# Dr. C.B. Tripathi, Professor and Head of the Department of Forencic Medicine Institure Medical Science, Banars Hindu University Vs State of U.P. and Vishwanath Shukla

**Court:** Allahabad High Court

**Date of Decision:** Sept. 7, 2005

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€" Section 195(1), 195(4), 340, 340(1), 340(2)
Penal Code, 1860 (IPC) â€" Section 193

**Hon'ble Judges:** Amar Saran, J

**Bench:** Single Bench

**Advocate:** H.K. Sharma, for the Appellant; L.B. Lal and R.S. Maurya and A.G.A., for the Respondent

**Final Decision:** Allowed

## Judgement

Amar Saran, J.
This appeal has been filed u/s 341 of the Code of Criminal Procedure by the appellant Dr. C.B. Tripathi against the order

dated 24.1.2004 passed by the Additional Sessions Judge, Court No. 5, Varanasi on an application u/s 340 Cr.P.C. whereby the learned Judge

directed the appellant and two others Vishwanath Shukla and Rajesh Shukla to be prosecuted by the Chief Judicial Magistrate, Varanasi and

directed them to file their personal bail bonds of Rs. 10,000/- and two sureties each of the like amount for their appearance before the court

concerned.

2. An impleadment application was moved by Shambhu Nath Rai, the applicant in the application u/s 340 Cr.P.C in this appeal u/s 341 Cr.P.C.

and an order was passed by this Court on 4.3.2005 for impleading Shambhu Nath Rai as opposite party.

3. I have heard Shri H.K. Sharma, learned counsel for the appellant, Shri L.B. Lal and Shri R.S. Maurya for the newly impleaded opposite party

Shambhu Nath Rai and learned Additional Government Advocate.

4. The law u/s 340 Cr.P.C. is very clear that proceedings for giving false evidence or perjury etc. can only be initiated u/s 195(1)(b) of the Code

of Criminal Procedure only when the court is of the opinion that it is expedient in the interest of justice that such an enquiry be made. It is not an

order which is to be passed in a routine manner as soon as a complaint is made that an offence mentioned u/s 195(1)(b) has been committed.

5. The allegations in the application u/s 340 Cr.P.C by Shabhu Nath Rai dated 8.7.97 insofar as they relate to the appellant were essentially that

the appellant had prepared a false medical report on 30.7.1984 describing fire arm injuries on the injured Rajesh Shukla, which did not precisely

correspond with the injuries noted by the appellant in the accident register on 24.7.84, and the X-Ray was also shown to have been advised for

parts of the body different from that noted in the original injury report dated 24.7.84. On the allegations in the present case, it is argued by the

learned counsel for the appellant that there was no such expediency for initiating proceedings u/s 340 of the Code of Criminal Procedure. It may

be noted that the incident in question, when the appellant is said to have given false medical report, was of 24.7.1984 and 30.7.1984. The

judgment of the trial court was of 8.11.1988. However, the application for launching a prosecution u/s 340 Cr.P.C was dated 8.7.1997, and the

order has been passed u/s 340 Cr.P.C. by the successor court on 24.1.2004, i.e. after a period of 20 years from the date of incident and 16 years

from the date of judgment. Even the application for initiating prosecution u/s 340 Cr.P.C was moved after 13 years. On these circumstances alone,

it can safely be held that there can be no expediency for lodging the complaint against the appellant at this stage. We also note that ordinarily such a

complaint should be lodged by that very trial court, which had delivered the judgment, and before whom the alleged false evidence was given, and

Section 340(2) enjoins that if there has been a failure of the concerned Court to pass such an order, it is usually the superior and not the successor

Court which should pass such orders to make such a complaint, if it is satisfied on merit that such a complaint be made. In this regard Section

340(2) of the Code of Criminal Procedure may be usefully perused:

340(2)-: The power conferred on a Court by Sub-section (1) in respect of an offence may, in any case where that Court has neither made a

complaint under Sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court

to which such former Court is subordinate within the meaning of Sub-section (4) of Section 195.

6. Moreover, even on facts, I find that no good ground has been made out for allowing the application u/s 340 Cr.P.C. All that had been stated in

the earlier judgment dated 8.11.1988 was that Ext. Ka-4 was not the true copy of the original injury report in the true sense and, therefore, it could

not be legally used in evidence against the accused and although the injured Rajesh Kumar Shukla, P.W. 2 had actually been medically examined

by Dr. C.B. Tripath, the appellant in this case , on 24.7.84, but its copy (Ext. Ka- 4) was prepared on 30.7.1984 and on perusal of the document

it showed that injuries were on the right leg, right forearm and right foot, but Dr. C.B. Tripathi had advised x-ray of left leg, left forearm and right

foot.

7. Also as according to the X-Ray note (Ext. Ka-4) multiple radio opaque foreign bodies are shown in left leg, left forearm, left hand and right foot

and solitary radio opaque foreign body was seen in the right leg the trial court felt that it was inconsistent with the place on which the injuries had

been caused. Even, if it is admitted that there was some inconsistency as alluded to above, in my opinion, this could have provided a ground for

acquittal of the accused Shambhu Nath Rai, but it could not provide a basis for directing initiation of criminal proceedings against the applicant u/s

340 Cr.P.C. Nothing material turns on these minor discrepancies, which may have occurred when transcribing the original injury report or its copy

(Ext Ka 4).

8. It may be noted that unless there is clear evidence of deliberate and malicious fabrication of false evidence as required u/s 193 IPC, no case u/s

193 would be made out. If the injured had not received injuries, and the appellant wanted to give a false medical report, he was not likely to have

run the risk of recording a finding in his injury report that the injuries were of fire arm injury and that x-ray should also be done. Normally, if a

doctor is interested in concocting false evidence, he may mention that there are some marks of contusions or other injuries, which would easily

disappear after some days and such a doctor would escape being caught in the trial, by taking the plea that the injuries must have disappeared

subsequently. But when as in the present case the doctor notes that there are fire arm injuries, and he himself directs that x-ray should be done on

different parts of the body of the injured, this clearly suggests that the doctor is giving the medical report in a bona fide manner on the basis of his

actual examination of the injured, and is therefore unafraid to note that the injuries are due to fire arm, and that X-Ray be conducted. Some

discrepancies with the noting in the accidental register, which was initially prepared on 24.7.1984 and the injury report, which was given on

30.7.1984 (Ext. Ka- 4) could be a mistake, but the forthright stance taken by the doctor clearly demonstrates its bona fide nature, and his

willingness to stand by his evidence and opinion that he had noted fire arm injuries on the injured.

9. In this view of the matter, I am of the opinion that this is not a case in which the order dated 24.1.2004 u/s 340 Cr.P.C passed against the

appellant by the Additional Sessions Judge, Court No. 5, Varanasi, directing the C.J.M. Varanasi for initiation of criminal proceedings for giving

false evidence can be sustained and accordingly this appeal is allowed and the aforesaid order dated 24.12004 is set aside. The appellant need not

appear before the C.J.M, Varanasi for his prosecution as directed by the aforesaid order.