favour of prosecution. When any cognizable case is reported police officer shall

⁴¹PILDAT, "Prosecution Service in Punjab and Sindh, 18. http://www.pildat.org/Publications/publication/ROLR/ProsecutionServicesinPunjabandSindh_PositionPaper_Sindh.pdf (accessed April 17, 2016).

⁴² Muhammad Abid v. State, 2013 YLR 2451.

⁴³ Alif Khan v. Haq Nawaz, 2012 YLR 50.

visit the place of occurrence immediately.⁴⁴ He will also ensure to prevent the removal of anything from the place of occurrence, which could help the prosecution to link the accused with offence.⁴⁵

All incriminating articles are preserved in sealed parcels.⁴⁶ This case property have kept at Police Station in "*Malkhana*" for safe custody and entry is made in "*register No. 19*". Any case property if required to be taken out of the "*malkhana*" for production in court shall be signed by the "*moharar*" and will make an entry of such dispatch in "*register No. 2*". Similarly after receiving back such case property same "*moharar*" will note again in "*register No. 2*".⁴⁷ On every date when trial will commence, case property of concerned case will be produced in court and record of issue and return of such case property shall be maintained.

But in number of cases police officials fail to produce case property in court and prosecutor fails due to this very reason to exhibit it during the recording of evidence and it badly affects the prosecution case. It has also been observed in several cases that case property produced in courts are in tempered condition and courts feel hesitation to rely on such suspicious case property.

Articles not sealed and packed at the place and time of recovery but at the police station, such recovery is doubtful.⁴⁸ Prosecution alleged that explosive material was recovered from a vehicle being driven by accused. Vehicle, from which alleged explosive materials were recovered, was not produced in Trial Court for exhibition. Non-production of case property threw doubts on the credential of prosecution story, which rendered foundation of case shaky on the basis of which sentence not sustainable. Prosecution case was full of doubt and

⁴⁴ The Police Rules, 1934, Ch. XXV, Rule 25.10.

⁴⁵ Criminal Procedure Code, 1898 (Act V of 1898), Sec. 22-B(b).

⁴⁶ The Police Rules, 1934, Ch. XXV, Rule 25.41.

⁴⁷ The Police Rules, 1934, Ch. XXV, Rule 27.18.

⁴⁸ 2004 YLR 3017.

material contradictions, the benefit of which would go to accused. For creating doubt, single circumstance was sufficient and not many circumstances were required. Prosecution could not prove its case reasonably and court had erred while appreciating evidence in its true perspective and in convicting accused persons. High Court acquitted the accused from the charge. Appeal against conviction allowed in circumstances.⁴⁹ Motorcycle on which deceased was allegedly shifted to hospital was neither produced before Investigating Officer nor during course of trial. Judgment of acquittal could only be interfered with if it looked wholly perverse, capricious, arbitrary, artificial, and speculative or based on misreading or non-appraisal of evidence on record resulting in miscarriage of justice. High Court declined to interfere in judgment. Appeal was dismissed in circumstances.⁵⁰

10. Limitation

Limitation is another defect on part of the prosecution. Criminal Procedure Code, 1898, and Limitation Act, 1908, provide limitation for appeal and revision but in number of cases prosecution fails to file appeals and revisions within prescribed period of limitation. It is duty of State to provide free, fair, expeditious justice to all. But if prosecution does not challenge any order, sentence or judgment which is against its interest then ultimately accused will take benefit of this defect and victim will suffer in any situation. Plea raised by authorities that delay caused due to lengthy procedure of sanction from concerned quarters. Provision contained in special law prevailed upon provision contained in general law. Appeal filed after expiry of 30 days was barred by time and there was no justification that leniency should be shown in case of appeal filed by State. Court of law could not adopt a different yardstick for the State, in case of limitation. Appeal was time barred and no justification was shown by the State for condonation of delay. Double presumption of innocence was attached to the accused and in extraordinary cases, where judgment was found to be perverse, shocking or suffering

⁴⁹ Muhammad Shah Khesro v. State, 2016 P.Cr.L.J., 606.

⁵⁰ Babar William v. Asif Younus alias Chhotoo, 2016 YLR 817.

from error of jurisdiction, Appellate Court could interfere. Appeal was dismissed in circumstances. Such delay on part of prosecution also plays a prominent role in acquittal of accused.

Conclusion

Prosecution should secure evidence against accused of such standard that at trial stage truthfulness of witnesses could not be questioned in any way. All pieces of evidence must be so inter-connected that one end of it be at the dead body of deceased, and other round the neck of accused. But in case any defect found during trial which creates suspicion, benefit of such suspicion always goes in favour of accused.

