

Joginder Singh and ors. Vs. State

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Court : Rajasthan

Decided On : May-12-1967

Reported in : AIR1968Raj63; 1968CriLJ378

Judge : C.B. Bhargava, J.

Acts : [Evidence Act, 1872](#) - Sections 3; [Code of Criminal Procedure \(CrPC\) , 1898](#)
- Sections 439 and 561A

Appeal No. : Criminal Revn. No. 162 of 1966

Appellant : Joginder Singh and ors.

Respondent : State

Advocate for Def. : Govind Mal Mehta, Adv.

Advocate for Pet/Ap. : P.N. Dutt, Adv.

Disposition : Revision allowed

Judgement :

ORDER

C.B. Bhargava, J.

1. This revision application by Jogindersingh and four others is directed against the appellate judgment of the learned Sessions Judge, Udaipur dated 14th April,

1966 by which he maintained the conviction and sentence of the petitioners under Sections 457 and 147 of the Indian Penal Code.

2. The case of the prosecution against the petitioners is that on the night of 19th April, 1964 at about 9 or 9.30 p.m., Dharamchand (P. W. 1) and his wife Smt. Kamla (P. W. 5) were sitting in the upper most story of the building situated in Bapu Bazar, Udaipur whose construction work was being looked after by Dharamchand on behalf of Madanlal resident of Nathdawara its owner and they gone upstairs after bolting the door of the staircase from inside. On the ground floor of this building there are two shops Nos. 103 and 104 which had been rented out to petitioner Joginder-singh for the last 4-5 years. It is said that at that time seven or eight persons including the petitioners climbed over the roof by means of a wooden staircase and came to the place where Dharamchand and Smt. Kamla were sitting and held out threats to kill Dharamchand and also relieved him of his wrist watch and a gold ring. The accused persons also by putting Dharamchand in fear, obtained his signatures on a blank paper having two stamps affixed on it. According to Dharamchand's statement recorded as supplementary information the above act was committed by the accused because a suit for eviction from the shop and criminal proceedings under Section 107 of the Criminal Procedure Code was pending against Jogindersingh. A written report Ex. P1 of the incident was made by Dharamchand on the next day at 3 p.m. at Police Station, Surajpol, Udaipur. The report Ex. P1 did not mention the names of the accused persons nor did it mention the presence of Smt. Kamla (P. W. 5) at the place of the incident. As the report was vague to some extent, the Station House Officer recorded the statement of Dharamchand for eliciting further information and in that statement Dharamchand mentioned the names of the petitioners and also described the presence of Smt. Kamla at the scene of occurrence.

In that statement he also explained why the report was made after so much delay. The explanation in the portion marked A-B, is that the informant remained busy in taking bath, informing other persons and in arranging his shop, However, at the trial Dharamchand has disowned this explanation On this report, a case for offences under Sections 457 and 382 of the Indian Penal Code was registered by the police and after investigation the petitioners were prosecuted for the said

offences in the court of the Additional Munsif Magistrate, Udaipur. Charges under Sections 457 and 147 of the Indian Penal Code were framed against the petitioners.

3. The prosecution in support of its case examined Dharamchand (P. W. 1), Jaskaran brother of Dharamchand (P. W. 2), Roshanlal (P. W. 3), Rameshwarlal (P. W. 4), Smt. Kamla (P. W. 5), Shri D. D. Gupta, Civil and Additional Sessions Judge, (P. W. 6) and Manoharlal, Station House Officer, (P. W. 7).

4. The petitioner denied the prosecution allegations altogether as also their presence at the place of occurrence. They did not examine any witness in defence.

