

**Pawan @ Diggi Vs. State**

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**Court :** Delhi

**Decided On :** Jan-24-2014

**Judge :** Kailash Gambhir

**Appellant :** Pawan @ Diggi

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: January 24, 2014 + CRL.A. 1297/2010 Pawan @ Diggi Through: ..... Appellant Mr. R.D.Rana, Advocate versus STATE Through: ..... Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State AND + CRL.A.1322/2010 Pawan @ Diggi Through: ..... Appellant Mr. R.D.Rana, Advocate versus STATE Through: ..... Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State  
CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

**JUDGMENT**

KAILASH GAMBHIR, J1 By this common judgment we propose to decide two criminal appeals preferred by the same appellant, Pawan @ Diggi challenging the common judgment dated 9th August, 2010 and order on sentence dated 12th August, 2010 passed by the learned Additional District Judge.

2. Crl.A. No.1297/2010 has been preferred by the appellant to challenge the impugned judgment whereby the appellant has been held guilty for committing an offence punishable under Section 392 read with Section 34 Indian Penal Code (hereinafter referred to as IPC) and Section 302 IPC read with Section 34 IPC in FIR No.167/05 and sentenced to imprisonment for life together with payment of fine of Rs. 5,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 5 months under Section 302/34 IPC and rigorous imprisonment for a period of 5 years together with a fine of Rs. 2,000/- and in default of the same to further undergo simple imprisonment for a period of two months under Section 392/34 IPC.

3. Challenge in criminal appeal No.1322/2010 is the same common judgment but concerning FIR No.174/05 whereby the appellant has been held guilty for committing an offence punishable under Sections 186/353 IPC and 25 Arms Act and was sentenced to undergo rigorous imprisonment for a period of three months under section 186; rigorous imprisonment for a period of two years under Section 353 IPC; rigorous imprisonment for a period of two years together with a fine of Rs. 1,000/under Section 25, Arms Act.

4. The case of the prosecution so far FIR No.167/2005 is concerned is that on the intervening night of 3-4th March, 2005 SI Aditya Ranjan (PW18) was in-charge of Police Post, Madan Pur, Khadhar who was acting as a checking officer on night duty. When he was on patrolling, some passer-by informed him, on the Kalandikunj road, a truck driver was beaten by 5-6 persons on the same road near Sarita Vihar Flyover. PW-18 sent information to PCR which was near the post and also informed SI Hari Prakash, who was on emergency duty, on telephone.

5. SI, Hari Prakash (PW14) on receipt of information from SI Aditya Ranjan (PW-18), immediately went to a place near Sarita Vihar Flyover along with Ct. Rajbir where he found PCR van in which injured and another boy namely, Naresh were sitting. He sent the injured along with Ct. Rajbir to AIIMS Hospital. Thereafter PW-18 himself went to the spot at Kalandikunj Road where he found truck No.HR38 4745. No other person was available at the spot. Meanwhile, Ct. Hari Prakash (PW-14) reached at the spot with DD No.29A and went to AIIMS Hospital and

collected MLC of injured, Sanjay. He sought permission from the doctor to record the statement of injured, however the deceased was declared unfit for statement. Then he recorded the statement of Naresh (PW-15), the helper of the deceased, wherein he deposed that he was working as a cleaner in the truck No.HR38 4745. The truck started from Nagpur about three days back and was being driven by driver Sanjay, deceased. At about 2 a.m. after paying toll tax at Badar Pur the truck proceeded further. One Maruti car came in front of the truck and 3-4 boys boarded the truck and started beating him and the driver. They drove the truck near Sarita Vihar Flyover. The driver was having money around Rs.7,000/-8,000/- in a black rexene bag which also contained documents of truck, the accused persons snatched the alleged rexene bag from the deceased and took it away. Thereafter they inflicted knife blows on the driver and ran away in the same Maruti car. He also stated that he can identify the boys who had snatched money and inflicted knife blows on the person of the driver. After making endorsement on the statement, rukka was sent to Police Station for registration of case, on the basis of which FIR No.167/2005 was registered by HC Uday Singh (PW13). Further investigation was handed over to SI Tikaram (PW21) who reached the spot, prepared site plan, called the crime team, got the scene of crime photographed, seized steel glass having blood stain, seat cover of the conductor seat, seat cover of the back side of the driving seat having blood stains.

