

Karan Singh Vs State of Uttar Pradesh and Others

Court: Allahabad High Court

Date of Decision: Aug. 13, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 156, 173, 195, 311, 340

Evidence Act, 1872 â€” Section 165

Penal Code, 1860 (IPC) â€” Section 182, 193, 195, 211, 323

Hon'ble Judges: Imtiyaz Murtaza, J; Amar Saran, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Imtiyaz Murtaza and Amar Saran, JJ.

We have heard learned AGA and Sri D.K. Singh,, Joint Registrar (Inspections), High Court,

Allahabad.

2. An application supported by an affidavit of Sri S.C. Misra, Spl. Secretary (Home), Civil Secretariat, Lucknow, dated 13.8.2007 has been filed

praying for 6 weeks" further time for giving detailed information with regard to withdrawal of prosecutions against the elected public

representatives who were elected in the recent assembly elections, as directed by our order dated 16.7.2007, and also about their criminal

antecedents. We think that said time of 6 weeks sought is excessive, and we grant only four weeks time to the State Government to furnish the

information sought by our earlier order dated 16.7.2007.

3. A compliance report prepared by the Joint Registrar (Inspections), Sri D.K. Singh, has also been received, which mentions that in furtherance of

our order dated 16.7.2007, the Registry has received copies of judgments from 27 judgeships between 30.7.2007 and 2.8.2007. As copies of the

judgments were to be received from 11 districts, letters were sent to these judgeships on 2.8.2007, but in spite of the aforesaid reminders, copies

of the requisite judgments/orders have not been received from six judgeships, namely, Basti, Budaun, Hathras, Kush Nagar, Rampur and Sant

Kabir Nagar. Again a reminder be sent to these judgeships with a warning that if there is any further delay in complying with the orders of this

Court, we will have no option but to refer this lapse of the concerned district and trial judges to their Administrative Judges and Administrative

Committee of the High Court for appropriate action.

4. So far as the matter relating to the withdrawal of prosecutions is concerned, copies of the orders have only been received from 2 judgeships viz.

Kushi Nagar and Bulandshar and orders are still awaited from 7 districts for which letters have been sent to those districts. We hope, that by the

next date of listing the orders regarding withdrawals of prosecutions shall be received from the remaining 7 districts also.

5. So far as getting the cases listed wherein the trials have been stayed in cases against the public representatives by this Court, it is informed by the

Joint Registrar (Listing) that the said cases have been directed to be listed before concerned Benches of this Court and dates have been fixed in

those cases. We hope that the said cases shall be disposed of expeditiously. In case the said cases involving public representatives are not being

taken up by the concerned benches, because of excess of work or any other reason, the Hon"ble Chief Justice may be requested to assign the said

Cases to a particular Bench if possible, for expeditious disposal of the matters.

6. An alarming state of affairs has been revealed on a perusal of the judgments which have been sent by the trial courts in the matters of the i public

representatives. Out of the 66 judgments which have been received so far, as many as 65 cases have ended in [acquittals. Very few of these

acquittals relate to cases where the politician was involved for participating in a political demonstration or cases of electoral or political rivalries.

The cases where he has been acquitted are murders, cases, of robbery, dacoity, and grabbing, abductions, extortions, crimes where grievous or

simple injuries have been caused to the victims, intimidation and violence against members of schedules castes. In many cases the accused are

involved in repeated offences, and it appears that the political career has been chosen as a passport by persons with criminal antecedents to

forcibly obtain an amnesty for then: crimes, and perhaps to continue their career of crime with impunity, with the help of cronies and henchmen, and

with the belief, which is sadly being confirmed in practice, that the law cannot touch them now. The large majority of cases have been acquitted

because the witnesses appear to have been coerced to turn hostile. It seems that the problem of hostile witnesses has become a cancer which has

afflicted our legal system, and appears to be virtually all-pervasive in the case of politically influential accused. In this otherwise bleak and dark;

scenario only in a solitary case, S.T. No. 458B of 2000, Sri Nairn Kumar Srivastava, Additional Sessions Judge, Fast Track Court No. 1,

Fatehpur, who we will have to rate as an outstanding officer, has shown the integrity and courage to record a conviction of imprisonment for life

and a fine of Rs. 10,000 each u/s 364 IPC, and to 1 year R.I. and a fine of Rs. 1000 each u/s 323 IPC against the politically powerful accused

Raj Narain and others even when some of the abductees who had initially nominated the accused, had later turned hostile for obvious reasons but

who were medically examined for their injuries after being recovered which corroborated the fact of their abductions, by relying on the decisions of

this Court and the Apex Court that it is possible to record a conviction by relying on that part of the testimony of a hostile witness, which appears

believable and which is corroborated by circumstances. The same accused has however succeeded in securing acquittals from other Courts in

three other cases in which he was involved, on merit or on account of the witnesses turning hostile.