5. The learned Additional Munsif Magistrate at the conclusion of the trial found the petitioners guilty of the offences with which they were charged. On appeal preferred against the said order, the learned Sessions Judge, Udaipur rejected it and maintained the conviction and sentence of the petitioners. By the same judgment the learned Judge directed that notices be issued to Manoharlal, Station House Officer and Vasakhasingh, Deputy Superintendent of Police to show cause why they should not be prosecuted for the offence under Section 221 of the Indian Penal Code, as they intentionally omitted to apprehend the accused immediately or at any rate on 24th April, 1964, when the accused appeared before them when they were as public servants legally bound to apprehend them. Both Manoharlal and Vasakhasingh submitted their replies in response to the said notices and the learned Sessions Judge after considering them by his order dated 27th April, 1967, held that in his opinion their action in not arresting the accused on 24th April, 1964, clearly fell within the mischief of Section 221 of the Penal Code. However, as the matter had already been brought to the notice of the Government and the Inspector General of Police and suitable action could also be taken against the delinquent officials departmentally. the learned Judge refrained from launching prosecution against them. It is against this order that a separated application under Sections 561A and 439 of the Code has been filed by Vasakhasingh, Deputy Superintendent of Police and Manoharlal, Station House Officer. They have also prayed in that application that the adverse remarks made

by the learned Sessions Judge in his judgment dated 14th April, 1966. be expugned because they are without any justification and would seriously affect their future official career. This judgment will dispose of both criminal revision No. 162 of 1966 by Jogindersingh and others and criminal miscellaneous petition No. 692 of 1966 by Vasakhasingh and Manorharlal.

6. I shall first take up the revision application filed by Jogindersingh and others. it has been vehemently contended on behalf of the petitioners that because the learned Sessions Judge has taken extraneous matters into consideration while deciding their appeal, has not fairly considered the evidence on record inasmuch as he has skipped over the material contradictions in the evidence of the prosecution witnesses, this Court should make a fresh appraisal of the evidence. It is also pointed out that the learned Sessions Judge went out of his way in basing his judgment on materials which did not form part of the record and as such his judgment stands vitiated.

7. Having gone through the whole record of the case I am inclined to hold that the contentions raised on behalf of the petitioners are not without any basis. The learned Judge in narrating the facts of the case has made observations which are extracted below: that 'Jogindersingh further told Dharamchand that the several cases lodged against them should either be withdrawn or they would not be left alive, and thus saying took out a knife. This was not the case of Dharamchand either in the police report or in his statement before the Court that Jogindersingh threatened him with a knife. This fact that Jogindersingh had a knife, has only come in the statement of Smt. Kamla and the question for consideration would be how far Smt. Kamla can be believed on this point. It is again observed that 'Jogindersingh obtained the signatures of Dharamchand on a blank paper on which two stamps of ten paisa each were affixed.' There is no evidence on record that stamps of ten paisa each were affixed on the blank paper. It has been further observed that 'Dharamchand and his wife remained sitting there speechless and confused for sometime, and when they thought that the culprits had gone away, they got down and went to their house at Bharbuja Ghati.' This is also not the case of Dharamchand and Smt. Kamla. On the other hand Dharamchand has stated that the accused followed them. It is further alleged that "when he went to the

police station in the morning Shri Vasakhasingh, Deputy Superintendent of Police was sitting there and he declined to accept the report saying that he had come so early in the morning.' This is not the statement of Dharamchand that Vasakhasingh Deputy Superintendent of Police was present when he went to the police station in the morning nor did he say that the Deputy Superintendent of Police had declined to accept the report.' Dharamchand then repeatedly went there after short intervals but on one excuse or the other, the report was not entertained at the police station as Shri Vasakhasingh, Deputy Superintendent of Police happened to be interested in the first two accused namely Jogindersingh and Tejsingh, as they were all by caste Sikhs.'

