

**Haridas Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Dec-03-2011

**Judge :** R. Basant & V. Chitambaresh

**Appeal No. :** Crl.A.No.951 of 2007

**Appellant :** Haridas

**Respondent :** State of Kerala

**Judgement :**

**R. Basant, J.**

Is the criminal trial just a complicated forensic game with accent only on compliance with complex rules? Is there no mission of discovery of truth for the stake holders in a criminal trial? Should not the indictee be obliged to assist the truth discovery process by revealing the true facts, at least to the court at the stage of trial? Does he have a right to remain arrogantly silent and non co-operative in the process of truth discovery before court? Should not the Indian jurisprudence look for a third desi (native) alternative for administration of criminal justice-other than the Anglo Saxon adversarial and the continental accusitorial ones, which can cater better to the needs of our society and which will rhyme better with our native commonsense and sense of justice? Should not bold efforts and initiatives in this direction start at least now-after Law India has completed about six and half decades of independent existence?

These thoughts remain with us when we part with this case and we felt it apposite to give expression to the same before we start the dictation.

2. To the more mundane and immediate questions raised by Sri. S. Rajeev, the learned counsel for the appellant now; Did the court below err in accepting and acting upon the oral evidence of PW1? Is the accused entitled for the benefit of doubt for the reason that the prosecution has not placed the entire materials before Court? Is the accused entitled to the right of private defence? At any rate, is not the accused entitled to the mitigative protection of Exception I and/or Exception 4 of S.300 I.P.C.?

3. The appellant has been found guilty, convicted and sentenced for the offence punishable u/S.302 I.P.C. He faces the sentence of imprisonment for life and fine of `25,000/-. In default of payment of fine, he has to undergo Rigorous Imprisonment for a period of 3 years.

4. The prosecution alleged that the appellant (1<sup>st</sup> accused) along with another (acquitted accused No.2) in furtherance of their common intention has caused the death of deceased Viswambharan, the half brother of the appellant. The appellant is alleged to have stabbed the deceased with M.O.1 knife, which allegedly was handed over to him in the course of the incident by the 2<sup>nd</sup> accused. The alleged incident took place at about 8 p.m. on 18.1.2000 in the residential building occupied by the accused Haridas along with his mother Rohini, sister Savithri and father Parameswaran Nair.

5. Investigation commenced with registration of Ext.P9 F.I.R. on the basis of Ext.P1 F.I. statement lodged by PW1, the sister of the deceased. Investigation was completed and it was PW12, the Investigating Officer, who filed the final report/charge sheet before the learned Magistrate. The learned Magistrate, after observing all legal formalities, committed the case to the court of session. The learned Sessions Judge took cognizance of the offence alleged against both accused. The accused person denied the charges that were framed against them by the learned Sessions Judge. Thereupon the prosecution examined PWs 1 to 14 and proved Exts.P1 to P30. M.Os. 1 to 10 were also marked.

6. In the course of cross examination of prosecution witnesses and when examined u/S.313 Cr.P.C., the accused took up a hybrid defence of total denial as also of contumacious conduct on the part of the deceased. No defence witnesses were examined. Exts.D1 to D3 case diary contradictions were marked when PW1 and PW6 were examined.

7. The learned Sessions Judge on an anxious consideration of all the inputs came to the conclusion that the second accused is entitled for an acquittal. Accordingly the second accused was found not guilty and acquitted of the offence alleged against him u/S.302 r/w 34 I.P.C. The appellant/accused, the learned Sessions Judge found, had planted the fatal injuries on the deceased. Accordingly he was found guilty, convicted and sentenced under Section 302 I.P.C.