CHAPTER THREE

INTERNATIONAL STANDARDS OF PROSECUTION

INTRODUCTION

It is the basic duty of prosecutors being the essential part of criminal justice system to ensure dignity of man, protect the public rights and smooth performance of the criminal justice system. They also play a role of guard to keep a society safe from criminals and protect the society from wrong doers.¹ Though prosecutors perform an important role in criminal proceedings but very little work has been done to highlight their role in society as compare to other stake holders in criminal justice system. In 1980 the need for defining international standards regarding prosecutors was stressed.² As a result an Association of prosecutors³ came into existence. The main object of this association was to introduce some guidelines to the prosecutors to improve their work.⁴ It made guidelines and explain the role of a prosecutor during the performance of his duties. Association further introduced standards of prosecution which provide a detailed scrutiny and powers of a prosecutor which are recognized by the UNO as well. These guidelines and standards proved very useful internationally to prosecutors and other people associated with prosecutorial work.

¹ Report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/20/19), 2012 para. 93.

² United Nations congresses on crime prevention and criminal justice are convened every five years pursuant to resolution 415 (V) of the General Assembly. They gather Member States experts, as well as individual experts from academia and representatives of civil society. Recommendations made by the experts are then communicated to the Secretary-General of the United Nations and to the United Nations policymaking bodies.

³ The International Association of Prosecutors is an international community of prosecutors committed to setting and raising standards of professional conduct and ethics for prosecutors worldwide; promoting the rule of law, fairness, impartiality and respect for human rights and improving international cooperation to combat crime. Its mission is to be a world authority for prosecutors in the conduct of criminal prosecutions and twenty five associated matters and to operate as an organization of international repute and referral. IAP comprises more than 145 organizational members and more than 1,000 individual members from every region in the world, and holds special consultative status with the United Nations Economic and Social Council. It works in cooperation with many regional and international organizations such as the United Nations Office on Drugs and Crime (UNODC). (Elizabeth Howe, "The International Association of Prosecutors (IAP)", *Commonwealth Law Bulletin*, Vol. 38, No. 2 (June 2012), pp. 347-350.)

⁴ Guidelines on the Role of Prosecutors,
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx> (Accessed 15 October 2016).

Another international Statute called "Rome statute" which deals with the procedure of International Criminal Court (ICC), also elaborate role of prosecutors who investigate a case referred by the Security Council or by a ratifying state. A prosecutor under the Rome Statute performs his duties independently and without any kind of interference. There are other several statutes which deal with prosecution at international level. Besides these international statutes there are several statutes at national level and each country has its own prosecution system like India, Bangladesh Iran, USA, Ireland and UK which I will discuss here in detail.

1. Prosecution under the United Nations Organization

United Nations Office on Drugs and Crime (UNODC) provides guidelines for prosecution. Though these guidelines have no binding force but these encompass the several practices of different countries which are being adopted during the performance of prosecutorial duties which prove very useful for several other countries which are less developed in this field. The basic idea was to provide assistance to those countries where prosecutorial norms are not strong and secondly to promote a fair and impartial prosecution in criminal trials. It also encourage to the countries to adopt these principles as long as these are not inconsistent with their national statutes and other laws with intention to provide a best service to the public at large.

Whereas the world community is determined to provide justice to its people, to promote international cooperation and respect all human rights without any discrimination but this is not possible unless criminal justice system of country is working properly and prosecution is performing its responsibility actively. Prosecutors have been assigned very decisive role in this regard and unless prosecution system of a country is active, strong, impartial and independent, it would be elusive to expect any good from such weak criminal justice system.

Certain aspects of prosecutors and prosecution under these UNODC guidelines are as follows:-

1.1 Qualifications of Prosecutors.

Qualifications of prosecutors are different in each country but selection of prosecutors should not be based on partiality, prejudice, and language or political, which affect the smooth running of prosecution. Any person recruited as prosecutor must possess the knowledge of latest development. It is duty of state to ensure the merit based recruitment of this most important job because an incompetent and partisan prosecutor could not perform his duties diligently.

Prosecutors appointed in Pakistan through Provincial Public Service Commission. The criteria is very simple and only two years practice is required to appear in selection examination. But it is a matter of great concern that these newly appointees lack requisite experience to proceed with the matter of sensitive nature. These newly appointed prosecutors proceed with the cases without any training and sometime make serious blunders due to lack of efficient legal knowledge. There are certain recommendations prepared by the Council of Europe⁵ which reiterate that "both external and internal independence of prosecutors can be guaranteed through provisions on the appointment and dismissal of prosecutors, career management and tenure, provisions on discipline and removal of prosecutors".⁶

⁵Council of Europe: Committee of Ministers, *Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System*, 6 October 2000, Rec(2000)19, available at: <http://www.refworld.org/docid/43f5c8694.html> [accessed 22 September 2016].

⁶ Organisation for Economic Co-operation and Development, "Anti-corruption specialisation of prosecutors in selected European countries", September 2011, available at <https://www.oecd.org/countries/lithuania/49540917.pdf> (Accessed 22 September 2016).