Neither Dharamchand nor any other prosecution witness has said that Vasakha Singh was interested in Jogindersingh and Tejsingh as they were all by caste Sikhs. Jaskaran and Shri Nand Lal Kachera then went to the residence of the District Magistrate and gave that report on which he (the District Magistrate) asked Shri Kachera to take that report to the Superintendent of Police to whom he would also telephone about the matter. Copies of that report were also sent to the Home Minister and Deputy Home Minister to the Government and so also to the Collector and the Superintendent of Police by registered post. When Shri Kachera met the Superintendent of Police, he called a police official posted at Surajpol Police Station and asked him to take necessary action in the matter.' The above facts do not find place in the evidence anywhere, On the other hand Jaskaran (P. W. 2) stated that he had gone alone to the Collector's house, 'No proceedings in the matter were taken on 22nd and 23rd of April, 1964, by the Station House Officer, and it is stated by the learned Public Prosecutor that Shri Vasakhasingh, Deputy Superintendent of Police was out of station during those two days. It is therefore, permissible to infer that he left the instructions not to take further action in the matter till he came back.' There is no basis whatsoever on the record for making an inference that the Deputy Superintendent of Police had left such instructions. 'It is further alleged (though nothing has come on record to substantiate it) that when the applications sent by Dharamchand to the Government reached the Superintendent of Police, he wrote a letter on 25th April, 1964, to the Station House Officer, Surajpol enquiring how a case under Sections 457 and 382, Penal Code, had only been registered, when an offence under Section 395, Penal Code,

was disclosed to have been committed. This letter was received at the police station at 6 p.m.' The learned Sessions Judge himself admits that there is nothing on the record to substantiate the above facts. 'Even then no effort was, however, made to recover the stolen property and no searches of the premises of the culprits were carried out.' There is no material on record in support of these inferences. The Station House Officer, Manoharlal who appeared as a witness in the case was not asked whether any attempt was made to recover the stolen property or not 'I need hardly say that I cannot attach any importance to anything recorded in her police statement as I am very doubtful whether the police officials prepared a faithful record of the statement made by her.' There is no basis for these remarks also. The Station House Officer who proved the statement of Smt. Kamla was not cross-examined to show that he had not correctly recorded the statement of the witness during investigation.

On the other hand the statement of Smt. Kamla in the court would show that she must have named all the petitioners in her statement to the police. 'Shri Manoharlal (P. W. 7) investigated the crime. He has stated that as his investigation disclosed that the accused were subjected to very little cross-examination, presumably because he was quite sympathetic to the accused all along. How far this remark by the learned Judge against the witness is justified shall be considered presently. 'Learned counsel for the accused has contended that in the case diary it was written that the complainant had brought this witness. I am not aware as to how the learned counsel for the accused appellants happened to know what was written in the case diary and speaking for myself, I am not prepared to rely on the police record made in this case, as the good faith of the police officials concerned in this matter is in serious controversy.' The learned Judge was not fair in making these insinuations against the counsel for the accused and the police officials because Manoharlal (P. W. 7) in his statement before the Court has stated that the complainant himself had brought Rameshwarlal witness to him on 24th.

8. From the above mentioned remarks made by the learned Sessions Judge it would undoubtedly appear that he has travelled beyond the record. The learned Deputy Government Advocate says that the facts mentioned by the learned

Sessions Judge might have been placed before him by the Public Prosecutor or that he might have taken into consideration the affidavit filed by Dharamchand before him on 13th April, 1966 in support of the application for examination of Shri Kachera Pleader in the appellate court. It is to be remembered that in the appeal before the learned Sessions Judge the parties had concluded their arguments on 12th April, 1966. The case was fixed for pronouncement of judgment on 13th April, 1966. It was on 13th April, 1966 that an application was made by Dharamchand for recording the statement of Shri Nandlal Kachera and on the same date, an affidavit was filed. The learned Sessions Judge rejected the said application, and the case was kept on 14th April, 1966 for pronouncement of judgment. This affidavit, therefore, did not form part of the evidence and its contents could not be made use of for the remarks made by the learned Sessions Judge. The only provision by which further evidence could be brought on record at the appellate stage was Section 428 of the Code. But the learned Sessions Judge did not allow any additional evidence to be brought on record, and, therefore, he had no justification for making any use of the affidavit filed by Dharamchand after the conclusion of the arguments.