8. Before us the learned counsel for the appellant/accused and the learned Public Prosecutor have advanced their arguments. Shri Rajiv, the learned counsel for the appellant has trained all his guns at the evidence of PW1. The learned Sessions Judge, contends Shri Rajiv, had totally erred in placing implicit reliance on the oral evidence of PW1. She is unworthy of credence. She is not a wholly reliable witness. Her evidence ought to have been rejected outright. At any rate, the accused is entitled to the benefit of doubt generated by the unsatisfactory evidence tendered by PW1. The learned counsel further proceeds to contend that inasmuch as the genesis of the incident is not proved by the evidence of the sole eye witness PW1, the appellant is entitled to claim that at any rate he is protected by the right of private defence. Assuming that the claim for right of private defence does not appeal to this Court, the appellant is at any rate entitled to contend that he can only be held guilty of exceeding the right of private defence entitling him to the protection of exception 2 to Section 300 I.P.C. Lastly and finally the learned counsel contends that in any view of the matter, the appellant is entitled for the protection of Exception 4 to S.300 I.P.C.

9. The learned Public Prosecutor on the contrary contends that evidence of PW1 is inherently inspiring and the same does not warrant or justify an approach with suspicion and distrust. There is no specific plea raised by the accused that he is protected by the right of private defence. At any rate, there is absolutely nothing to

indicate that the appellant has any such right of private defence. He cannot be held to have exceeded the right of private defence, in any view. The learned Prosecutor finally contends that the protection under Exception 4 cannot be claimed by the appellant in the facts and circumstances of this case.

10. We shall now proceed to consider the contentions raised seriatim. An appellate judgment is and must be read (and is intended to be read) as a continuation of the judgment of the trial court. This helps to avoid unnecessary prolixity. Appellate courts can legitimately start with the presumption that any reader of the appellate judgment has already read the impugned judgment before the approaches the appellate judgment. It is not really necessary, for the appellate judge to narrate in detail the pleas, evidence, appreciation of evidence and the conclusions of the trial court. An appellate judgment can legitimately start in a business like manner with the opening statement that the impugned judgment is assailed on the following specific grounds. For the mere convenience of the reader (even the Court superior to the appellate court) it is not necessary for the appellate judge to recount and re-narrate the endeavour of the trial judge. We feel that in the interest of saving dictation time of the appellate judges, it would be a good idea to insist that copy of the original judgment should invariably be annexed to (issued along with) the appellate judgment. They together constitute an integral whole. Such a culture of writing an appellate judgment would be wholesome and would help the interest of time management better, we feel. Inadequacies of the trial judgment in the narration of pleas, discussions etc., can be adverted to while discussing the grounds of challenge. In that view of the matter, we deem it unnecessary to re-narrate the oral and documentary evidence relied on by the rival contestants. We need only observe that the learned counsel have taken us in detail through the oral evidence of PWs 1 to 14 as also Exts.P1 to P30. We have further been taken in detail through the charge framed by the learned Sessions Judge as also the examination of the accused under Section 313 Cr.P.C. We shall refer to the oral and documentary evidence specifically wherever necessary in the course of the discussions.

11. Deceased Viswambharan is the son of Rajamma (PW9). PW1 Sreekumari is the sister of deceased Viswambharan and the daughter of Rajamma. Rajamma's

husband was Parameswaran Nair. While Rajamma was living, he had accepted Rohini, the sister of Rajamma (PW9), as his second wife. In Rohini he had 3 children. The appellant/accused Haridas is the only son. He along with his mother Rohini was residing in a house. There, along with them Parameswaran Nair, the father of the appellant, deceased and Saraswathy-the sister of the appellant, were also residing. There was no much of love lost between the two sisters, the co-wives.

12. The marriage of Sugathamma, one daughter of Rajamma in Parameswaran Nair, was scheduled to take place on 30.1.2000. According to the prosecution, PW9 and the deceased had advanced an amount of `10,000/- to the accused Haridas and his mother Rohini in connection with the marriage of Saraswathy, the daughter of Rohini. That was intended to be returned. It was not returned by Rohini and Haridas when PW1's marriage took place. They expected the accused and Rohini to return that amount to meet the expenses of the marriage of Sugathamma.

13. It is the case of the prosecution that Viswambharan on that fateful night at about 8 p.m. chose to proceed to the house where Rohini and the appellant along with Parameswaran Nair and Saraswathy were residing. The purported purpose was to invite them for the marriage of Sugathamma and to claim return of the amount of `10,000/- to meet the expenses of such marriage. Deceased went towards that house from the house of PW1. The deceased resides along with PW9 in another house farther away from the house of PW1. The deceased proceeded to the house of Rohini and some time thereafter house of PW1 heard a commotion from that house. She rushed to that house and there she is alleged to have seen the appellant inflicting injuries on the deceased with M.O.1. It is the case of the prosecution that the appellant had caught hold of the deceased and at that juncture the second accused Rajesh had handed over M.O.1 knife to the appellant to facilitate infliction of injuries. PW1 claims to have witnessed the incident proper.