1.2 Appointment of Prosecutors

The first essential to secure an independent and impartial prosecution is the mode of appointment of prosecutors. The appointment criteria is different in each State⁷ but the process of appointment does not matter but the fact which is more important is the how this process is conducted. It should be ensured that only competent candidates get selected who possess required knowledge and ability to prosecute⁸ and nobody could doubt the impartiality of selection authority otherwise nobody would have trust in prosecution system.

2. Prosecution under International Criminal Court (ICC)

2.1 Office of the Prosecutor

Prosecution office is an independent organ⁹ of International Criminal Court (ICC) herein after called “the Court” and main duty of this office is to scrutinize any situation which comes under the jurisdiction of the court i.e. genocide, crimes against humanity and war crimes which appear to have been committed by any individual or government against their own people and carry out investigation to fix the responsibility and if they find anyone in the commission of those atrocities, prosecute those who are most responsible. International Prosecution has been mandated by the international community to independently, impartially and without any pressure from the country to choose the situation for investigation where offences have been committed by the any terrorist or their own nationals.¹⁰ The prosecutors

⁷ Report of Commission on Crime Prevention and Criminal Justice, E/CN.15/2011/8, 20th session, paras. 50-54. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V11/803/51/PDF/V1180351.pdf>. (Accessed 22 September 2016).

⁸ Report of Commission on Crime Prevention and Criminal Justice, E/CN.15/2011/8, 20th session, para.52. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V11/803/51/PDF/V1180351.pdf>. (Accessed 15 October 2016).

⁹ Rome statute of the International Criminal Court, article 1.

¹⁰ <https://www.icc-cpi.int/about/otp> (Accessed 15.12.2016)

of the court are appointed by the Assembly of State Parties for a non-renewable period of nine years.¹¹

2.2 Function of Prosecution office

All prosecutors belong to different nationalities and having different professional background work collectively and to perform their responsibilities with more dedication and without any pressure there are three main divisions of international prosecution.

- First division carries out preliminary examination of the situation in respect of jurisdiction, admissibility and coordinates judicial cooperation and provides advice to the prosecution office.
- Thereafter if the jurisdiction division of the court has jurisdiction in the said offense it refers the matter to the investigation division. The main function of this division is to scrutinize the available evidence and provide an expert opinion in this regard.
- There after investigation division forwards the situation to the prosecution division which makes strategies to conduct prosecution against the culprits.¹²

2.3 Reference to Prosecution

According to Article 13 of the Rome Statute there are three ways to refer the matter to the office of Prosecutor for investigation of offence, which comes under the jurisdiction of the court.¹³

Any state party may request to prosecution to start investigation in the situation as happened in cases of Congo, African republic, Uganda and Mali.¹⁴

¹¹ https://en.wikipedia.org/wiki/Prosecutor_of_the_International_Criminal_Court (Accessed 15.12.2016)

¹² <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf> (Accessed 2nd October 2016)

¹³ Section 13 of Rome Statute.

Secondly United Nations Security Council (UNSC) may also request to prosecution office as is the case of Darfur and Libya. It is worth mentioned here that prosecution can only investigate the matter in respect of a non-member state when UNSC refers the matter.¹⁵

Thirdly a prosecutor can start investigation on his own if he succeeds in securing the court permission as experienced in the case of Kenya, Cote d'Ivoire and Georgia. Prosecutor cannot start investigation in respect of State which is not member of Rome Statute unless any member state is involved in committing the offence on non-member state territory.¹⁶

Prosecutor can start investigation in respect of a non member state if that state accepts the jurisdiction of the court on ad-hoc basis by submitting a declaration to that extent.¹⁷

2.4 Preliminary examinations

Prosecution starts preliminary examination of the information received it by any individual, group or a member state. On the basis of that information prosecution office examines whether there is sufficient reason to start investigation. In preliminary examination prosecution office will see where the offence has been committed and who the aggressor was, whether any prosecution is being started at national level and whether such prosecution would serve any interest of justice. There is no time limit for investigation to close. It all depends on the circumstances of each case. Prosecutor may refuse to start investigation or continue the investigation. No political pressure is entertained in any way in the process of decision making.¹⁸

¹⁴ Section 13(a) of Rome Statute.

¹⁵ Section 13(b) of Rome Statute.

¹⁶ Ibid 13(c)

¹⁷ Section 12(3) of the Rome Statute.

¹⁸ <https://www.icc-cpi.int/about/otp> (Accessed 15.12.2016)

2.5 Investigations

Prosecution office sends its missions to the concerned states which include investigators, advisors and sometimes prosecutors. These missions collect evidence and record the statements of witnesses and victims. During investigation prosecutors not only collect incriminating evidence but prosecutors also collect exonerating evidence and share this latter part of evidence with the defence in order to dig out the truth of given situation.

2.6 Applying for an Arrest Warrant or Summons to Appear

If after the investigation prosecutor finds that there is sufficient evidence against the accused he may request the court to issue process to the accused to face the trial. If judge agrees with the prosecution request he will issue arrest warrants to restrain the accused from interference with the investigation or to repeat the crime. Unless such warrants are executed, they remain in force for life. Court may issue summons in alternative when accused appears before the court voluntarily and court finds it sufficient to issue summons instead of warrants.