There is also no basis to say that the said facts might have been placed before the court by the Public Prosecutor. At any rate the learned Judge should have strictly confined himself to the evidence on record and should not have acted upon matters not made evidence on record. There is also justification for the contention that the learned Sessions Judge has not carefully gone into the evidence and has overlooked the material discrepancies appearing in the statements of the prosecution witnesses. It was admitted by Dharamchand in the supplementary information given by him to the police that a civil case for eviction of Joginder Singh from the shop and proceedings under Section 107 of the Code were pending against him. He also admitted that after this incident he had also instituted proceedings under Section 107 of the Code against Jogindersingh. This clearly showed that the relations between the parties were strained from before and as such there was greater need for the court to scrutinise the evidence of Dharamchand, his brother Jaskaran and his wife Smt. Kamla.

9. It is to be noted that the incident is alleged to have taken place in a building which is situated in Bapu Bazar, Udaipur City from where the police station is about 2-3 furlongs and yet no information was given to the police on the same night although it had not become very late till then since Dharamchand has admitted that he had returned to his house after the incident at about 10 p.m. In the report Ex. P1 written by Dharam Chand which must have been written after he had sufficient time for consultation and consideration, names of the accused are not mentioned. It is difficult to believe that Dharamchand failed to mention the names of the accused persons in the report as he says, under the impression that he would do so when asked by the police. Dharamchand is a literate person and runs a shop in Udaipur City and it is hard to believe that he did not realise the importance of mentioning the names of the accused in the first information report. The courts below have not attached any importance to this omission because he did so in the statement which is alleged to have been recorded by the police soon after the report was made.

I am however doubtful if the said supplementary information was recorded by the police soon after the report the reason being firstly that the report did not contain the names of the accused and the police probably did not register any case on that report. This belief finds support from what is stated in Ex. D2. Ex. D2 says that report of the above incident has been made at Surajpol Police Station but so far no action has been taken upon it. It seems to me that the supplementary information was recorded after Dharamchand's brother had approached the Collector and submitted the application copy which is Ex. D2. How much time had elapsed by then is not known. There is another significant omission in Ex. D2 and that is about the presence of Smt. Kamla at the place of occurrence. Such an important omission -could have been made by pharam Chand is not understandable. In his statement before the court he has stated that he had omitted to state the presence of his wife in the first information report because he was not sure whether it was necessary to do so.

Having regard to this omission in the first information report and the statement of Smt. Kamla (P. W, 5) in the court which on material points differs with the statement of Dharamchand, I have serious doubts about the truth of what she had

stated in the court. In her statement before the court she has stated that Jogindersingh had a knife and he had threatened to kill her husband. Tejsingh also took out a dagger and asked her husband to put his signatures on the paper and also relieved him of a watch and a ring. That Jogindersingh was armed with a knife or Teisingh took out a dagger during the occurrence does not find place in the case put forward by Dharamchand either before the police or in the court. This shows that the witness was drawing more on her imagination than what she alleges to have seen. According to Dharamchand, Jogindersingh took out a paper from his pocket and after affixing stamps on it asked him to put down his signatures. Contrary to this Smt. Kamla has state'd that Nathu Mal petitioner went down-stairs and brought a paper. She does not say about the affixing of stamps on the paper. She stated that she did not know by which route they returned to their house. She did not know whether the staircase was made of wood or steel. Dharamchand has stated that after the incident all the petitioners followed them upto Ghanchiwara and thereafter, two or three of them followed them upto their house.

On the other hand Smt. Kamla has stated that when they came down all the petitioners told them to go directly to their house as they were standing there. She does not say that all or some of the accused had followed them upto their house. In the court she has stated that she knew Jogindersingh and Tejsingh only from before the occurrence and did not know the other accused persons. Earlier in the examination-in-chief she stated that she could identify only four of them but in fact she identified all the five. She was confronted with her police statement Ex. D3 portion A-B wherein she had stated that she knew all the five accused persons because they happened to be her neighbours. She replied that she did not remember whether she gave that statement to the police. It is this part of her statement before the police which made the learned Sessions Judge to remark that he could not attach any importance to anything recorded in her police statement because it was very doubtful whether the police officials prepared a faithful record of the statement made by her.