14. The prosecution wanted to examine PW2 another eye witness to the occurrence. She is also a neighbour residing close to the house of the appellant. PW2 turned hostile to the prosecution. She did not speak about the infliction of the

injuries proper. According to her, when she came to know of the commotion (that too when someone later knocked at her doors), she came out and found the deceased with injuries lying on the lap of PW1 near the house of the appellant.

15. The only other non official witness of relevance to be mentioned is PW9, mother of the deceased. She also came to the scene of the occurrence after the deceased had suffered the injuries and she allegedly found the deceased with injuries with PW1 near the scene of occurrence.

16. It will be apposite straight away to mention that Rohini, the mother of the appellant, had also allegedly suffered an injury in the course of the incident. That is the admitted version of the prosecution. We shall later advert to the dispute as to how Rohini had suffered the injury. Suffice it now to say that Rohini was treated for the injuries suffered by her. The prosecution initially did not choose to cite and examine, PWs 13 and 14. Later after the close of the prosecution evidence-nay, after even the examination of the accused under Section 313 Cr.P.C. an application was filed under Section 311 Cr.P.C. and PWs 13 and 14 were examined and Exts.P27 to P30 were marked. Ext.P27 is the wound certificate issued by PW13 doctor, which reveals the nature of injury suffered by Rohini. PW14 a police official had conducted the initial investigation. He proved Exts.P28 F.I. statement Ext.P28(a) body note and Ext.P29 F.I.R. The final report filed in that crime was marked as Ext.P30 through PW12. The prosecution takes the stand that the injuries on Rohini were not suffered by her at the hands of deceased Viswambharan and the insignificant injuries must have been self inflicted. However, in the course of the evidence of PW1, it is indicated, that Rohini may have suffered the injury when the deceased pushed her in the course of the incident.

17. Be that as it may, the million dollar question to be decided in this case is whether the evidence of PW1 can be safely accepted and acted upon. Detailed arguments have been advanced by both sides on this crucial aspect. The incident takes place in the house of the appellant. PW1 had gone to the house on hearing the commotion. She is the sole witness who has been examined by the prosecution to unfold the precise sequence of events.

**(Ed. Note: Paragraphs 18 to 44 omitted being appreciation of facts)**

45. The learned counsel argues that at any rate, commencement of the incident is not revealed. We agree. The precise commencement of the incident could not have been witnessed by PW1. But the evidence of PW1 clearly shows that when she saw the deceased, he had not suffered the injuries. Some incident must have happened before PW1 ocularly perceived what happened. The inability of the prosecution to place direct evidence on that aspect cannot according to us generate any reasonable doubt in the mind of the court about the version of the prosecution. What happened inside or in the courtyard of house of the appellant cannot be spoken by other persons who were not present there. The totality of inputs compellingly reveal that no such serious incident had taken place prior to the presence of PW1 at the scene and her ocular version need not be doubted or approached with distrust for the reason that something grave may have taken place before she reached the scene. On the totality of inputs such a doubt does not exist in the mind of the court. This is so notwithstanding the inability of the prosecution to examine witnesses to specifically prove the incident that had taken place prior to PW1 reaching the scene.

46. The learned counsel for the appellant contends that at any rate the appellant is entitled to the right of private defence. The learned counsel relies on precedents to highlight the nature of the burden on an accused in a case where the right of private defence is rendered probable from the inputs available. We do not think it necessary to advert to precedents specifically. We shall refer to and reiterate the position of law, which is well settled, trite and undisputed.