6. The injured Sanjay had expired and his post-mortem was conducted by the post-mortem Doctor of AIIMS hospital, Delhi. The post-mortem Doctor handed over the viscera box and the blood sample of the deceased in a gauze to constable, Kamal Raj, (PW-6), who handed over the same to the investigating officer, SI Tika Ram. The dead body of the deceased was identified by his brother, Pradeep and PW-4, Prithvi Chand. The appellant in this case was apprehended from a place near Badar Pur after information was received by PW-19, SI, Suresh Sharma, that a person involved in the alleged incident would be coming near Railway line NTPC for proceeding towards Gautam Puri. A raiding team was constituted to apprehend the accused and when the police reached near the police booth, Muslim Camp, Mohan Cooperative at about 6.00 p.m., two boys were found coming near the Railway line towards Mohan Cooperative and the accused Pawan @ Diggi was identified by the complainant, Naresh (PW15) and

when Pawan @ Diggi was asked to stop, he took out a country made revolver and pointed it towards the police party and said ruk jao nahi to goli mar dunga (stop otherwise I will shoot). The accused, however, was over powered as Constable, Daya Ram who hit the accused with danda on his hand and as a result, the country made revolver fell down from his hand and he was apprehended. After his arrest and pursuant to his disclosure statement a black colour bag of the deceased containing some documents, pertaining to the truck, were recovered at the instance of the accused from the bushes on the side of the road proceeding from Kalindi Kunj to Madan Pur, Khadhar. This bag was of Samsonite make and the truck No.HR38 4745 was written on it with paint. Pointing out memo of the place of recovery and the seizure memo of the black bag was prepared by the IO. The appellant in this case was charged for the offence under sections 397/392/302 read with Section 34 IPC. To prove its case the prosecution in all examined 23 witnesses. The statement of the accused was recorded under Section 313 Cr.P.C. wherein he pleaded innocence and his false implication. The accused had also submitted his statement in writing under Section 313 Cr.P.C. to explain the circumstances as to how he was arrested and produced before the SHO.

7. Since, the accused assaulted the police party, causing obstruction in the discharge of public duty, SI Suresh Sharma sent the rukka for registration of the FIR under Sections 186/353/307 IPC and Sections 25/27 of Arms Act. On the basis of this rukka, FIR No.174/05 was registered against the appellant. The site plan was prepared by ASI, Tej Ram who was assigned the investigation. The country made revolver was seized after making a rough sketch of the same. The disclosure statement of the accused was recorded, which was handed over to Investigating Officer of the case in FIR No.167/05, PS Badar Pur. The sanction under Sec. 39 of Arms Act was obtained by the IO. The complaint under Sec. 195 Cr.P.C. was also filed in the court and after completing the investigation, charge sheet was filed.

8. In this case the prosecution examined in all 13 witnesses. The statement of the accused was recorded under Section 313 Cr.P.C. and he took the same defence of false implication in the case. In defence, the accused examined only one defence witness to prove that he was not apprehended from the place near

Railway Line, NTPC.

9. On behalf of the appellant arguments were addressed by Mr. R.D. Rana, Advocate and the State was represented through Ms. Richa Kapoor, learned APP for the State. Mr. Rana, counsel for the appellant, with all vehemence submitted that the appellant has been falsely implicated in both the cases and false implication of the appellant would be apparent if the Court closely examines the entire trail of investigation in both the FIRs. The contention raised by the counsel for the appellant was that for no good reason complainant, Naresh was kept confined under the police custody for two days merely for identifying the accused. Counsel for the appellant further argued that the appellant has been facing criminal prosecution in many petty cases of pick pocketing and chain snatching and the police with a view to take a benefit of resolving this murder case of a truck driver- Sanjay, falsely fixed the appellant in this case. Counsel for the appellant further submitted that the falsity of the prosecution case as against the appellant would also be apparent from the fact that after the apprehension of the accused, the prosecution did not make any effort, even worth the salt, to arrest the other accused persons who were alleged to be in the company of the appellant at the time of the incident. Counsel for the appellant also argued that even as per own case of the prosecution, it was not the appellant who had inflicted the stab injuries on the person of the deceased, yet the police failed to make any effort to apprehend the actual perpetrator of the crime. Counsel further argued that the police neither bothered to enquire from the appellant, the particulars of registration of Maruti car in which all the assailants were travelling on the intervening night nor the appellant was asked to disclose the address of other assailants who were accompanying him in the car at the time of commission of the crime. Counsel for the appellant further argued that the police officials of PS Badar Pur have an old enmity against the appellant, as the appellant had been raising voice against the highhandedness of police officials of police station Badar Pur and Kotla Mubarak Pur for falsely implicating him in various criminal cases and therefore in order to wreck the vengeance and to teach the appellant a lesson, the police officials falsely implicated the appellant in the murder case of deceased, Sanjay. Counsel for the appellant also argued that the police with a view to falsely implicate the appellant, had shown a recovery of a black bag through the appellant, which was

kept by the police at the time of seizure of truck. Counsel for the appellant also argued that no public witness was asked to join the police at the time of alleged recovery of bag at the instance of the appellant.