7. This is a matter of grave concern as it confirms our worst fears that persons with political or financial clout are able to bend the judicial system at

will, and to win over witnesses by money, muscle or political power and secure desired acquittals. Such acquittals by compelling witnesses to turn

hostile carry the danger of nullifying the deep concern of this Court, and also of the apex Court for checking criminalization of our polity and for

preventing law breakers from becoming law makers. Regrettably negligible resistance has been shown by our subordinate judiciary to prevent this

unfortunate development and they seem happy to meekly surrender to this nefarious game of "breaking" witnesses by the politically powerful

accused and to have readily recorded acquittals in such a large number of cases, even though this Court has been monitoring their trials and calling

for copies of the judgments. It is also equally tragic to find that even those members of our political elite who have clean antecedents have done

nothing to put their house in order by taking action against these offenders from their ranks who cast a slur on the political class as a whole, and

have refused to bring out a law for ousting political representatives from political posts who have been charge sheeted even in grave offences, and

allowed them to continue in their offices, until their conviction is actually secured, to secure which as things stand today, needs a miracle.

8. There appears great substance in these lines quoted in *Zahira Habibullah Sheikh and Another Vs. State of Gujarat and Others*, from "*Zahira*

Habibullah Sheikh v. State of Gujarat:

22. It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep promise to justice and it cannot stay petrified

and sit non-challantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope

(See *Jenniso v. Backer* 1972 (1) AER 1006. Increasingly, people are believing as observed by SALMON quoted by Diogenes Laertius in "*Lives*

of the Philosophers"" laws (ire like spiders" webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through

and get away"". Jonathan Swift, in his ""Essay on the Faculties of the Mind"" said in similar lines: ""Laws are like cobwebs, which may catch small flies,

but let wasps and hornets break through.

(Emphasis added)

9. From a perusal of the judgments of acquittal recorded by the trial judges we further note:

(a)The trial judges have not taken any steps for ensuring that the Investigating officers produce the witnesses in Court on the dates fixed and

provide protection to them as per our direction No. 6 to the PGP in our order dated 31.8.2006, whereby we had directed that the investigating

officers ensure production of the witnesses and provide witnesses with protection. From the scale at which the witnesses have been turning hostile

in various cases we are doubtful if the DGP has issued effective instructions for monitoring this matter as directed by this Court.

(b)No steps appear to have been taken for cancellation of the hails of the accused where the witnesses have been turning hostile en bloc most

probably due to political influences or other extraneous pressures, in breach of direction No. 5 in our order dated 31.8.2006. In this connection

reference may be made to various decisions of the apex Court (some of which were mentioned in our earlier order dated 31.8.06), viz. Gur Charan

v. State AIR 1978 SC 179, Mahboob Dawood Shaikh v. State of Maharashtra AIR 2004 SC 2890, Panchanan Misra v. Digambar Misra AIR

2005 SC 1299 , Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, that if there are apprehensions in the mind of the

prosecution that the accused are tampering with witnesses who are turning hostile, it would tie desirable for the appropriate Courts to cancel the

bails granted to the accused.

10. In State (Delhi Administration) Vs. Sanjay Gandhi, , it has been observed that the ground for cancellation of a bail granted to an accused need

not be prayed with mathematical certainty or even beyond reasonable doubt and the allegations of tampering with the witnesses may be established

by a mere preponderance of probabilities as in a civil case. On such tests the bail granted to the accused in Sanjay Gandhi"s case (supra) was

cancelled.

11. (c) No effort appears to have been made by the trial courts to follow the principles laid down in various decisions of the Apex Court on how

to deal with cases where witnesses are turning hostile and to actively search for the truth, and the direction of the apex Court in Zahira Habibullah

H. Shaikh v. State of Gujarat AIR 2004 SC 3114, that the court was not merely to act as a tape recorder for recording the evidence overlooking

that the object of the trial was to reach the truth, appears to have been blissfully ignored. The trial courts appear to have meekly surrendered to the

wiles and machinations of powerful accused and to have readily passed orders of acquittal when the witnesses started turning hostile. The Courts

have ignored its mandate which is to search for truth and justice and with this end to direct further investigation if necessary at the stage! prior to

cognizance u/s 156(3) Cr.P.C. or subsequently u/s 173(8) Cr.P.C. The latter provision also confers powers on the investigating agency to further

investigate a case even after submission of a charge sheet or final report, during | the pendency of a trial in Court. The provisions of Section 311

Cr.P.C have also been ignored which confer wide discretionary powers on the Court for summoning a witness at any stage of trial or inquiry or to

examine any person present, or recall any person already examined and which makes it obligatory for the Court to exercise such powers if the

Court considers his evidence essential for the just decision of the case. Again u/s 165 of the Evidence Act plenary powers have been conferred on

the Judge to put any questions he pleases in any form, or order production of any document for proof of relevant facts, and neither party is entitle

to object to the production of such evidence if it is otherwise not in admissible. Power to seek additional evidence has even been conferred on the

superior Court u/s 391 Cr.P.C.