47. The burden rests always on the prosecution to prove its case beyond doubt. This burden continues on the shoulders of the prosecution from the beginning to the end of a criminal trial, whatever be the defence pleaded by the accused. The accused may plead or not plead. Notwithstanding the nature of the plea raised by the accused the burden continues with the prosecution till the end of the trial to prove its case beyond doubt and if there be any doubt in the mind of the court about the acceptability of the prosecution version the benefit of such doubt must unhesitatingly be conceded to an indictee by a court. That golden thread runs

through the entire fabric of administration of criminal justice in this country.

48. The accused can take up a plea that he is protected by the right of private defence. Under Section 105 of the Evidence Act the said burden is on the indictee. The court can start with a presumption of absence of circumstances bringing the case within the general exceptions. We extract below S.105:

**“105. Burden of proving that case of accused comes within exceptions:--** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any General Exception in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.”

The burden rests on the shoulders of the appellant to establish that he is entitled to the protection of the right of private defence—a general exception recognised under the Indian Penal Code. It is not necessary for the accused to make any specific plea to entitle him to protection of the said general exception. The accused need not admit even his presence. But on the facts proved if the availability of the plea of right of private defence emerges from the totality of circumstances, certainly a court must consider whether the accused is entitled to such protection. In the instant case, the appellant has not pleaded the right of private defence. Want of the plea on his part cannot impress us at all if otherwise the plea is rendered probable and possible. But, the totality of circumstances in this case does not at all generate any doubt in our mind about the availability of the right of private defence for the appellant. The accused has not pleaded it. His burden under Section 105 remains undischarged. From the totality of circumstances no semblance of doubt is aroused in our mind that the accused is entitled to the protection of the right of private defence.

49. An accused, who has taken up a plea for protection of the general exception, may fail in his attempt to establish that plea. But the failure of that plea does not automatically lead to acceptance of the case of the prosecution. Even in such an event, the court has to alertly verify whether in the course of his failed attempt to raise a plea of right of private defence (any general exception for that matter) the

indictree has succeeded in generating a reasonable doubt in the mind of the court about the initial case of the prosecution. If such a doubt is generated, notwithstanding the fact that he has failed in his attempt to establish his plea of right of private defence (general exception), he will be entitled to succeed. Not because his plea for general exception has been established, but in his unsuccessful attempt to claim such right, he may have succeeded in generating a reasonable doubt in the mind of the Court about the initial case of the prosecution. But in this case right of private defence is not proved. It is not rendered probable also. Such attempt in the course of arguments to claim such right of private defence does not generate any reasonable doubt in the mind of the court about the initial case of the prosecution.

50. This is not to say that an accused who does not admit his presence and who has not suffered the injuries is not entitled to claim the right of private defence. Section 97 of the Indian Penal Code makes it clear that the right of private defence is available not only to defend one's own body, but the body of any other person. If we were satisfied that the appellant was really attempting to defend the body of his mother Rohini against any offence affecting the human body apprehended from the deceased we would certainly have considered him entitled to the right of private defence under clause firstly of S.97. That plea has not been raised specifically. The evidence available does not indicate the probability of such a plea. The appellant must therefore be held to be not entitled to any right of private defence.

51. Having thus held that the appellant is not entitled to the right of private defence, it is unnecessary for this Court to delve deeper into the question whether he has exceeded his right of private defence. We take the view that he is not entitled to the right of private defence and hence there is no question of accepting his plea that he may only have exceeded the right of private defence entitling him to the mitigative protection of Exception 2 to S.300 I.P.C.

52. Before we proceed to consider the claim for protection of Exception 4, we need only mention that it is crystal clear that injuries were inflicted intentionally by the appellant on the deceased. Not a semblance of doubt exists on that aspect. The

injuries suffered, the evidence of PW3 and Ext.P3 postmortem certificate reveal convincingly, are sufficient in the ordinary course of nature to cause death. Injuries 7 and 13 were the fatal injuries suffered. We extract them from Ext.P3.