10. So far as the conviction of the appellant in FIR No.174/2005 is concerned, the counsel for the appellant also argued that the entire version of the police, receiving a secret information regarding two persons involved in the said incident of robbery and murder of driver- Sanjay at Sarita Vihar and the constitution of raiding party by the concerned SHO to apprehend them and then the appellant being identified by the complainant, Naresh and the accused taking out a katta from his right dub to threaten the police and then ultimately the police arresting the appellant after hitting him with a stick resulting into fall down of katta, is a story coined by the police officials so as to show the arrest of the appellant as genuine and legal. The actual facts as per the counsel for the appellant which led to the arrest of the appellant were that on the date of his apprehension, he was coming back from village, Charela, Noida along with his mother-in-law Smt. Saroj (DW1) and when he was getting down from the bus at Ali Gaon Bus Stand, he was caught hold by three police officials who were accompanied by one police informer with the name, Vinod. Counsel for the appellant further submitted that the appellant was brought to the Police Station-Badar Pur, and was confronted to the complainant, who was already sitting there. On being confronted to the complainant to recognize if the appellant was the accused, complainant said that he might be one of the accused persons. Thereafter, the appellant was taken to another room where a person namely Sanjay was present. After some time, the accused was severely beaten by the police official namely Daya Ram, causing serious injuries on his right hand. Counsel for the appellant also submitted that the appellant was taken to the hospital and then again he was brought back to the police station after his treatment and signatures of the appellant were forcefully taken by the police on certain papers despite his inability in appending his signatures. Counsel for the appellant also submitted that after his arrest, the police also planted a katta so as to show its recovery through the appellant.

11. Ms. Richa Kapoor, learned Additional Public Prosecutor for the State strongly refuted the contentions raised by the counsel for the appellant. Learned APP

submitted that there can be no reason to disbelieve the independent testimony of Naresh (PW-15) whose presence at the time of incident cannot be doubted. Learned APP further argued that PW-15 was working as a cleaner in the truck and therefore, he was a natural witness in whose presence the incident had taken place and neither the defence has been able to attribute any motive against this witness nor could it rebut his testimony and therefore the conviction of the appellant in FIR No.167/2010 was based entirely on the sole testimony of PW-15. Learned Additional Public Prosecutor also argued that the evidence of PW-15 is also corroborated by the recovery of the black rexene bag during the disclosure statement of the accused and this is the same bag which contained the stolen money of Rs.7-8,000/- besides various other papers of truck. Learned APP further argued that the said black bag had peculiar characteristics as the same carried the truck number with white paint thereon. Learned APP also argued that the recovery of black bag at the instance of the accused is clearly admissible under Section 27 of the Indian Evidence Act. Learned APP further argued that the testimony of PW-15 was also corroborated by other witnesses including Rajesh Kapoor (PW-22) who proved on record the ownership of the truck in question and also the employment of complainant, Naresh (PW-15) as a cleaner and the fact that both of them were on duty on the intervening night of 3rd-4th March, 2005. Based on these submissions, learned APP submitted that no perversity or illegality can be found in the impugned judgment and order on sentence passed by the learned trial court in FIR No.174/2005.

12. Supporting the said common judgment of the learned trial court, in convicting the appellant in FIR No.174/2005 under Section 25, Arms Act and Section 186/353 IPC and the sentence order dated 12.08.2010, learned APP submitted that the appellant is a habitual offender and after receiving a secret information about the accused, the raiding team was constituted by the SHO so as to apprehend him from the disclosed spot. Learned APP also submitted that the appellant was identified by Naresh (PW-15) who was accompanying the raiding team and despite the fact that he resisted his arrest by taking out a country made revolver, he was timely overpowered by Constable Daya Ram, who hit the stick on his right hand, as a result of which the country made revolver fell from his hand. Learned APP also argued that the said country made revolver was seized by the police and

after his arrest the said black bag was recovered from him during his disclosure statement. Learned APP thus submitted that the accused had obstructed government servants in discharge of their public duties to apprehend the accused and therefore the accused has been rightly convicted for committing an offence punishable under Sections 183/353 and under Section 25 of the Arms Act.