10. It would be noticed that the witness in her examination-in-chief has stated that the persons who came to them while they were sitting in the upper-most storey of

the building were addressing each other by name and their names were Jogindersingh, Teisingh, Nathumal, Bhagchand and Ghanshyam. If this is so then the names of all the five accused correctly find place in her police statement. It is not that the police officer had introduced the names of the accused persons in the statement of the witness of his own accord, but because she had herself come to know their names at the time of the occurrence. Besides, if the police was sympathetic towards the accused as the learned Sessions Judge seems to think, they would not have wrongly introduced the names of the accused persons, rather they would have tried to omit them. The statement of Smt. Kamla was recorded in the court on 18th May, 1965, and in her cross-examination she has admitted that she had been ill for the last 2-3 years. She had become slightly better during the past 2-3 months, but she was still unable to move about. If this is so how was it that in April, 1964, she came all along from her house to the place of occurrence and went up to the upper-most storey without any particular business. For all these foregoing reasons, I entertain serious doubt about her presence at the place of occurrence particularly because of the omission made in the first information in this regard by Dharamchand.

11. Coming to the statements of Ro-shanlal (P. W. 3) and Rameshwarlal (P. W. 4) who according to the learned Sessions Judge have corroborated the evidence of Dharamchand and Smt. Kamla. Roshanlal (P. W. 3) has stated that while passing through that Bazar, he saw five accused persons present in the court at the shop of Sardar, whereby meaning Jogindersingh, at 7 or 8 p.m., but he did not see anything else. He also saw a staircase by the side of the wall in a vacant place. The witness was declared hostile by the court and on being cross-examined by the Prosecuting Sub-Inspector, denied to have said before the police that he had seen one person climbing the staircase. On being cross-examined by the accused he stated that he had also noticed the staircase lying there on several occasions before, and had similarly seen the accused persons sitting at that shop. The statement does not mention the date, month or the approximate period when the witness saw what he had stated before the court. This statement instead of lending any support to the case of the prosecution shown that the lying of staircase beside the wall or the collecting of the accused persons at the shop of Jogindersingh was not an unusual occurrence. It has come in evidence that

Teisingh is the brother of Jogindersingh and the remaining three have also their shops nearby.

Therefore, there was nothing unnatural if he saw all the accused sitting at the shop of Jogindersingh, Rameshwarlal (P. W. 4) is the next witness. He says that he was coming out from Kailash Hotel after taking tea at 9 or 9.30 p.m. and was going towards his house when he saw that a staircase was lying by the wall of a room and one man was climbing over it while 4-5 persons were standing on the ground. He waited there for about a few minutes and then went away. He saw the person who was climbing the staircase from his back and did not remember his face. He identified Nathumal, Bhagchand and Tejsingh as those persons who were standing at a distance of 2-3 paces from the staircase. Besides, this fact that the witness by chance happened to pass by that way at that time it is not clear how the complainant or the police came to know of his having seen what he had stated before the court. He was not known to Dharmchand and Jaskaran both of whom denied to have produced him before the police for his statement. On the other hand Manoharlal, Station House Officer, has stated that the complainant had produced him before him. His statement was recorded by the police four days after the occurrence.

12. Even if the above infirmities in his statement be overlooked, it does not help the prosecution much because he was unable to identify the man whom he saw climbing the staircase.

13. So we are now left with the statement of Dharamchand alone because Jaskaran (P. W. 2) is not an eye witness of the occurrence. Legally there can be no objection in basing the conviction of the accused on the sole testimony of a witness provided he is above reproach and entitled to full credit. This however, cannot be said for Dharmchand. As already stated there was bad blood between the parties from before this occurrence and litigation both civil and criminal was going on between them. His failure to promptly lodge a report at the police station, omission of the names of the accused from the report, omission to mention his wife's presence at the place of occurrence in the report and the allegation of his being relieved of a wrist watch and ring, all cast serious doubt on his veracity. It is

not that the police made no attempt to elicit information from the accused to recover the watch and the ring but the learned Sessions Judge who has made full use of the case-diary, probably missed to notice this point.