“7. Incised penetrating wound 2.3 x 0.6 cm x 4.5 cm, nearly horizontal on the left side of front of chest, its inner end was sharply cut which was placed 3 c.m. outer to midline, and 9 c.m. below inner end of collar bone. The outer end showed splitting to tissues. The wound entered the chest cavity by cutting the third rib at the costochondral junction for a length of 2.5 cm. The wound terminated on the front aspect of ascending of aorta by making a cut 2.5 x 0.5 c.m., 4 c.m. above its origin after transfixing the front part of left lung 2.2 c.m. x 0.5 c.m. The wound was directed upwards, backward and to the right, for a total minimum depth of 4.5 c.m. Mediastinum was infiltrated with blood. The left chest cavity contained 2 litres of fluid blood mixed with clots. The left lung was collapsed. Right chest cavity was empty and lung appeared normal.

13. Incised penetrating wound 2.2 x 0.5 x 4 c.m. obliquely placed on the front of left side of abdomen. Its lower inner end was clear cut and was placed 7 c.m. outer to midline and 14 c.m. below costal margin. Its back upper end showed splitting of tissues. The wound was directed upwards backwards and to the right and terminated by making a superficial cut of 0.8 c.m. x 0.2 c.m. on jejunal loop of small intestine, 15 c.m. distal to duodenojejunal junction.”

The evidence of the expert PW3 shows that those injuries were sufficient in the ordinary course of nature to cause death. Intentional injuries were caused. The deceased succumbed to those injuries. Those injuries are sufficient in the ordinary course of nature to cause death. The offence clearly falls within clause thirdly of S.300 I.P.C. if not, under clause firstly of S.300. The offence of culpable homicide amounting to murder defined u/S.300 I.P.C. is thus clearly established.

53. The last question to be considered is whether the offence u/S.300 I.P.C. can slide back to the offence of culpable homicide not amounting to murder u/S.299 I.P.C. by the play of Exception 4 to S.300 I.P.C. On this aspect the learned counsel for the appellant vehemently contends that at any rate, the appellant is entitled to the mitigative protection of Exception 4.

54. To attract Exception 4, the following ingredients must be shown to be established.

(i) There must be no pre-meditation.

(ii) There must have been a sudden fight upon a sudden quarrel.

(iii) The act must have been committed in the heat of passion.

(iv) The offender must not have

(a) Taken undue advantage; or

(b) acted in a cruel or unusual manner.

Each ingredient must be established. They must be shown to exist simultaneously and cumulatively. It is only on proof of all the 4 requisites that a successful claim for protection of exception 4 can be raised.

55. We come back to the specific facts again. That there was no pre meditation appears to be undisputed. It is clear as day light that the appellant could not have even anticipated the visit of the deceased to his house at that point of time. Whether the deceased had premeditated or not, it is evident that the appellant could not have premeditated or even anticipated that such an incident is likely to take place. That there was no premeditation is thus established convincingly in the facts and circumstances of this case.

56. We do not have details of the sudden quarrel, upon which the sudden fight commenced. But it is very evident that there must have been a sudden quarrel and upon that sudden quarrel, the sudden fight must have ensued. The very case of the prosecution eloquently establishes the fact that a sudden quarrel must have taken place unanticipated and upon such sudden quarrel, the sudden fight must have taken place. Fight there evidently was. Even going by the prosecution version, we can see the unfailing indications of a fight. It was not a mere wordy duel. Physical combat was there. The second ingredient that there was a sudden fight upon a sudden quarrel is thus established.

57. Coming to the third ingredient, the question is whether the Act was committed in the heat of passion. When an act can be said to have been committed in the heat of passion and when it can safely be held that passion must have waned and reason must have prevailed, is a question of fact to be decided in the facts of each case. No straight jacket formula or litmus test available to all situations can be formulated by any court. We have to bear in mind that exception 4 of S.300 I.P.C. recognises the principle that heat of passion may cloud sober reasons of persons and may urge them to do acts which they would not otherwise do normally if reason prevailed over them. Exception 4, it has often been repeated, is a humane provision to help an offender to claim mitigation (not absolution) when the act has been committed by him under the heat of passion which Act he may not have committed if sober reasons were permitted to prevail. In the instant case the deceased evidently had come to the appellant's house. A quarrel had ensued. Going by the Explanation to Exception 4, it is not even important as to who offered the provocation or who committed the first assault. In the instant case, the sudden quarrel and the sudden fight stemmed from the conduct of the deceased, who had gone to the house of the appellant on that night. Something happened there, which led to the sudden quarrel upon which the sudden fight ensued. Passion must have been running high. The strained relationship between the parties must, in these circumstances, be taken note of. The deceased was making a demand for return of an amount given a long time back even admittedly. If an ordinary mind were triggered by passion in such circumstances, we are unable to find anything inherently unnatural or improbable. We cannot lose sight of the fact that even according to the prosecution, Rohini, the mother of the appellant, had suffered injuries in the course of the incident, admittedly at the hands of the deceased as spoken to by PW1. This must have definitely caused adrenaline, to be pumped into the blood stream of the appellant justifying the contention of the counsel that there was heat of passion prompting the appellant.