2.7 Prosecutions

When accused appears before the court in result to the summons or warrants it is duty of prosecutor to convince the judge at pre-trial stage¹⁹ that prosecution has sufficient evidence against the accused and requests for the commencement of trial. Judge after perusing the evidence may accept, refuse or order for review of evidence presented in court against the accused.²⁰ If court confirms the evidence and trial has started, prosecution will produce its evidence including documents, any other tangible object and produce witnesses whom defence has right to cross-examine. Prosecution is bound to disclose all evidence including

¹⁹ Rome Statute of the International Criminal Court, Article 53.

²⁰ Rome Statute of the International Criminal Court, Article 63.

incriminating and exonerating to the defence at trial. Thereafter accused will produce his evidence by the assistance of his counsel.²¹

3. Prosecution under International Criminal Tribunals

3.1 International Criminal Tribunal for Rwanda (ICTR)

International criminal Tribunal for Rwanda (ICTR)²² was established by a statute to prosecute the accused involved in violation of human rights in Rwanda.²³

3.2 Role of Prosecution

The basic duty of prosecution was to investigate the situation and collect evidence against those who violated the humanitarian laws in the territory of Rwanda. Prosecution for this tribunal would be independent and he would not be bound to receive any kind of instruction from any government.²⁴ It is pertinent to mention here that all lower staff of prosecution would be appointed by the Secretary-General through consultation with the Prosecutor.²⁵

3.3 Investigation and preparation of indictment

It was the first duty of prosecution to start investigation to secure evidence against the culprits. After collection of evidence prosecution will assess the evidence whether it is sufficient to proceed against the accused. Prosecutor has power to question any person having acquaintance with the offence and he may seek information from Government and other concern authorities. After collection of evidence and recording of statements if prosecution

²¹ <https://www.icc-cpi.int/about/otp> (Accessed 15.12.2016)

²² S/RES/955 (1994) 8 November 1994 UNSC resolution

²³ <http://www.ijrcenter.org/international-criminal-law/internationalized-criminal-tribunals/> (Accessed 31.12.2016)

²⁴ Article 15 of Statute for ICTR.

²⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatuteInternationalCriminalTribunalForRwanda.aspx> (Accessed 31.12.2016)

finds that there is a prima facie case made out against the accused it will prepare indictment against the accused and produce it before the judge.²⁶

3.4 Review of the indictment

After submission of indictment by the prosecutor, the judge will review it and may confirm or dismiss it. In case he is satisfied that there is sufficient incriminating evidence against the accused it will confirm such indictment. On such confirmation prosecution will apply to court for issuance of warrants or any other order which is essential for the purpose of commencement of proceedings.²⁷ During the proceedings if any new fact or evidence are available it may be presented by the prosecution if court considers that it is essential for just decision of the case and the judge will also consider it.²⁸

3.5 Immunities of the International Tribunal for Rwanda

Under the statute of ICTR all the Judges, Prosecutors, its staff and registrar shall enjoy complete immunity, privileges and facilities like a diplomat in accordance with international law and they shall continue to enjoy this privilege in respect of words spoken or written and act performed by them in their official capacity.²⁹

4. International Criminal Tribunal for the former Yugoslavia (ICTY)

International Criminal Tribunal for the former Yugoslavia (ICTY) hereinafter called "the Tribunal" was established by the United Nations³⁰ to prosecute the perpetrators who committed serious crimes in the territory of Former Yugoslavia in 1991.

²⁶ Article 17 of the statute of ICTR

²⁷ Article 18 of the statute of ICTR

²⁸ Article 25 of the statute of ICTR

²⁹ Article 48 of the statute of ICTR

³⁰ UNSC resolution 827 S/RES/827 (1993) 25 May 1993

Prosecutors were appointed by the UNSC on the recommendation of Secretary General. A prosecutor should possess high moral character, competent and well experienced. Staff of prosecution shall be appointed by the Secretary General on recommendation of the Prosecutor. The main responsibility of the prosecution to prosecute and collect evidence against the culprits and if they found it sufficient they may produce it before court to initiate proceedings against the accused. Prosecutor would be an independent organ of the Tribunal and it will not receive any instruction from any Government during the discharge of his duties.³¹ Moreover Prosecutors have almost same powers of prosecution and investigation as enumerated earlier in the statute of international Criminal Tribunal of ICTR. Besides these International Tribunals, there are some other International Tribunals as well which includes International Military Tribunal for Germany (Nuremberg Tribunal), International Military Tribunal for the Far East (Tokyo trials), Special Court for Sierra Leone in which prosecutors enjoy same powers of prosecution and investigation.