12. Sometimes it is argued that this would result in filling up lacunae, but as appropriately observed in paragraph 26 in Zahira Habibullah Sheikh

and Another Vs. State of Gujarat and Others, that it is the prerogative of the Court to recall or summons a witness under the second part of

Section 311 Cr.P.C. because it considers his evidence essential. As aptly observed in Zahira's case (supra):
""Sometimes the examination of

witnesses as directed by the Court may result in what is thought to be ""filling of loopholes"". That is purely a subsidiary factor and cannot be taken

into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the

Presiding Judge.

13. The width and amplitude of powers u/s 311 Cr.P.C. and 165 of the Evidence Act have been(thus described in the earlier ""Zahira Habibulla H.

Sheikh v. State of Gujarat"" case reported in AIR 2004 Supreme Court 3114 at paragraph 46:

Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary

materials have to play an active role in the evidence collecting process. They have to monitor proceedings in aid of justice in a manner that something,

which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings

effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the

prosecuting agency or the prosecutor is not acting in the requisite manner. The Courts cannot afford to be wishfully or pretend to be blissfully

ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and

acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands to such

prosecuting agency showing indifference or adopting an attitude of total aloofness.

(Emphasis added)

14. The need, justification and philosophy calling the Courts to take a pro-active interest in reaching for the truth in each case has again been

elaborately elucidated in paragraphs 33, 34 and 38 of *Zahira Habibullah Sheikh and Another Vs. State of Gujarat and Others*, which we quote in

extenso:

33. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties,

crime being a public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to

the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the

community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona

non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often

referred to as the duty to vindicate and uphold the "majesty of the law. Due administration of justice has always been viewed as a continuous

process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it.

If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording

machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct

conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts

administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair

trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

34. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a

citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to

be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be

determined in seemingly infinite variety of actual situations with the ultimate object in mind viz., whether something that was done or said either

before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is

only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their

family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the

accused as is to the victim and the society. If a fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of

judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is

eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear, material

witnesses is certainly denial of fair trial.

38. "Witnesses" as Bentham said : are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness

himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can, constitute a fair trial. The

incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or

due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on

account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in

power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and

stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require

that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not

suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration

of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule

of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when

serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs

and that the trial is not reduced to a mockery. Doubts are raised about the roles of investigating agencies. Consequences of defective investigation

have been elaborated in *Dhanaj Singh @ Shera and Others Vs. State of Punjab*, It was observed as follows: 2004 AIR SCW1609 ""5. In the case

of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person

solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly

defective."" (See *Karnel Singh Vs. State of M.P.*,

(Emphasis added)

15. How the evidence has to be considered and adjudged in cases where witnesses are turning hostile has been elaborately discussed in several

recent and earlier decisions of the Apex Court, inter alia which are the following : *Deepak Chandrakant Patil Vs. State of Maharashtra*, *Ramashray*

Yadav and Others Vs. State of Bihar, *Ravindra Shantram Sawant Vs. State of Maharashtra*, *Ajit Savant Majagavi Vs. State of Karnataka*, ; State

of *Gujarat Vs. Anirudh singhh and another*, *State of U.P. Vs. Ramesh Prasad Misra and another*, *Birendra Rai v. State of Bihar* AIR 2005 SC

1284 wherein it has been emphasized that an unscrupulous accused cannot be allowed to get away lightly only because he has succeeded in

winning over the witnesses, and they have turned hostile and have thereby refused to support the prosecution case. In *Ramesh Prasad Mishra*, *Ajit*

Savant Majagavi, *Deepak Chandrakant Patil*'s cases (supra) it has even been emphasized that when witnesses including eye witnesses are turning

hostile, the Court may still record the conviction on the basis of the circumstantial evidence on record, as circumstances speak the truth whereas

persons may engage in falsehoods. The Court needs to search for ""nuggets of truth"" and rely on any part of the evidence that may be believable, as

there is no law that the entire evidence of a hostile witness needs to be discarded when he is declared hostile and the prosecution chooses to cross-

examine him [Vide *Bhagwan Singh Vs. The State of Haryana*, *Shri Rabindra Kumar Dey Vs. State of Orissa*, and *Syad Akbar Vs. State of*

