

CASE COMMENT: SUNIL KUMAR PAL VS. PHOTA SHEIKH AND ORS.

M. Madusubaasini***INTRODUCTION**

This case¹ is an appeal by special leave from a judgement of a Division Bench of Calcutta High court dismissing an application for leave to appeal made by the appellant under section 401 of Crpc, 1973², against the order of acquittal made by the Additional Sessions Judge, Nadia in sessions case No. 20 of 1977 filed against the respondents' Nos. 1 to 9. This case dealt with the professional misconduct of police, magistrate, and public prosecutor. Easily summarised facts that information backs up this appeal include the following.

FACTS OF THE CASE

On the evening of August 29, 1975, the appellant's younger brother Nishith Pal (hence referred to as the deceased) was shot and killed outside the entrance to his village of Sondanga, which is located in the district of Nadia. On August 30, 1975, at 8:05 A.M., Topan Kumar Pal, a nephew of the deceased, filed a first information report with the Kotwali Police Station in Krishna Nagar regarding the murder of the deceased. The allegation made by the appellant claims that despite repeated representations to various authorities by the appellant and the witnesses to the murder, the police conducted their investigation of the murder of the deceased in a superficial and unjust manner.

The accused murderers were alleged to be members of or at least supporters of the communist party of India (Marxist), which was at the time the dominant political force in the State of West Bengal. The appellant claims that the police failed to conduct a proper investigation. Moreover, the witnesses received no protection at all, and these protestations were met with indifference. According to what is known, the police filed a charge sheet against respondent Nos. 1 to 9 on November 4, 1976, approximately fourteen months after the murder, alleging violations under sections 302, 364, and 120B of the Indian Penal Code, 1860. The appellant came down to India from the United Kingdom on or around May 15, 1978, he constantly requested that a special

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¹ AIR 1984 SC 1591, 1984 (2) SCALE 184, (1984) 4 SCC 533

²[https://indiankanoon.org/doc/1571667/#:~:text=\(1\)%20In%20the%20case%20of,307%20and%2C%20when%20the%20Judges](https://indiankanoon.org/doc/1571667/#:~:text=(1)%20In%20the%20case%20of,307%20and%2C%20when%20the%20Judges)

public prosecutor be appointed to handle the case against respondents Nos. 1 to 9, but neither the Government of West Bengal nor any of these officers responded right away.

The appellant appears to have written a registered letter to Shri Umapada Bhattacharya, Public Prosecutor and didn't receive a response, even though the trial was scheduled to start on May 19th, 1978. After that, the appellant attempted to meet with District Magistrate Nadia to learn about who would be handling the case on behalf of the prosecution. However, the District Magistrate declined to do so and instead forwarded the appellant to the superintendent of police Nadia. Even though the trial had only been postponed until May 22 and was scheduled to begin on that day, the superintendent of police told the appellant to meet him on May 23. Even though Shri Umapada Bhattacharya was the Public Prosecutor for the Nadia district, he represented respondents Nos. 1 to 9 on May 22nd, 1978. In order to represent and get ready for the case, Shri S.N. Ganguly, who represented the prosecution as a special public prosecutor, requested an adjournment of the case. However, the Additional Sessions judge who is hearing the case only granted an adjournment for one day, and this time was completely inadequate, the special public prosecutor returned the brief. The District Magistrate, Nadia, sent a hastily written letter to Shri. S.S. Sen, additional public prosecutor and who was Shri Umapada Bhattacharya's junior. Asking him to take over the prosecution in place of Shri S.N. Ganguly. Prior to the lunch break, Shri S.S. Sen completed his examination of 11 out of 19 prosecution witnesses.

The communist party of India had a number of hostile supporters present when the witnesses were giving their testimony in the case. The witnesses were naturally concerned for their safety when they noticed these supporters. The complainant prayed for the Additional sessions judge to adjourn the trial in order to seek a transfer of the case to the High court. The matter was then transferred to another district in West Bengal at the request of the appellant and the complainant who have filed a plea before the Calcutta High court. The learned Additional sessions judge approved the request for adjournment.

On behalf of the complainant, a request was made to the learned additional sessions judge to call some significant witnesses and hear the recorded statement of one Hyder Ali and it is also rejected. The complainant preferred a revision application against the order but the application was rejected by the High court of Calcutta. They also further alerted the court to the fact that since Shri Umapada Bhattacharya was representing the respondent Nos. 1 to 9 it had given the confidence to continue threatening the witnesses and their families.

As a result, the important witnesses were not questioned by the prosecution. Witnesses who were being interrogated were combative out of fear for their lives. When the appellant made an application, requesting the court to call him as a witness. Also, the Additional session judge denied this application. Then appellant filed the second plea on May 11, 1979, asking for a stay of the proceedings so he could appeal to the Calcutta High court. But this application was also dismissed. On May 12, 1979, the learned additional session judge issued an order finding respondents Nos. 1 to 9 not guilty of the offences asserted against them and clearing them of those allegations.