13. Based on the aforesaid submissions, learned Additional Public Prosecutor submitted that the findings given by the learned trial court are cogent, correct and based on the correct appreciation of the evidence led by the prosecution and the defence and the present appeals filed by the appellants deserve outright dismissal.

14. We have heard learned Counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the Trial Court records.

15. The criminal trial is meant for doing justice to all i.e. the accused, the victim of the crime and the society. The conviction and acquittal of any accused in a crime to a very large extent is dependent on the investigation. The investigating team discharges a very onerous public duty to carry out the investigation in every crime which they are expected to perform with all sincerity, honesty, dedication, leaving no scope for loop holes or gaps, before filing the charge sheet for the commencement of trial. The duty of the investigating team is not merely to bolster a prosecution case with such evidence as may enable the court to record the conviction but to bring out the real unvarnished truth. Under Section 2 (h) of Cr.P.C, investigation has been defined as investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. This definition given in the criminal procedure code is inclusive and non-exhaustive. In the matter of H.N. Rishbud and Inder Singh vs. State of Delhi, reported in 1955 AIR196 the Honble Supreme Court of India exhaustively laid down the procedure of investigation as follows:

When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter

on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non- cognizable offence, he shall not investigate it without the order of a competent Magistrate. Thus it may be seen that according to the scheme of the Code, investigation is a normal preliminary to an accused being put up for trial for a cognizable offence (except when the Magistrate takes cognizance other-wise than on a police report in which case he has the power under section 202 of the Code to order investigation if he thinks fit). Therefore, it is clear that when the Legislature made the offences in the Act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises. Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in section 162. Under section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be -necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if

he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under section 173 of the Code in the prescribed form furnishing various details. Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173.

16. In the matter of Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi) reported in AIR 2010 SC2352, the Honble Supreme Court laid down the concept of fair investigation and fair trial as follows:

In the Indian Criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India. A person is entitled to be tried according to the law in force at the time of commission of offence. A person could not be punished for the same offence twice and most significantly cannot be compelled to be a witness against himself and he cannot be deprived of his personal liberty except according to the procedure established by law. The law in relation to investigation of offences and rights of an accused, in our country, has developed with the passage of time. On the one hand, power is vested in the investigating officer to conduct the investigation freely and transparently. Even the Courts do not normally have the right to interfere in the investigation. It exclusively falls in the domain of the investigating agency. In exceptional cases the High Courts have monitored the investigation but again within a very limited scope. There, on the other a duty is cast upon the prosecutor to ensure that rights of an accused are not infringed and he gets a fair chance to put forward his defence so as to ensure that a guilty does not go scot free while an innocent is not punished. Even in the might of the State the rights of an accused cannot be undermined, he must be tried in consonance with the provisions of the constitutional mandate. The cumulative effect of this constitutional philosophy is that both the Courts and the investigating agency should operate in their own independent fields while ensuring adherence to basic rule of law. It is not only the responsibility of the investigating agency but as well that of the Courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner.

The investigation should not prima facie be indicative of bias mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. In the case of *Kashmeri Dev v. Delhi Administration and Anrs.* [JT1988(2) SC293 it has been held that the record of investigation should not show that efforts are being made to protect and shield the guilty even where they are police officers and are alleged to have committed a barbaric offence/crime. The Courts have even declined to accept the report submitted by the investigating officer where it is glaringly unfair and offends basic canons of criminal investigation and jurisprudence. *Contra veritatem lex nunquam a liquid permittit*: implies a duty on the Court to accept and accord its approval only to a report which is result of faithful and fruitful investigation. The Court is not to accept the report which is *contra legem* but to conduct judicious and fair investigation and submit a report in accordance with Section 173 of the Code which places a burden and obligation on the State Administration. The aim of criminal justice is twofold. Severely punishing and really or sufficiently preventing the crime. Both these objects can be achieved only by fair investigation into the commission of crime, sincerely proving the case of the prosecution before the Court and the guilty is punished in accordance with law.