Karnataka, In this connection it has been felicitously expressed in *State of Rajasthan Vs. Bhawani and Another*,

The fact that the witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the

witness, no doubt furnishes no justification for rejecting en bloc the evidence of the witness. But the court has at least to be aware that prima facie,

a witness who makes different statements at different times has no regard for truth. His evidence has to be read and considered as a whole with a

view to find out whether any weight should be attached to the same. The court should be slow to act on the testimony of such a witness and,

normally, it should look for corroboration to his evidence.

(d) No steps appear to have been taken for prosecuting the witnesses for perjury u/s 193, 94 or 195 I.P.C. for giving false evidence at any stage

of the judicial proceedings or u/s 182 or 211 IPC for lodging a false report or false complaint in accordance with the provisions of Section 340

and 195 Cr.P.C. This has specifically been recommended, by the apex Court in *State of Madhya Pradesh Vs. Badri Yadav and Another*, , *Yakub*

Ismailbhai Patel Vs. State of Gujarat, *Ranjit Singh Vs. The State of Punjab*, and other cases.

(e) There is also no indication that in any case of acquittal, a recommendation has been made to the public prosecutor to file a government appeal

on the ground that the witnesses appear to have turned hostile en bloc, apparently for political reasons. In the case of *Sunil Kumar Pal Vs. Phota*

Sheikh and Others, , the acquittal was set aside, because the witnesses had turned hostile en masse and it was aptly observed by the apex Court,

in paragraph 9, that ""It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to

subvert the legal process. No citizen should go away with the feeling that he could not get justice from the court because the other side was

socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law.

16. Retial was also ordered in AIR 2004 Supreme Court 3114 ""*Zahira Habibulla H. Sheikh v. State of Gujarat*"" where the witnesses had turned

hostile, and there was apprehension of tampering with the witnesses. It was considered a tailored acquittal which had resulted in a travesty of the

truth and the following observations were made by the Apex Court whilst setting aside the acquittal:

67. It is no doubt true that the accused persons have been acquitted by the trial Court and the acquittal has been upheld, but if the acquittal is

unmerited and based on tainted evidence, tailored investigation, unprincipled prosecutor and perfunctory trial and evidence of threatened/terrorised

witnesses, it is no acquittal in the eye of law and no sanctity or credibility can be attached and given to the so-called findings. It seems to be nothing

but a travesty of truth, fraud on legal process and the resultant decision of courts-coram non judis and non est. There is, therefore, every

justification to call for interference in these appeals.

17. We, therefore, direct the Registry to seek detailed explanations from all the aforesaid sessions and other trial judges who have recorded

acquittals in the cases aforementioned, principally on the ground that the witnesses have turned hostile, as to why they have not taken any steps on

the aforesaid points mentioned at points (a) to (e) hereinabove. In case they have taken any steps to comply with the points (a) to (e), the steps

taken may be elucidated.

18. We would also like a response from the DGP and the State of U.P. as to what steps have been taken for ensuring that witnesses are not put

under any pressure by politically influential accused, they are produced in Court on the dates fixed by the investigating officers and the witnesses

are given witness protection.

19. We would also like to know of the steps taken by the State government to file government appeals where politically well connected accused

are able to secure acquittals on the ground that witnesses have turned hostile en masse or on other untenable grounds. The commitment, alacrity

and absence of discrimination on party lines in cases where the government files appeals against the accused who appear to have been acquitted

on untenable grounds, sets up a witness protection programme, and ensures! that politicians of any political party who are involved in crimes are

punished for their misdeeds will be the real test for judging whether the present government is serious about its avowed commitment for curbing

criminalization of the political space, or is it indulging in mere words for public consumption or for furthering a campaign of vendetta against political

opponents.

20. We would also like the registry to furnish to us in a tabular form the list of cases, where judgments have been pronounced mentioning the name

of the particular political representative involved, his political post, the Case trial number, the designation of the Court which has decided the case,

the name of the Judge, the sections of the crime, whether acquittal or conviction has been recorded, and whether the acquittal was on merit or

because the witnesses had turned hostile. I I

21. The State is also directed to ""expeditiously make payments on the pending expense demands raised by Sri Prakash Singh Retd DGP, on

behalf of the Advisory committee appointed by this Court.

22. List this case for orders and for receiving compliance reports and explanations on the queries sought on 17.9.2007.