

# Factors Responsible for Low Conviction Rates in Trials

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**Abstract:** The principle object of the criminal law is to protect society by punishing the offenders. But on the other side justice and fair play require that no one be punished without a fair trial. A person may be a suspect and may guilty of offence, there may be evidence against him but yet he is not punished unless and until he is tried and adjudged to be guilty by the competent court. In administration of justice it is the prime importance that justice should not only be done but it must appear to have been done. According to the NCRB statistics of the Crime for the year 2016, the conviction rate for the offence of Murder is 30%, of Rape are 23.9, of Rioting is 20.2% and of Kidnapping and abduction is 21.2% which is quite shocking.

**Keywords:** Low Conviction Rates, Trials

## I. INTRODUCTION

It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. Thus it becomes necessary to be brought before the court for trial and all material and statements collected as evidence against him is made available to the court so that the court can adjudicate upon guilt and innocence of the accused. And all this is done through the prosecuting agencies like police and pleaders. If they fail to adhere their duty as they required then it would be difficult for us to achieve our constitution mandate. However failure of duty is one thing but there are other factors too which can result in miscarriage to justice during trial. This article will try to discuss them.

## II. WHAT IS TRIAL?

Unfortunately the word trial is not defined either by the Code of Criminal Procedure, 1973 or in any other Acts. In case of *Vidyadharan v State of Kerala*,<sup>ii</sup> it was only stated that it is clearly distinguishable from Inquiry and inquiry must always be a forerunner to the trial.

### Factors responsible for Low Conviction Rate

A victim of crime when approaches the door of law with its grievance and request the agencies of justice to set law in motion, his or her faith and hopes were at extreme and he only dreamed to get the culprit punished for disturbing his personal dignity. No doubt few got succeeded and many fail even when they have concrete proof against the accused. Due to varieties of reasons which ultimately end in acquittal. Few of them are discussed as under: -

#### 1. Negligence of Duty by the In- Charge of Police Station

Section 154 of the Code of Criminal Procedure, the officer in - charge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence. Non registration of cases is a serious complaint against the police.<sup>1</sup> The National Police Commission of India in its 4<sup>th</sup> Report has pointed out that a complaint often heard against the police is that they evade registering cases for taking up investigation when specific complaints are lodged at the police station.<sup>2</sup> In the study conducted by the Indian Institute of Public Opinion, New Delhi, regarding "Image of the Police in India"<sup>3</sup> it found that over 50% of the respondents have mentioned "non-registration of complaints", as a common malpractice in police stations. Among the several malpractices it is ranked third, the first two places being taken by:-

- I. Showing partiality towards rich or influential people in cases involving them or reported by them, and
- II. Shielding goondas and other criminal elements concerned in gambling dens, illicit distillation, etc. This malpractice of non-registration arises from several factors, including the extraneous influences and corruption that operate on the system, besides the disinclination of the staff to take on additional load of investigational work in the midst of heavy pressure of several other duties. Among all such factors the most important one which accounts for a substantial volume of crime going

<sup>1</sup> Section 154, Cr.PC, 1973

<sup>2</sup> The National Police Commission of India, 4<sup>th</sup> Report, 1980

<sup>3</sup> Indian Institute of Public Opinion, "Image of the Police in India".(MHA , 1978 , New Delhi)

unregistered is the anxiety of the political executive in the State Government to keep the recorded crime figures low so as to claim before the State Legislature, the public and the press that crime is well controlled and is even going down as a result of 'efficient' police.

### III. POOR INVESTIGATION

Thus police often resort to short cut methods and exhibit negative traits of police sub - culture, namely, rudeness, use of, defensiveness in face of criticism, lack of innovativeness etc. Not only this in cases where the complaint about the commission of sexual offence against the women is reported accused is brought face to face with the victim and he is allowed to intimidate her or dissuade her from lodging the complaint. Also the investigation team not reaches on time. They even don't record and collect material evidences and statement of witnesses from the crime scene. The recent example of such public outcry against police system is the, *Parduman Murder case* where the finding of state police and the CBI varies from each other, earlier the *Arushi murder case* and the *brutal gang rape of a Para medical student in 2012* raise agitation against police System.