17. In the matter of *Jamuna Chaudhary and others vs. State of Bihar*, AIR 1974 SC1822 the Apex Court ascribed the role of the investigating officer to bring out the real unvarnished truth for the courts to reach a right conclusion. Relevant para of the said judgment is referred to as under:

The duty of the Investigating Officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. It is apparent that the prosecution witnesses had tried to omit altogether any reference to at least the injuries of the appellant Ramanandan because there was a cross case in which such an admission could have been made use of to support the prosecution in that case. Dukhharan, however, made a very feeble and obviously untruthful attempt to account for the injuries of Ramanandan by saying that he had snatched a pharsa from one of the members of the crowd and had started swinging it around. He could not, however, state whether any one was injured by it. He even stated that he did not recognise

the man from whom he had snatched the pharsa. Although he said that he knew Ramanandan from his childhood, he could not say whether all his fingers were present on the day of occurrence. It was apparent that he was trying to conceal some occurrence over the Shikmi land that morning in which the fingers of Ramanandan were chopped off. He admitted that there was a dispute between Raghubir, Jamuna, and Rajdhari which had lasted 2 1/2 to 3 years over the Shikmi land. In fact, this dispute was given as the only cause of the incident set up by the prosecution.

18. After a challan is filed, if the Court is of the opinion that the evidence on record is sufficient to proceed against the accused, then the Court shall take the cognizance and vice-versa. After the Court has taken cognizance and the charges are framed against the accused, the journey of trial commences. The sole object of every trial is to conduct a fair trial in search of a ultimate truth viz whether the accused is an actual perpetrator of the crime or is an innocent person. To find out the ultimate truth in a criminal case, the court is not dependent merely on the evidence placed on record by the police. The effect of any criminal proceedings cannot always be left entirely in the hands of the parties as ultimately, it is the duty of the court to leave no stone unturned to bring out the truth for doing complete justice between the parties and to protect the interest of the society as well. Dealing with the concept of fair trial in relation to any criminal proceedings, the Apex Court in the case of *Zahira Habibullah Sheikh (5) and Anr. v. State of Gujarat and Ors.* reported in 2006 (3) SCC374 held as under:

The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: 'The Judge was biased.' (Per Lord Denning, M.R. in *Metropolitan Properties Co. Ltd. v. Lannon*, All ER p. 310 A.) The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife

should be above suspicion (Per Bowen, L.J.

in *Leeson v. General Council of Medical Education*). It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope (see *Jennison v. Baker*). Increasingly, people are believing as observed by Salmon quoted by Diogenes Laertius in *Lives of the Philosophers*, Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away Jonathan Swift, in his *Essay on the Faculties of the Mind* said in similar lines: Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

19. Describing that a criminal trial is not like a fairy tale, the Honble Apex Court in *State of Punjab vs. Jagbir Singh & Others*, reported in AIR 1973 SC2407 has held as under:

A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the

same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

20. Laying emphasis for the courts to adopt rational, realistic and genuine approach for administering justice in a criminal trial, the Apex Court in the case of State of Himachal Pradesh vs. Lekh Raj & Anr., reported in (2000) 1 SCC247 in the following para held as under:

The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstances keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper technical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial. Criminal Jurisprudence cannot be considered to be a Utopian though but have to be considered as part and parcel of the human civilisation and the realities of life. The courts cannot ignore the erosion in values of life which is a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and the mankind.

21. In State of Karnataka vs. Yarappa Reddy, 2000 SCC (Cri) 61, the view taken by the Apex Court was that the court must have predominance and pre-eminence in a criminal trial over the action taken by the investigating officer and criminal justice should not be made causality for the wrongs committed by the investigating officers in the case. The relevant para of said judgment is reproduced as under:

19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case?. If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously?. It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

22. This appellant is not a new face in the criminal world as per the list of the criminal cases in which he was found involved as per one of the Status Report filed on record by the State. The status report dated 21.07.2013 disclose that the appellant was involved in as many as 30 cases and out of these he stands discharged in 18 cases; acquitted in 3 cases; convicted in 5 cases (which includes these two cases also) and has compromised in 3 cases while one case is still pending. Nine of such cases pertains to police station Badar Pur where these two FIRs were also lodged. We have also been apprised that this appellant was arrested in FIR No.619/2004 dated 11.12.04 under Section 379/511 IPC registered with Kotla Mubarakpur Police Station and in this FIR, his disclosure statement led to his arrest in 18 other cases of same nature. He was acquitted by the Court of Sh. Rajinder Singh, Metropolitan Magistrate, vide order 13-1-12 in FIR No.619/2004, while he stood discharged on 14.12.2004 in all other 18 cases which were registered against him based on his disclosure statement in case No.619/2004. The alleged involvement of appellant in such high number of criminal cases registered against him with the same police station makes it quite apparent that the appellant was not a stranger to the area SHO and the concerned

police officials of Police Station, Badar Pur. It is more often seen that in such kind of cases of chain snatching, robbery, etc., the same person is made accused again and again. This is possible when either the same accused is committing such kind of offences repeatedly whether within the jurisdiction of the same police station or in the adjoining areas but it is equally possible that the police falsely implicate such an accused with the help of one or the other evidence to bring an easy resolution to such cases without the police taking the trouble of making any efforts in tracing the real culprit of the crime.