5. Prosecution System of India

5.1 Appointment:

Prosecution in India and Pakistan is not that much different. In India prosecutors are appointed in High Court by the Central Government after making consultation with concerned High Court.³² In each district to run the affairs of prosecution, District Magistrate will prepare a list of advocates after consultation with District and Session Judge. This list will be forwarded to the Central Government and government may appoint a public prosecutor only from said list.³³ For selection as Assistant public prosecutor one should

³¹ Article No. 16 of the Statute of ICTY

³² Section 24(1) of Indian Cr.P.C.

³³ Section 24(5) of Indian Cr.P.C.

possess 7 years working experience³⁴ while for appointment of special prosecutor one should have practiced at least for 10 years.³⁵

5.2 Duties of Public Prosecutor

In India, after completion of investigation police prepare report along with other necessary documents and forward it to the public prosecutor, who scrutinizes the report and if find any deficiency, returns it to the police for removal of defects. Prosecutor will evaluate the evidence and forwards it to the Magistrate for decision. Furthermore a prosecutor may also withdraw a case³⁶ from the court before the announcement of judgment. Prosecutor exercises these powers as provided by the statute only in the interest of justice.³⁷

6. Bangladesh Prosecution System

In Bangladesh there is no permanent prosecution system.³⁸ After coming into power, ruling party appoints advocates belongs to its party as Public Prosecutors. There is no certain criteria for their appointment accept loyalty to the present government. Due to this reason they do not perform their duties diligently and alternatively government has to bear the loss. Therefore they cannot perform their duty when any accused belongs to the same ruling party. In absence of selection system not only creating law and order situation but also creating an embracing situation in criminal justice system in the country. Government appoints its loyal people in each district who look after the government interest in cases. When a party wins elections and comes into powers it removes all prosecutors appointed by the previous government and appoints its loyal advocate as public prosecutors, by this practice, not only court proceedings remain standstill, because it is time consuming job to replace entire

³⁴ Section 24(7) of Indian Cr.P.C.

³⁵ Section 24(8) of Indian Cr.P.C.

³⁶ AIR 1983 SC 194

³⁷ Section 321 of the Code of Criminal Procedure of India.

³⁸ The disposable prosecutors of Bangladesh, Posted on March 16, 2008 by Article 2.

<http://alrc.asia/article2/2008/03/the-disposable-prosecutors-of-bangladesh/> (Accessed 02 October 2016).

prosecution at once³⁹ but also general public lose its confidence in this hide and seek prosecution system. Caretaker government has taken some steps to establish a permanent prosecution system but subsequent elected government again appointed its own advocates.⁴⁰ Several lawyers who are appointed as Public Prosecutors, do their own practice side by side and always try to secure their own interest at the cost of public interest. Due to this reason they hardly take any interest in government cases. Poor prosecution and defective investigation has led the situation from bad to worse which not only endangered the criminal system but also is the main reason of low conviction rate.

6.1 Bangladesh International Criminal Tribunal

Bangladesh government also constituted a controversial International Criminal Tribunal under the international crimes (Tribunal) Act, 1973 in which dozens of men have been prosecuted on basis of defective trial in which prosecution was totally incompetent and evidence was totally deficient as the same fact was admitted by the chief justice.⁴¹ Like other national prosecution there was no standard for appointment of the prosecutor and only criteria for appointment was the discretion of government.

7. Prosecution system of USA

7.1 Appointment

In USA, Attorney office was created under the judiciary act, 1789 which says that a person competent, having good experience in law may be appointed as Attorney to prosecute the cases on behalf of the state in each district.⁴² The said act further says that an Attorney General shall be appointed in Supreme Court who will represent the Federal Government and

³⁹ The disposable prosecutors of Bangladesh, Posted on March 16, 2008 by Article 2 Available <http://alrc.asia/article2/2008/03/the-disposable-prosecutors-of-bangladesh/> (Accessed 02 October 2016).

⁴⁰ <http://www.thedailystar.net/frontpage/the-perils-prosecution-108724>, the perils of prosecution (Accessed 12.10.2016)

⁴¹ <https://www.hrw.org/news/2016/03/22/bangladesh-war-crimes-verdict-based-flawed-trial> (Accessed 16.12.2016)

⁴² <http://law.jrank.org/pages/1872/Prosecution-United-States-Attorney-selection-process.html> (Accessed 12.12.2016)

will advise the President if required. He will further supervise the district attorney offices.⁴³ Attorney general is appointed by the president with the consent of Senate. While assistant Attorneys are appointed by the Attorney General.⁴⁴ Though office of Attorney General does not directly supervise the appointment of attorneys but to some extent his discretion is always required in this process. There are no uniform criteria for their appointment as every state appoints attorneys in accordance with local laws and traditions.