### IV. POOR COORDINATION BETWEEN THE PROSECUTOR AND THE INVESTIGATING OFFICER

The 1<sup>st</sup> foremost important factor for the success of the prosecution is proper coordination between the prosecutor and the Investigating Officer. The papers before filing in Courts would be scrutinized by the Prosecutor, and advice given wherever any deficiencies came to be noticed. Only after the rectification of the same, would the papers filed in Court. The Prosecutor would keep a close watch on the proceedings in the case, inform the jurisdictional police, and get the witnesses on dates of trial, refresh the memory of witnesses where necessary with reference to their police statements, and examine the witnesses, as far as possible at a stretch.<sup>4</sup> But now a days it is not practiced as stated. Moreover the ingredients of the offence are not clearly brought out in the charge sheet or in the supporting documents, due to which the cases results in acquittals. Also at times the IO is indifferent to the court proceedings and has to be summoned to court to give evidence. When the officials come to depose, they are not prepared with the facts of the case and hence fumble, making mistakes which prove detrimental to the case. Trainee doctors in public hospitals, who are generally on duty at night when cases are brought in, sign the medical reports. But when the case comes up for trial, they may have completed their internship and might have returned to their

native place. Tracking them becomes difficult and proving the medical report without their help is a major problem in court, despite the medical documents supporting the prosecution version. She added that doctors feel intimidated during cross examinations and there is a general fear of courts in the minds of most doctors. Only a few medical officers are well versed with the process of cross examination. At times the family forces the victim not to give evidence, especially when the accused is a family member, near relative or an influential person in the community.

### V. POOR PROSECUTION

So far as the system of prosecution is concerned, it is often seen that best legal talent is not availed of for placing its case before the court. The accused is normally represented by a very competent lawyer of his choice. There is a mismatch in that; an equally competent lawyer is not there to represent the prosecution. The burden of proof being very heavy on the prosecution, it is all the more necessary for the prosecution to be represented by a very able and competent lawyer. Lack of co-ordination between the investigation and the prosecution is another problem. This makes things worse. The investigation of a criminal case, however good and painstaking it may be, will be rendered fruitless, if the prosecution machinery is indifferent or inefficient. One of the well-known causes for the failure of a large number of prosecutions is the poor performance of the prosecution. In practice, the accused on whom the burden is little he is not to prove his innocence engages a very competent lawyer, while, the prosecution, on whom the burden is heavy to prove the case beyond reasonable doubt, is very often represented by persons of poor competence, and the natural outcome is that the defence succeeds in creating the reasonable doubt on the mind of the court. When the accused appears or is brought before the court in pursuance of a commitment of the case. The prosecutor open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. Thus the prosecutor plays a key role in the criminal justice system. Because he or she decides who will be charged, what charge will be filed, who will be offered a plea bargain, and the type of bargain that will be offered. The prosecutor also may recommend the offender's sentence. In *Babu vs. State of Kerala*,<sup>5</sup> the Court observed that "Public Prosecutors are really Ministers of justice whose job is none other than assisting the state in the administration of Justice. They are not representative of any party. Their job is to assist the court by placing before the court all relevant aspects of the case. They are not there to see the culprits escape conviction." In *Balvant Singh vs. State of Bihar*<sup>6</sup>, the Hon'ble Supreme Court has pointed out that it is the statutory responsibility of the

<sup>4</sup> Justice V.S. Malimath Committee Report on, "Reforms of Criminal Justice System", 125 Vol - 1, March 2003, New Delhi

<sup>5</sup> 1984 Cr LJ (Ker H.C)

<sup>6</sup> AIR 1977 SC 2265

public prosecutor alone to apply his mind and decide about the withdrawal of prosecution and his power is non – negotiable and cannot be bartered away in favour of those who may be above him on administrative side. In *Subhash Chander vs. State*<sup>7</sup>, the Supreme Court stated that it is the public prosecutor alone and not any other executive authority that decides withdrawal of prosecution. In doing so, he acts as a limb of the judicial process and not as an extension of the executive. The fact that the “prosecutor controls the doors to the courthouse” may be particularly important in cases in which the credibility of the victim is a potentially important issue, such as sexual assault cases.

#### VI. ADJOURNMENTS OF COURT PROCEEDING DURING THE COURSE OF TRIAL

Public expects and deserves speedy trial and quick justice. Delay is a denial of justice. There are two problems about which every one complains. The first is posting large number of cases which everyone knows cannot be dealt with on that day for sheer want of time. This leads to the Court wasting considerable time in calling the cases. The second problem relates to frequent adjournments. A notorious problem in the functioning of the courts, particularly in the trial courts is the granting of frequent adjournments, mostly on flimsy grounds. Adjournments contribute to delays in the disposal of cases. They also contribute to hardship, inconvenience and expense to the parties and the witnesses. The witness has no stake in the case and comes to assist the court to dispense justice. He sacrifices his time and convenience for this. If the case is adjourned he is required to go to the court repeatedly. He is bound to feel unhappy and frustrated. This also gives an opportunity to the opposite party to threaten or induce him not to speak the truth. The right to speedy trial is thwarted by repeated adjournments. Adjournment is a curse of the courts. Section 309 of the Code regulates adjournments and provides that adjournment should be granted only when the court finds it necessary or advisable for reasons to be recorded. It also gives discretion to the court to grant adjournment subject to payment of costs.<sup>8</sup> However these conditions are not strictly followed and the bad practice continues. In *Vinod vs. State of Punjab*,<sup>9</sup> the Supreme Court observed that Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination – in - chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. In fact, it

is not all appreciable to call a witness for cross-examination after a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross - examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake Arise" There is a constant discomfort Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross- examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.