58. Yes there was passion when the incident commenced. But was there not time for passion to die down and reason to prevail. The meager evidence presently available does not at all suggest that there was any such time available for passion to subside and reason to prevail. Even going by the version of PW1, it was a sudden incident-an integrally whole incident which could not be split into

parts to justify a contention that after any specific part of the incident there was time for reason to return and prevail.

59. A weapon was used. We have indications to suggest that the appellant did not have the weapon when the incident started. Even going by the version of PW1 in the course of the incident it came in handy for the appellant. Use of the weapon, in these circumstances, cannot certainly contra indicate the existence of the heat of passion.

60. A contention was raised in many cases that use of a weapon by the offender against an unarmed person can be said to contra indicate the heat of passion. That can be reckoned as an indication that undue advantage has been taken and the act was cruel and unusual. These are sufficient to exclude the protection of Exception 4, it was urged.

61. The question has been considered in detail in *Johny v. State of Kerala* (2010 (1) KLT SN 95 (C.No.116)=(2010 (1) ILR Ker.6371). The mere use of a weapon against an unarmed person, it has been held, does not necessarily exclude the application of Exception 4. The mere fact that the offence of murder was committed and plurality of injuries were inflicted cannot also take the case out of the sweep of Exception 4 on the ground that the act was cruel or unusual. Application of Exception 4 arises for consideration only after the offence u/S.300 I.P.C. is proved. Every murder in that larger and wider connotation is cruel and unusual. But cruelty and unusualness of a grave and exceptional variety will certainly have to be shown to take the case out of the sweep of exception 4.

62. To sum up, we note that there was no premeditation on the part of the appellant. Nay, he could not even have reasonably anticipated the unfortunate, incident. There was a sudden quarrel and a sudden fight upon such sudden quarrel as per all indications available though we have no ocular account of the manner in which that sudden quarrel and sudden fight developed before PW1 saw the infliction. The conclusion appears to be safe that there was a sudden quarrel and a sudden fight upon such sudden quarrel. Passion was evidently running high and the overt act seen by PW1 can evidently be described to be committed in the heat of passion. The appellant cannot be said to have taken any undue advantage

or acted in any exceptionally cruel or unusual manner. We do, in these circumstances, unhesitatingly agree that the appellant is entitled to mitigative protection of Exception 4 to Section 300 I.P.C.

63. Having held that the appellant is entitled to the protection of Exception 4, we are satisfied that the conviction and sentence imposed on the appellant under Section 302 I.P.C. deserves to be altered and modified to Section 304(1) I.P.C. The sentence imposed also therefore deserves to be modified and reduced.

64. Under Section 304(1) I.P.C. the sentence that can be imposed is imprisonment of life or imprisonment of either description for a term which may extend to 10 years. Offender is also liable for fine. We are satisfied in the facts and circumstances of this case that a sentence of R.I. for a period of 8 years on the young offender, who was aged 24 years on the date of the offence would serve the interests of justice eminently. The sentence of fine of ₹25,000/- and the default sentence does not deserve to be interfered with.

65. In the result:

a) This appeal is allowed in part;

b) The verdict of guilty is upheld. But the conviction and sentence are altered to Section 304(1) I.P.C.;

c) In supersession of the sentence of imprisonment for life imposed on the appellant, the appellant is sentenced to undergo R.I. for a period of 8 years under Section 304(1) I.P.C.

d) The sentence of fine imposed and the default sentence are upheld;

e) All other directions of the court below including the direction for set off are upheld.