IMPORTANT STATUTES STATED IN THE CASE

1. Section 302, 364, and 120B³ in The Indian Penal Code, 1860
2. The Contempt of Courts Act, 1971⁴
3. Section 401⁵ in The Code of Criminal Procedure, 1973

JUDGEMENT

We do not believe it is possible to sustain the ruling made by the learned Additional Sessions Judge clearing respondents Nos. 1 to 9, as it clearly has a severe flaw. Without a shadow of a doubt, the trial that led to the dismissal of the charges against respondents Nos. 1 to 9 was egregiously unjust from the perspective of the prosecution and skewed excessively in their favour. The Public Prosecutor of Nadia's decision to represent respondents Nos. 1 to 9 in court defies both professional standards in the legal profession and fairness in the administration of justice.

Furthermore, it is indisputable that a sizable contingent of Communist Party (Marxist) sympathisers congregated within the court compound during the trial and during the testimony of the witnesses. These supporters agitated the area by yelling against the defence and in favour of the accused. Although the witnesses, the complainant, and the appellant were all subject to intimidation, nothing was done to provide them with safety. So they might testify honestly and courageously in a setting that was appropriate and in keeping with the court's sanctity. It's important to notice that a number of witnesses became antagonistic, which was undoubtedly a sign that they sensed danger.

³ Indian penal code 1860, s. 302, 364, 120B

⁴ https://www.indiacode.nic.in/handle/123456789/1514?sam_handle=123456789/1362

⁵ Ibid

The trial was postponed for only one day when the Special Public Prosecutor, who was in charge of the prosecution, requested it in order to prepare his case. Then, late on May 22, 1978, Shri S.S. Sen, Additional Public Prosecutor, was asked to lead the prosecution. He had to start the case the very following day, on May 23, 1978, with essentially no time for good preparation. Without a doubt, the trial could not be seen as fair and just from the perspective of the prosecution in these circumstances. The entire sequence of events demonstrates that the trial's proceedings were substantially biased in favour of respondents Nos. 1 to 9. Considering the circumstances, the trial must be deemed tainted and respondent Nos. 1 to 9's acquittals as a result of that trial must be overturned. No one must be permitted to damage the judicial system in order to enable people to maintain faith in the administration of criminal justice. No citizen should really feel as if they've been cheated out of justice by a socially, economically, or politically powerful adversary who could influence the legal system.

Therefore, we grant the appeal, reverse the judgement and order of the learned Additional Sessions Judge clearing respondents Nos. 1 to 9, as well as the High Court's decision rejecting the appellant's application, and order that respondents Nos. 1 to 9 be retried on the same charges⁶ for which they were tried before the learned Additional Sessions Judge. Since the atmosphere in Krishna Nagar seems to be biased against the appellant and the complainant, it is necessary for the sake of justice that the trial not be held there. As a result, we would like to direct that the session's case be transferred to the City Civil and Sessions Court in Calcutta, where it will be heard by a City Civil and Sessions Judge who will be chosen by the Chief Judge of the City Civil & Sessions Court. We further request that the State Government appoint an experienced criminal defence attorney from the City Civil & Sessions Court in Calcutta as the Special Public Prosecutor. This appointment will be made after consultation with the appellant and the complainant, and any recommendations made by them will be taken into account. The trial must start within four months of the present date and, if at all possible, must be finished within another three months. Respondents Nos. 1 to 9 must be detained and brought before the Chief Judge of the City Civil and Sessions Court. The Chief Judge, or any other City Civil & Sessions Court judge to whom the sessions case may be assigned, will then decide whether or not to issue bail to the defendants.

⁶ Indian penal code 1860, s. 302, 364, 120B

CASE ANALYSIS

Ideal prosecutors must view themselves as agents of justice. In India, we have a public prosecutor who follows the judge's instructions. Usually, the trial judge is in charge of overseeing the entire case. However, it is commonly accepted that the prosecutor has the customary right to nolle prosequi. In India, the public prosecutor does not appear to be an accomplice of the state in the sense that the prosecutor must obtain a conviction at any cost. As a public servant and member of the prestigious legal profession, the prosecutor must be neutral, fair, and truthful. When it comes to police the investigation made by them has to be very accurate and more precise in nature. Justice is with the judges and magistrates. Therefore, they have to create strong and fair administration of justice. There are precedent cases in the following reference⁷.

CONCLUSION

Commonly, committing a crime is seen as an offence against the State that must be handled by the criminal justice system of the State Executive. Therefore, it is abundantly obvious after careful study of the aforementioned information that public prosecutors are not required to pursue conviction at any cost. Additionally, it is not their responsibility to take the victim's side in any vengeance. Instead, it is their primary responsibility to see that justice is done, and in order to fulfill their obligation, they must provide the court with all pertinent information, including any that supports the accused. A public prosecutor is a separate legal person from the police, and the latter cannot direct them on how to carry out their duties. She/he is free to decide whether to withdraw a case at her/his discretion without interference from the police, politics, or any other third party. The Public Prosecutor is an agent of the State, not the police, and is solely subjected to pressure from the general public. Public prosecutors should refrain from employing improper strategies intended to result in erroneous convictions while doing their duty. In addition to acting as an advocate, a public prosecutor also serves as a minister of justice.

⁷ <https://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=004891302000&Title=SUNIL-KUMAR-PAL-Vs.-PHOTA-SHEIKH>