23. On a deeper and closer examination of the prosecution evidence, we are distressed to find that the present case is a clear example of false implication of the appellant in both the FIRs i.e. FIR No.167/2005 registered against him under Sections 392, 397, 34 IPC and FIR No.174/2005 registered against him under Sections 186, 353, 307 IPC.

24. It is not a case of faulty or imperfect investigation simpliciter but is a case wherein investigation is coloured with a clear intent of the police to falsely fix the accused in the said cases. The learned trial court has based the conviction in FIR No.167/2005 by giving due credence to the testimony of eyewitness, Naresh (PW-15). In his very first statement PW15 stated that he could identify all the accused persons who had committed the said crime. The testimony of Naresh (PW-15) got corroborated with the discovery of a black rexene bag at the instance of the accused. As per PW-15, this bag contained Indian currency of Rs.7,000 -8,000/- and some documents of truck which were stolen by the accused persons after carrying out the murder of the driver Sanjay. The black bag also had one unique feature i.e. it carried the truck number thereon with white paint.

25. The learned trial court verily believed the testimony of PW-15 being the eyewitness of crime and did not accept the argument of the defence that the said witness (PW-15) was a planted witness and held that if it was so, then PW-15 could have assigned the accused, main role of stabbing the deceased, Sanjay. Learned trial court also took a view that in his examination PW-15 truthfully stated that the accused person neither caused any injury to the deceased Sanjay nor did he give any beating to him. The learned trial court also held that the presence of

PW-15 at the time of the incident was further proved by the deposition of Rajesh Kapoor (PW-22) who had deposed that Naresh (PW-15) was working as a cleaner on the truck, owned by his mother and on 4th March 2005 the deceased Sanjay and PW-15 were on duty on the same very truck, which was going from Nagpur to Delhi. The learned trial court also took a view that PW-4 had no reason to name the accused falsely in the present case as he did not know the accused from beforehand there was no occasion for him to falsely identify him in the said case. The learned trial court further found the said witness (PW-15) has been truthful as he identified only the present accused after he had seen two boys reaching the disclosed spot as per the secret information received by the police.

26. The above reasoning given by the learned trial court cannot be faulted with, if we remain on surface and do not dwell deep to carefully and closely examine each and every evidence placed on record by the prosecution. It is trite to say that in every case the court is required to take into account the overall circumstances of the case with a practical, pragmatic and reasonable approach and examine whether the prosecution has succeeded in deriving home the guilt of the accused or not.

27. Adverting back to the facts of the present case, undeniably, the murder of driver Sanjay had taken place on the intervening night of 3/4 March, 2005. As per the prosecution PW-15, Naresh being the cleaner of the truck was present in the truck at the time of the alleged incident and had not only witnessed the crime but was also beaten by the accused persons. In the present case the accused was apprehended on the basis of statement as well as the identification made by this witness only. It will therefore be worthwhile to examine the truthfulness of the evidence of this witness. Although there can be no dispute with the settled legal position that a solitary evidence of an eye witness, if found reliable and credible, can by itself form the basis of conviction of an accused person, but it is equally true that if the conviction of any accused person is merely based on the testimony of an eye witness, which is surrounded by many suspicious circumstances and does not inspire the confidence, then it would be a complete travesty of justice. The courts therefore have to be more careful when examining evidence of such a solitary witness, however, much will depend upon the facts and circumstances of

each case and no general principle can be laid down as to under what circumstances, the uncorroborated testimony of a sole witness can itself form the basis of conviction of an accused person.