#### VII. WITNESS GETTING HOSTILE

Witness is an important constituent of the administration of justice. By giving evidence relating to the commission of the offence he performs a sacred duty of assisting the court to discover truth. The National Police Commission in its 4<sup>th</sup> report referred to the inconveniences and harassment caused to witnesses in attending courts. The Commission reproduced a rather critical and trenchant letter it received from a senior District and Sessions Judge. The learned judge gave a litany of grievances and complaints that a witness may have and then said that:-<sup>10</sup>

“A prisoner suffers from some act or omission but a witness suffers for no fault of his own. All his troubles arise because he is unfortunate enough to be on the spot when the crime is being committed and at the same time ‘foolish’ enough to remain there till the arrival of the Police.”

There are three categories of witnesses: -<sup>11</sup>

- i) Victim-witnesses who are known to the accused;
- ii) Victims-witnesses not known to the accused (e.g. as in a case of indiscriminate firing by the accused) and
- iii) Witnesses whose identity is not known to the accused.

<sup>7</sup> AIR 1980 SC 423

<sup>8</sup> Section 309. The Code of Criminal Procedure, 1973

<sup>9</sup> Vinod Kumar vs. State of Punjab, (2015) 3 SCC 220

<sup>10</sup> The National Police Commission of India, 4<sup>th</sup> Report,

1980

<sup>11</sup> Law Commission of India, 198<sup>th</sup> Report on, “Witness Identity and Witness Protection Programmers”, 4 (August 2006, New Delhi)

Category (i) requires protection from trauma and categories (ii) and (iii) require protection against disclosure of identity. Thus due to the perjure a witness have to face during the course of trail, he chooses to hostile to keep himself apart from the trial.

### VIII. CONCLUSION

The main objective of the criminal trial is to determine whether an accused person has violated the penal law and where found guilty, to prescribe the appropriate sanction. Prosecution is an executive function of the state and is usually discharged through the institution of the prosecutor. The burden of proof rests on the prosecution as per the prescribed standard of proof. The prosecutor faces several problems in proving the guilt of the accused person. Some of these problems fall beyond the scope of his duties and responsibilities. The legal framework, the law enforcement infrastructure and the quality of the personnel operating within the legal system, amongst other factors, considerably affect the conviction rate.<sup>12</sup> Over the years, courts in India have consistently held that sexual offences ought to be dealt with sternly and severely as undue sympathy to impose inadequate sentence and do more harm to the system and undermine public confidence in the efficacy of law.<sup>13</sup>

1. The conviction rate is largely affected by the quality of investigation, Insufficiency of evidence due to poor investigation and the standard of proof prescribed by law to send the case to trial.
2. Poor Prosecution due to a total lack of coordination between the investigator and prosecutor.
3. The propensity of offenders to plead guilty also has a significant bearing on the conviction rate. This is totally out of row.
4. The present level of application of forensic science in crime investigation is some-what low in the country, with only 5-6% of the registered crime cases being referred to the FSLs and Finger Print Bureau put together.
5. Witness turning hostile. May be due to threat from other side and at times the family themselves forces the victim not to give evidence, especially when the

accused is a family member, near relative or an influential person in the community?

6. Judges do not deliver Judgments for years. As a result the Judge may forget important aspects thereby contributing to failure of justice. Also the Judgments are not promptly signed after they are typed and read causing great hardship to the parties.

In *Dhananjay Chatterjee vs. State of W.B.*<sup>14</sup>, the Supreme Court opined that shockingly large numbers of criminals go unpunished thereby increasingly encouraging the criminals and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

No doubt that despite all odds the Judiciary in India plays a significant role in protecting human rights. The Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen. Out of the three organs of Government, the judiciary has become a vanguard of public life. But it is an admitted fact that the Conviction rate in offences in the country still very low in the country but it is also true that for such rate the judiciary alone cannot be held responsible as the conviction and acquittal in a trial is only based upon the evidences collected by the investigating agency during investigation of the offence more over turning witness hostile also plays a significant role. Also there is some error on part of judiciary too like easily allowing Bail to the accused of grave offence as a result of which the accused further influences the witness even when the offence is categories as Non Bailable.

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<sup>i</sup> NCRB Report , 2016, xxxvi

<sup>ii</sup> 2004 SC 536

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<sup>12</sup> Kyoji Ishikawa, "Issues Concerning Prosecution in relation to Conviction, Speedy Trial and Sentencing" (107<sup>th</sup> ITC, UNAFEI, 1997, Japan)

<sup>13</sup> Justice J.S Verma, "Report of committee on Amendment in Criminal Law 2013", New Delhi 2013

<sup>14</sup> (1994) 2 SCC 220