7.2 Investigating powers

Prosecution standards in USA are different at local and national level. Several prosecutors have complete control and authority in prosecutorial business. Powers of prosecutors come from the statute, precedents, and from traditions of prosecution office. He may review the charge against accused and offer him plea bargain, further he may reduce the seriousness of charge if accused willing to cooperate with the prosecution and pleads guilty and also make sentencing recommendation during trial.⁴⁵ Prosecution also play role during investigation and give advises to the police so evidence required for conviction may be secured. He further requests the court if arrest warrants are required. In USA it is also duty of prosecutor to ensure that investigation has been done fairly and lawfully. It's the power of prosecutor to decide whether to charge or dismiss the charge against the accused. Another power which a prosecutor in USA possesses is grand jury. Which consists of some people who hear the complaints brought by the prosecutor to decide whether any offence has been committed by the accused or not and if any offence has been committed, this jury will decide whether such charge should be heard by a court of law or not.⁴⁶

⁴³ Section 35 the Judiciary Act 1789 of USA.

⁴⁴ <http://law.jrank.org/pages/1872/Prosecution-United-States-Attorney-selection-process.html> (Accessed 12.12.2016)

⁴⁵ Philip Heymann and Carol Petrie, *What is changing in prosecution*, National Academy Press Washington, DC (2001), 08.

⁴⁶ *Ibid.*, 09

7.3 Duties of Prosecutor

Prosecutor represents the government throughout the trial. Prosecutors enjoy extensive power to review the evidence produced by the law enforcement agencies and decide whether conviction can be secured on it or not. If he finds that incriminating evidence against the accused is available, he presents it in the court and question the witnesses and decides, whether to offer plea bargain to the accused or not. He is altogether independent to plead the case, to make choices and no one can pressurize him from any quarter. Victim may also contact the prosecutor to seek direction in case of any compromise or contact from the accused side.⁴⁷

7.4 Prosecutor and suspected misconduct

If the prosecutor suspects that any illegal activity or misconduct is being done by any member of an investigating agency or an official of a prosecution office by reason of negligence or lack of skill which may prejudice the prosecution of any accused he may report the matter to the supervisory authority in the prosecution office to take appropriate action against the delinquent officer.⁴⁸ Thereafter if according to prosecution inquiry's findings, the alleged delinquent officer found guilty, prosecution will recommend to initiate criminal investigation against him and will refer the matter to the concern authority of prosecution for collection of evidence.

7.5 Prosecutor and Judicial Misconduct

Judiciary is an important institute of any country. If prosecutor finds that any judicial member is involve in any illegal activity or misconduct he will promptly report the matter to

⁴⁷ <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/the-criminal-justice-system> (Accessed on 30.11.2016)

⁴⁸ ABA Criminal Justice Standards Committee, Standard 26-3.1, Washington 2014, 189.

the concern authority of prosecution office and if it concludes that any judicial member finds guilty it may recommend criminal investigation against the delinquent officer.⁴⁹

7.6 Prosecutor's Role in Suspected Misconduct by Defense Counsel

If prosecutor suspects that any defense counsel is involved in any misconduct or in harassment of the official of prosecution or in any way trying to affect the prosecution he may at once report the matter to the supervisory authority in prosecution office to look into the matter and if it found that defense counsel is involved in alleged misconduct, prosecution may initiate criminal investigation against the accused.⁵⁰

7.7 Misconduct by Witnesses etc.

If the prosecutor is of the view that any witness, informant or juror is involved in any misconduct he may seek supervisory review of alleged conduct. After receiving such information supervisory authority will look into the matter and if found the information true will recommend criminal investigation against the accused. If the alleged misconduct relates to the official duties of a witness, informant or juror prosecutor will inform the concerned judge as well.⁵¹

7.8 Illegally Obtained Evidence

If prosecutor believes that any evidence during investigation has been secured illegally he has power to decide whether to discard such evidence or dismiss the proceeding based on such evidence. He may also recommend action against the investigating officer.⁵² In Pakistan though prosecutor can evaluate the evidence before submitting the report under section 173

⁴⁹ ABA Criminal Justice Standards Committee, Standard 26-3.2, Washington 2014, 191.

⁵⁰ ABA Criminal Justice Standards Committee, Standard 26-3.3, (Washington 2014), 195.

⁵¹ ABA Criminal Justice Standards Committee, Standard 26-3.4, (Washington 2014), 198.

⁵² Ibid., Standard 26-3.5, (Washington 2014), 199.

of the Code to the court and if he finds any defect, he may get it removed from the concerned investigation officer and may give his opinion in respect of evidence available against the accused but his opinion has no binding force and prosecutor has no other option except to forward the report to the court which will decide the fate of particular case through a judicial order.⁵³

Conclusion

Every country has its own prosecution system which varies according to the local norms and laws but prosecution system remains in place with one agenda to assist the court in securing the conviction of accused. To make it more effective international prosecution standards should be adopted. Experience and practices of countries which possess better practical and historical prosecution experience can be utilized for better result in prosecution. Prosecution system of USA is more powerful in decision making and there is no political or other pressure on the prosecution. USA has a better prosecution system where all appointments are made on merit and no political interference tolerated in this regard.