28. PW-15 - in his very first statement, based on which the rukka(Ex.PW-15/A) was recorded,disclosed that on the fateful night, truck was driven by deceased, Sanjay and at about 2 a.m. when the truck proceeded ahead after depositing the toll tax at Badar Pur Border, one small Maruti car stopped adjacent to the truck and 3-4 persons from the car, entered the truck and started beating him and the deceased, Sanjay. He further deposed that when the truck reached near Sarita Vihar, flyover, the accused persons took out Rs.7-8,000/- and some documents pertaining to the truck from the black coloured rexene bag and inflicted stab injuries at the feet and back of deceased Sanjay and ran away in the same car. He further said that the accused persons, who snatched away the money and inflicted the stab injuries to the driver, could be identified by him on being confronted. This first statement of Naresh (PW-15) nowhere refers the name of accused Diggi and the same was introduced by this witness only in the supplementary statement, recorded by the police. In the supplementary statement, this witness made an improvement in the facts stated by him earlier and told that when accused persons were leaving, he heard one of the accused stating that Diggi abhi kaam nahi hua. Thereafter the police, on the basis of this information given by PW-15, apprehended one of the accused person and the most interesting fact is that the police is able to apprehend only the accused whose name was stated by PW-15 i.e. Pawan @ Diggi, by making improvement, and none else, whereas as per the case of prosecution, there were five accused persons in total. It is also pertinent to mention here that, during the examination in chief, again this witness blatantly failed to depose any fact such as he heard one of the accused taking name of appellant Diggi. Apart from the statement of this witness there is no other evidence on record to prove that the appellant was one of the accused person in the alleged incident. In the light of these facts and circumstances two questions which are posed before us are, firstly how come PW-15 failed to state the fact that he heard one of the accused saying, in his first statement and second that how come the police was able to apprehend only the accused whose name was taken by PW-15, only in his supplementary statement, and none others. In these circumstances we

suspect a foul play on the part of police officials to falsely implicate the accused person.

29. Further in his first statement, PW-15 nowhere stated that the boys had taken away the black rexene bag but the statement only refers to the driver being robbed of Rs.7/8,000/- and the documents pertaining to the truck. Therefore, it becomes quite evident that black coloured rexene bag remained in the truck while the boys had taken away the money and other documents. Thus a question arises that when the bag remained in the truck itself, then how come its recovery was done at the instance of the accused person. Further the recovery of this bag at the instance of accused during his disclosure statement also does not inspire confidence for many reasons like, there was neither any independent witness to the recovery of this bag nor any efforts were shown to have been made by the police to join some independent witness to the recovery of black bag. The recovery of the said bag also became doubtful as signatures of the complainant Naresh were not obtained on the Seizure Memo (Ex.PW10/D) although as per the deposition of PW-1 Constable Jawahar Singh as well as PW-15, Naresh himself was present at the time of recovery of the said bag. The presence of complainant - Naresh at the time of recovery of the bag also becomes doubtful as PW-24, Inspector R.S. Dhaiya and PW-17, Constable Daya Ram in their respective depositions nowhere mentioned about the presence of the complainant Naresh. The recovery also cannot be believed as the said rexene bag was neither confronted to the PW-15, Naresh nor to PW-22 and these two witnesses could only confirm the genuineness and authenticity of the black coloured rexene bag which was lying in the truck. The cumulative effect of all these serious lapses on the part of the investigating agency and the prosecution impels us to disbelieve the story of the prosecution with regard to the recovery of the said black rexene bag during the disclosure statement of the accused.

30. Apart from all these lapses stated above there are many other suspicious circumstances which makes it amply clear that the way the investigation had proceeded in the matter, the false implication of the appellant in both the cases can be visibly seen. How we have reach to such a conclusion can be established from the following unanswered questions:a) For what reasons PW-15, who was

the convict and injured witness, was detained in the Police Station for two days?. b) Why the police made no efforts to obtain the exact particulars of the Maruti Car including its ownership etc. although as per the evidence of PW-15, and disclosure statement of accused, all the assailants were travelling in a Maruti Car?. c) Why police also failed to ascertain the detailed particulars of other assailants who were alleged to be accompanying the accused Pawan @ Diggi although they were specifically named in the disclosure statement of this accused?. d) Why no efforts were not made by the police to arrest the other assailants including the main assailant who had inflicted stab wounds on the person of the deceased although they were specifically named by the appellant, Pawan @ Diggi in his disclosure statement?. e) Why PW-15, Naresh was not medically examined although as per his own evidence, he was also beaten by the assailants and he had received minor injuries?. f) Why no public witness was joined by the police at the time of arrest of the accused and also at the time of alleged recovery of black coloured rexene bag and nor any such efforts were shown to have been made by the police?. g) Why the police did not conduct the TIP Proceedings after having come to know that a person with the name of Diggi was found involved in the said incidence. The TIP proceedings could be easily conducted after carrying out the arrest of Pawan @ Diggi with whom the SHO and other police officials of Police Station Badar Pur were quite familiar?.