65. Back to the parting thoughts that we referred to in the opening paragraph. If the indictee had a duty to reveal facts truthfully to the Court at least at the stage of trial, trial/guilt adjudication would have been a simpler and more business like mission in this case. An over involvement with possibilities and probabilities takes

away and detracts from the true mission of trial-of truth discovery. At least it retards the journey to the shores of truth and justice. There must be, we feel, an obligation for the indictee to co-operate in the truth discovery process by explaining his stand truthfully to Court with a price attached to non co-operation. Law must be the quintessence of the trained commonsense of the community. The wider the gap between the commonsense of the community and the complex law, the greater would be the harm to the authority of such law. The system would lose its credibility with the polity, if guilt adjudication remains just a complex forensic game with no real commitment to ascertainment of truth. The system does not have the luxury of time and material to indulge in the time and resource consuming present day game of guilt adjudication/trial. That is a luxury which the system can ill afford. Human rights of the many is important in that they have the right to live in a crime free society. Guilt adjudication must be an efficient business like mission with all safeguards against unjustified conviction. But under the ideal law that we visualize, no indictee can be permitted to claim any right to arrogantly not co-operate with the truth discovery process. An opportunity and obligation to plead true facts before the adjudicator is no denial of human rights, according to us. The sublime conscience of the community will also not be wounded by the law imposing such an obligation on the indictee. It is time that the meaningless, unnecessary and luxurious drama that goes on before criminal courts comes to an end and gives way to a more meaningful exercise with basic commitment to discover true facts and to usher in a crime free society. Independent India must be able to develop a system of administration of criminal justice which rhymes well with native concepts and norms of truth discovery and justice. The bitter star chamber experiences of our predecessor system cannot persuade us to fatalistically continue with a system that does not cater to our needs and is anachronistic.

66. Why are statements made to a police official inadmissible even now under the Indian law? The Britisher trusts his bobby; the American trusts his cop; but the Indian system with its imperial relic continues to completely distrust its police man. He cannot even take a signed statement from a witness. Can part of a system feed itself on a regular diet of distrust against another part? Such confirmed distrust, we feel, cannot beget anything other than irresponsibility from the police.

It is not necessary that we wait for the last Indian police official to transform and improve himself before the system sheds its distrust against the police. Inbuilt safety mechanisms can be devised to ensure respectability for statements given before police. To start with, the officers of the police above a particular level in the hierarchy alone can be permitted to record such signed statements of witnesses. An obligation can be imposed that such statements should be recorded in the hand of such superior police officer. Insistence can certainly be made that within specified hours of recording the statement, the statement must be placed before the Magistrate having supervisory jurisdiction. The Magistrate can be obliged to forward such statements to the maker of the statement with option to the maker to complain to the Magistrate about the inappropriate recording of the statement if any with specific statement about his version. Appropriate deterrence can be stipulated for recording statements incorrectly or falsely. The great distance between admissibility and acceptability can safely be left with the adjudicator. If necessary it can be insisted that if a person is ultimately arrayed as an accused, such statements shall not be admissible. Such inbuilt mechanisms can certainly improve the respectability of such statements before police. Independent India must be able to develop a credible police force charged with the solemn responsibility of conducting proper and truthful investigation. Efforts in that direction have to start at least now.

67. Before commencement of trial on the basis of the signed statements of witnesses, it is possible for the trial Judge to question an indictee and record his response in a manner identical with the questioning contemplated u.S.313(1)(a) of the Code of Criminal Procedure, which provision is practically getting rusted in the Code of Criminal Procedure without any alert use by the adjudicators. At this stage, the obligation to co-operate with the adjudicator must include the obligation to advance the true facts before Court. After ascertainment of response of the indictee, the prosecution can be expected or called upon to adduce evidence on the disputed questions alone.

68. Our grievance is that there is no willingness to think and innovate. There is no yearning to indianise the system of administration of criminal justice. We refuse to accept that Indian legal ingenuity is unequal to the task. Efforts are not

forthcoming and it is our anguish against that, that has prompted us to digress. We leave it there.

69. We direct the Registry to forward a copy of this judgment to the Law Commission of India to draw its attention to paras. 1 and 65 to 68.

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