14. It is significant that Jaskaran (P. W. 2) states to have seen the stolen watch with Jogindersingh who is said to have challenged him to take it from him if he had enough courage. Contrary to this in his statement under Section 164 of the Code (Ex. D2) with which he was confronted he had stated that he had seen the rings with Jogindersingh ten or fifteen days after the occurrence. If this was so then it was most natural that he would convey this information to his brother Dharamchand also. But Dharamchand says that even his brother did not inform him of his having seen either the watch or the ring with the accused. Besides, the above statement of the witness appears to be palpably false because the accused were put under arrest on 25th April. Their identification parade was held on 29th April and they were released on bail on 30th April. It cannot be that the accused knowing well that they were being prosecuted for the offence of robbery, would keep on exhibiting the stolen articles publicly. The record also does not show why Nathumal, Ghanshyam and Bhagchand should have joined hands with Joginder Singh in committing this crime. The learned Sessions Judge says that they are the close associates of Jogindersingh. About this the only evidence is that these three accused persons have also their shops near the shop of Joginder Singh. No specific part is assigned to these accused persons.

On the other hand it is admitted by Dharamchand that Ghanshyam kept standing at the place of occurrence and did not utter a word. He also admitted that he did not know the name of Ghanshyam before the occurrence. It is not known how he came to know his name when he mentioned it in the supplementary information given by him to the police. The only person alleged to be present at the time of the occurrence were Dharamchand and his wife Mst, Kamla and none of them knew Ghanshyam's name from before. They also did not meet anybody else who might have told them his name. It is, therefore, not clear how Ghanshyam's name was introduced in the case. Similarly, no overt act is attributed to Bhagchand. For Nathumal of course it is said at the trial by Dharamchand that he lighted a few match-sticks to enable him to put down his signatures on the paper. But Mst.

Kamla is unable to state who had lighted the match-sticks. But she says that Nathumal had brought the paper from downstairs.

15. There is one more factor which deserves consideration and that is that in Ex. D2 which is a copy of the application made by Jaskaran and Dharamchand to the Collector mentions amongst the names of the accused one of Pritamsingh when the draft of the application was prepared. Then Pritamsingh's name was scored out and Mohansingh's name was substituted in his place. That too was scored out and finally Tejsingh's name was inserted. Jaskaran has failed to explain why these alterations were made and by whom. At, any rate it shows that Tejsingh's name amongst the accused was inserted last of all after scoring out the name of Pritamsingh and Mohansingh.

16. Normally, this court does not interfere with the findings of fact arrived at by the courts below upon a revision application, unless as in the present case the courts below had overlooked essential parts of evidence and acted upon inadmissible and extraneous matters. That is why this court had to go through the entire evidence in order to do justice between the parties. After having done so I have, for the foregoing reasons, come to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and as such the accused are entitled to acquittal.

17. I must add that the learned Sessions Judge also adopted rather an extraordinary course in cancelling the bail of the appellants before him even before the pronouncement of the judgment without assigning any reason for it. No allegation appears to have been made on behalf of the prosecution that the appellants had in any way misused the liberty granted to them or were likely to abscond. Obviously the bail could only have been cancelled by the appellate court in a case falling under Section 426(1) of the Code on grounds similar to those which govern the cancellation of bail under Section 497(5) of the Code in order to prevent abuse of the process of the court and to secure the ends of justice. It seems that the learned Sessions judge cancelled the bail of the appellants of his own accord without assigning any reason for such action.

18. The revision application is, therefore, accepted, convictions and sentences of the petitioners are set aside and they are acquitted of the charges. They are on bail and they need not surrender to it. Their bail bonds are cancelled.

Criminal Misc. Petition No. 692 of 1966.