31. All these unanswered questions clearly show a foul play on the part of the police officials, who even failed to adhere to the very basics and were perhaps overzealous in solving the case just by roping in the present accused who as per the police is a hardened criminal of the area. We are also not prepared to accept the prosecution story that after having received a secret information police team along with PW-15, Naresh apprehended the present accused after being identified by PW-15. We are also not ready to digest that the appellant has taken out a Katta from his pocket and constable, Daya Ram overpowered him by hitting him with a stick, which resulted in falling down of katta. Rather, the defence version appears to us to be more realistic and plausible, which is also supported by the testimony of DW-1, mother in law of the appellant recorded during the course of the trial of another FIR No.174/2005.

32. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberations in the Court-room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecuted is given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the material by the informed man i.e. the Judge that leads to determination of the lis.

This observation made by Honble Supreme Court in the matter of *Lehna vs. State of Haryana* reported in (2002) 3 SCC76 is of utmost importance while appreciating the role of each and every one who is involved in the process of dispensing justice. It should always be remembered that the duty of the investigating officers is not merely to augment a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth. The investigating officers should always conduct themselves in a most fair, transparent and judicious manner. This objective can be achieved only when the investigating officers are competent, and have an expertise in the field and they perform their duties with utmost honesty and dedication in carrying out fair and impartial investigation, uninfluenced by any extraneous factors including the factor of bringing an easy solution to any crime by false implication of an innocent person. In the administration of criminal justice system investigation plays a very vital and crucial role. In criminal jurisprudence an accused is presumed to be innocent till proved guilty and the accused is entitled to unbiased and impartial investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India (*Sidhartha Vashisht @ Manu vs. State* (supra)). Protection of the society is the first responsibility of the police and the laws, procedures and police practices must be such as to ensure that no guilty person shall escape the clutches of law and no innocent shall ever be harassed. The concept of reasonable and fair trial would be

one in which the accused as well as the victim or the aggrieved person gets complete justice. Before accusing an innocent person of the commission of a grave crime, it is essential to conduct an honest, sincere and dispassionate investigation.

33. Recently in the matter of State of Gujrat vs. Kishanbhai Etc. being Criminal Appeal No.1485 of 2008 decided on 07.01.2014, the Honble Supreme Court while taking note of matters where an innocent man is falsely implicated by police to face the ordeal of trial, held as under:

Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the accused-respondent innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long drawn litigation, spanning over a decade, or more. The expenses incurred by an accused in his defence can dry up all his financial resources ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

34. In the present case also we find that the appellant is an innocent man, who has been falsely implicated as an accused in the said two criminal cases. The manner in which the investigation was carried out by the police clearly suggests a foul play on the part of police officials by implicating the appellant in FIR No.167/2005, to find an easy way of solving a murder case, without putting any serious effort to apprehend the other culprits. The registration of the second FIR

No.174/2005 was with a view to give legitimacy to the arrest of the appellant. Otherwise, it sounds totally illogical that police would constitute a team comprising of six officials to arrest this appellant, Pawan @ Diggi, who is already a familiar face with the local police, due to his involvement in many other criminal cases. False implication of any person that too at the instance of the police without their being incriminating evidence to support the same has to be viewed very seriously against the police officials involved in such a murky process and a false implication even of a person who may be an accused of committing some other offences, stands on the same footings. We are not suggesting here that the police cannot commit mistakes or there cannot be any bona fide reasons behind the wrongful prosecution of any person, but where the facts by itself brazenly suggests presence of no such incriminating evidence and yet a person is made an offender to suffer turmoil and agony, of undergoing arrest, facing criminal prosecution and then finally getting convicted, it amounts to serious invasion and trampling of his rights as guaranteed to him under Article 21 of the Constitution of India.

35. In the light of the above observations, we are constrained to direct the Police Commissioner to take appropriate disciplinary action against the delinquent police officials, who were involved in the investigation of the crime in the said two FIRs and pending disciplinary enquiry against the main IO in the said two FIRs, no investigation involving any major crime be entrusted to him and, if any, investigation into any major crime is already with the said IO then the same shall be personally monitored by the concerned DCP of the district.

36. In the light of the facts and circumstances stated above, the appeals filed by the appellant are allowed and the impugned judgment and order on sentence dated 9th August, 2010 and 12th August, 2010, respectively, passed by the learned Additional District Judge are hereby set aside. Consequently, the appellant in both the appeals being Criminal appeal No.1297/2010 and Criminal appeal No.1322/2010, stands acquitted.

37. Appellant is in judicial custody. Let he be released forthwith, if not required in any other case.

38. A copy of this order be sent to Jail Superintendant for compliance. KAILASH GAMBHIR, J.

**SUNITA GUPTA, J.**

JANUARY24 2014 v/pkb

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