⁵³ Section 9(5) of The Punjab Criminal Prosecution Service (Constitution, Functions And Powers) Act 2006.

CHAPTER FOUR

CONCLUSION AND SUGGESTIONS

CONCLUSION

It is basic principle of natural justice that every accused should be prosecuted in the light of evidence available against him and in case of any suspicion, benefit of doubt should extend in favor of accused. It is not just duty of prosecutor to secure conviction of an accused in any way but to assist the court to reach an equitable and conscientious conclusion of trial. An accused cannot be termed guilty unless he proves guilty in the light of prosecution evidence. He should be treated innocent unless he proves guilty and prosecution should ensure that every trial should be based on equitable evidence. There are several problems which prosecution in Pakistan is confronting. It is necessary to overcome these issues that prosecutor should be assigned a role in investigation. If a prosecutor will be part of investigation he would be on better footing to evaluate the evidence. Further prosecutor should be given a statutory role to discard a case if he considers that this case is not fit for prosecution due to deficient of evidence. This practice will not only save the precious time of prosecution but also it will lessen the burden of courts and it will minimize the number of fake or frivolous cases.

SUGGESIONS

No doubt that successful conviction of the accused from court is guarantee of prevention of crimes and in case of acquittal it would just waste the precious time and efforts of court. Conviction rate in Pakistan is very low as comparison to the other countries even the developing ones. It is less than 10 percent. According to government statistics, only 4,960 cases of rape were registered in Pakistan from June 2013 to February 2015. There were 6,632 arrests, but just 219 convictions. All these acquittals were due to defective investigation and

faulty prosecution. This shows the poor performance of prosecution system and there is no justification of this miserable situation. There are certain problems which our prosecution system is facing and if these hurdles can be settled, performance of the prosecution can be improved.

1. First problem which our prosecution system is facing is recruitment qualifications of prosecutors. Normally prosecutors selected with only two years practice by the Public Service Commissions. These candidates do have hardly any practical experience and after their induction they are assigned courts without any induction training, resultantly they fail to manage the cases properly due to lack of knowledge to deal complex legal cases. It is very miserable situation in Pakistan regarding our legal education as legal education is without any career ambition and personal objective. Further prosecutors are not offered any lucrative job as comparison to the judiciary or private practice as lawyer and due to this reason competent lawyers are reluctant to join this prosecution. So to improve the situation government should make it more attractive and introduce better salary and promotion service structure for prosecutors.
2. The huge pendency of cases in courts and inadequate number of prosecutors further deteriorates the situation as one prosecutor have to conduct cases in more than one court at the same time which not only waste the precious time of court but also it effect the prosecutorial work as a prosecutor under such heavy workload hardly finds any time to understand the facts of the case. So it is necessary to increase the strength of prosecutors on yearly basis alongside the judiciary. It proves very precarious for a prosecutor when he don't have even proper sitting in court to discuss its case with prosecution witnesses. He discusses all legal aspect of the case while sitting in open court in presence of accused and defence counsel. Prosecutors are conduct cases

without any training and without any proper assistance, though they learn by experience but this exercise takes time and meanwhile prosecution work badly suffer. It is suggested that prosecutors should be provided proper training before assignment of cases in court. For this purpose a national level prosecution training center must be established where not only prosecutors should be given prosecutorial training but they should also be trained in matters relating to the investigation, forensic aspect of evidence and subsequently other refresher courses should also be included in this training process.

3. Prosecutors must be given a statutory role in making prosecutorial decisions without any interference. If prosecutor finds a case is not fit for prosecution then he must have enough statutory powers to turn down the said case on its very stage. A free, impartial, speedy and efficient prosecution system is very essential for a successful criminal system. A transparent and independent prosecution can improve the law and order situation in country and confidence of public will also improve their reliance on criminal judicial system. Due to poor prosecution accused acquitted from courts and this fact gives rise to the sense of insecurity in society and people look for extra legal alternatives. Therefore it is suggested that prosecution system must be improved without any deliberation.
4. Prosecution and judiciary are main components of criminal justice system and their nature of work is more or less the same but comparatively there is a huge difference of performance between the two as judiciary is well established, having better service structure than prosecution. There is also a sharp difference in pay scales in both services. Therefore every year a number of learned prosecutors leave the prosecution

service and join judiciary, where working conditions are far better than prosecution. Where they can work freely and without any pressure. This practice creates a vacuum in prosecution system because it is a time taking exercise to recruit new prosecutors. This falling strength of prosecutors not only affects the prosecutorial work but on the other hand public confidence in prosecution system also damaged.