19. In this petition it has been urged on behalf of Vasakhasingh, Deputy Superintendent of Police that he had no hand in the investigation of the case and was simply a supervising officer. It is urged that the remarks made by the learned Sessions Judge against him in the judgment are without foundation and there is no material on record to support them. In paragraph 3 of the application it is stated that the learned Sessions Judge had a personal grudge against him for reasons stated therein which need not be reproduced here. It is stated that Vasakhasingh had no duty to apprehend the accused. As a supervision officer he had called the explanation of the investigating officer for not arresting the accused before 24th April or on 24th in spite of his direction. It is pointed out that such instructions were issued by the Deputy Superintendent of Police, could be proved from the digest register, despatch register and supervising officer's case diary. These records were produced before the Sessions Judge who inspected them, but conveniently omitted to refer them in his order dated 27th April, 1966. That from the facts narrated, no offence under Section 221 of the Indian Penal Code could be made out against the petitioner.

20. As regards the expunction of remarks from the judgment, it is now settled that 'the High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction if however of an exceptional nature and has to be exercised in exceptional cases only. '--(See State of U. P. v. Mohammed Naim, AIR 1964 SC 703. The Supreme Court also pointed out in the same judgment that :--

'It is a principle of cardinal importance in the administration of justice, that the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by the Supreme Court. At the same

time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint.'

The remarks by the learned Sessions Judge against the petitioners have been quoted and discussed above in the judgment of revision application No, 162 of 1966 (Jogindersingh v. State). It is clear that Vasakhasingh, Deputy Superintendent of Police had no hand in the investigation of the case and also did not appear as a witness in the court. These remarks have been made against him behind his back and he had no opportunity till then to explain his conduct before the learned Judge. It is also clear, as already discussed, that there was no basis on the record for the learned Sessions Judge to have made those damaging and undeserving remarks against him. If these remarks are allowed to stand, they would certainly harm the official career of the officer.

21. Taking all the circumstances of the case into consideration, I must say that the learned Sessions Judge should have firmly resisted the temptation of being swayed by his personal predilections. He should have exercised more restraint in making adverse remarks because as observed by Subba Rao J., as he then was in Raghubir Saran v. State of Bihar, AIR 1964 SC 1:

'Moderation in expression lends dignity to his office and imparts greater respect for judiciary.'

22. In the case of Manoharlal, Station Bouse Officer too, the learned Sessions Judge expressed doubts whether the police officers prepared a faithful record of the statements of the witnesses in the case He also remarked that the investigating officer was quite sympathetic to the accused all along. Ho also doubted the good faith of the police officers concerned and that the police record was not reliable. Manoharlal had appeared as witness in the case. If the circumstances raised any doubt that he had not discharged his duty faithfully and had deviated from the straight course he could have been questioned in the trial court about it. It was also open to the Sessions Judge to recall him and examine him with regard to his supposed dubious conduct. That would have provided him opportunity to explain that conduct.

23. It may be pointed out that under Rule 7.1 of the Rules made by the State Government under Sections 45 and 46 of the Police Act relating to the general powers of arrest, it is laid down that the authority given under Section 54 of the Code of Criminal Procedure is permissive and not obligatory. Whenever escape from justice or inconvenient delay is likely to result from the police failing to arrest they are bound to do so; but in no other case. Rule 7.2 lays down that 'If the fact that suspicion rests upon a particular person has been kept secret, and there is no risk of his absconding, the police shall defer making the arrest until the investigation is sufficiently complete; but if any interference with the liberty of the accused person is necessary to prevent him from absconding, and the facts justify arrest, the police shall arrest him and shall not interfere with his liberty unless they arrest him '

24. In the present case Manoharlal did not get opportunity at the trial to explain Why a case under Section 395 was not registered against the accused, and why they were not arrested even on 24th April. However, as the judgment of the learned Sessions Judge has been set aside and the accused have been acquitted, adverse remarks made against the petitioners will carry no force and accordingly the revision application is allowed and the order of the learned Sessions Judge dated 27th April, 1966 is also set aside.