5. Every year number of prosecutors quit their jobs and joins judiciary or other like professions due to lack of promotion opportunities in this profession. Obviously every prosecutor dreams to be at good place and to built a strong and confidant prosecution it is incumbent to introduce a balance system of promotion in which a prosecutor who deserve to be promoted at the rank of APG and DPG could not restraint due to lack of promotion system. it would be a great atonement to any prosecutor to get any opportunity to plead cases in superior judiciary and sometimes enough to push him to work hard. Opportunities to advancement is a great motivation for any employee so it is required to introduce a promotion policy based on merit, experience and competency of a prosecutor so he could not only be satisfied with this profession but also to improve his performance with the time.

6. Police officials conduct investigation in criminal cases who are not well conversant with modern techniques of investigation. They investigate the cases without seeking any assistance and guidance from the prosecutor which affects the standards of investigation. This practice not only wastes the time of all the investigating agencies but also it results in acquittal of accused. Investigation can only be improved if there is strong coordination between police and prosecution. Investigation agencies should

be well conversant with modern techniques which are indispensable for investigation and collection of evidence.

7. It is a right of an accused that his case must be concluded within a specified time but due to rush of work, inadequate strength of judges, shortage of police officials and acute shortage of prosecutors, cases cannot be decided within a specific time and these reasons cause delay which not only fuel backlog of cases in courts but also it affects the confidence of public who on the one hand become the victim and on the other hand wait for remedy at the cost of their time and expenses and believe that courts are unable to protect them from unfair acts of wrongdoers. Similarly it is equally injustice to the accused, who face the agony of trial for a long period and subsequently acquitted from the charge. It gives rise to revenge and society witness law and order situation. Therefore it is essential for a fair justice system that provision of in time justice should be ensured.

8. Effective prosecution can only be possible if prosecutors are equipped with latest development in law and forensic techniques to secure evidence. But this is not possible in a situation where prosecutors are in lack of library facilities and there is no access to modern technology for solving complicated question. There is no permanent training programme and mostly prosecutors conduct cases without any appropriate training or guidance. To improve the prosecutorial work it is necessary that Government arranged libraries, well equipped with modern technology so prosecutors could prepare cases.

9. Prosecutors are held hostage between massive work load and get hardly any time for research. District Public Prosecutor is responsible to assess the performance of prosecutors serving under his supervision. But due to several other responsibilities he hardly spare any time to individually the performance of prosecutors and cannot give feedback to the concern prosecutors in case of any deficiency. This issue should be address urgently and proper mechanism to assess the performance of prosecutors should be introduced and strict action should be taken against delinquent prosecutors should be recommended.
10. It is requirement of natural justice to register the F.I.R. and investigate the complaint of any person and take it to its logical end. But in number of cases police official are reluctant to register the case due to political pressure or some other reasons which causes delay in registration of F.I.R. complainant forced to look for remedy available under section 22-A and 22-B Cr.P.C. This futile exercise not only increases the workload of court but also waste the precious time of court. It has been hardly seen that any justice of peace has declined to register the case. Police hesitantly register the case without any explanation of such delay which not only creates an anti prosecution presumption of deliberation and consultation on part of prosecution but also it causes wastage of evidence till then. Therefore it is suggested that police officials should be bound and some penal provision must be incorporated if any police official decline to register the case and investigation should be conducted in time to save evidence from destruction to avoid any subsequent loss to the prosecution.¹
11. Under section 12(1)(a) of the PCPS 2006² it is duty of police to provide a copy of F.I.R. to the prosecutor with object to seek the immediate guidance from the

¹ Tor Jan alias Jag v. State, 2012 P.Cr.L.J., 780.

² Section 12(1) An officer in charge of a police station or the investigation officer shall—(a) immediately report to the District Public Prosecutor, the registration of each criminal case by sending a copy of the first information report.

prosecutors but due to negligent conduct of police officials they fail to seek any guidance in this respect. Some cases involve special knowledge and technique and if in time coordination fails, it causes destruction of prosecution case and subsequently police cannot remove that defect from the investigation.³ Therefore police officials should make it sure to provide a copy of F.I.R. to the prosecutors and seek guidance from the concern prosecutors in this regard.

12. It is a right of an accused to know the charge against him. Which not only gives a clear picture of prosecution case but also provide him an opportunity to defend himself from charge. But if any charge framed which misled the accused in his defense it will subsequently cause the acquittal of accused. Though any such defect can be cured under section 227 Cr.P.C. but extra care should be exercise to avoid any such illegality or irregularity.⁴ Prosecution charge must be consistent at every stage of trial⁵ because an inconsistent charge may entail retrial.⁶

³ PILDAT, "Prosecution Services and Media in Pakistan," PILDAT Rule of Law Reforms Series, (Islamabad: Pakistan Institute of Legislative Development and Transparency, 2016), 16. http://www.pildat.org/Publications/publication/ROLR/ProsecutionServicesandMediainPakistan_MediaBrief.pdf (accessed April 17, 2016).

⁴ Sarwar Shakir v. State, 1992 MLD 1253.

⁵ Muhammad Ehsan Khan v. State, 1968 P.Cr.L.J., 759.

⁶ Sarwar Shakir v. State, 1992 MLD 1253.

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