# Duty of Investigating Officers in the Investigation of Crimes

***…. S.S. Upadhyay, HJS***
*Former District & Sessions Judge/*
*Former Legal Advisor to Governor*
*UP, Lucknow*
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*Mobile : 9453048988*
*E-mail : ssupadhyay28@gmail.com*

1. **Importance of proper & scientific investigation of crimes :** The crime scene has to be scientifically dealt with without any error. In criminal cases, especially based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the element of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. One of the major activities of the investigating officer at the crime scene is to make thorough search for potential evidence that have probative value in the crime. The investigating officer may be guarded against potential contamination of physical evidence which can grow at the crime scene during collection, packing and forwarding. Proper precaution has to be taken to preserve evidence and also against any attempt to tamper with the material or causing any contamination or damage. The criminal justice system in this country is at crossroads. Many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. The investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. Practices and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness etc. Whereas forensic evidence is free from those infirmities. Judiciary should also be equipped to understand and deal with such scientific materials. Constant interaction of Judges with scientists, engineers would promote and widen their knowledge to deal with such scientific evidence and to effectively deal with criminal cases based on scientific evidence and to effectively deal with criminal cases based on scientific evidence. It is not that in all cases the scientific evidence is the sure test, but the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence, cannot be underestimated. Scientific evidence encompasses the so-called hard science, such as physics, chemistry, mathematics, biology and soft science, such as economics, psychology and sociology. Opinions are gathered from persons with scientific, technical or other specialized knowledge, whose skill, experience, training or education may assist the court to understand the evidence or determine the fact in issue. Many a times, the court has to deal with circumstantial evidence and scientific and technical evidence often plays a pivotal role. See : Dharam Deo Yadav Vs. State of UP, (2014) 5 SCC 509.

2. **Consequences of deficiency into investigation** : It is often noticed by the courts dealing with the criminal cases that the investigating officers commit many mistakes and latches in the investigation of crimes and such mistakes and shortcomings continue to be unnoticed and unchecked upto the police officers of the higher levels of the police department. Some of the mistakes and the shortcomings often left behind by the investigating agencies is sometimes due to ignorance of exact

and real position of law, judicial pronouncements of the courts particularly of the Supreme Court and the own High Court and sometimes because of neglectful attitude, carelessness and other extraneous reasons. Lack of proper training to augment the efficiency and performance level of the police personnel engaged in the task of investigations and also for non-availability and non-supply of the relevant legal material and the judicial pronouncements of courts to the investigating agencies do hamper the course of proper and effective investigation of crimes. The result of incomplete or defective investigations often results into the acquittal of the accused even if he was involved in commission of heinous offences. With the change of technology and fast pace of development in the pattern of commission of different natures of crimes, the criminals have also not only gone high tech in the commission of the offences but in many cases it is often noticed that the technically educated criminals are much ahead than the police in the commission of offences and getting spared because of the laxity of and ignorance of modern techniques of crime detections on the part of investigating agencies. The fact of the police force being ill equipped and under staffing of the police agency alongwith the lack of proper training particularly relating to the laws concerning the process of investigation are also the major causes attributing towards the incomplete and defective investigations. The shortcomings, loopholes and weaknesses that are left behind by the investigating agencies in the investigation of crimes do make the case set-up by the prosecution in the court is ultimately found on weak footings and the perpetrators of the crimes stand benefited in terms of getting scot-free of their liability. The ultimate sufferer of such weak and defective investigations are not only the victims of the offence or their dependents but society as a whole is the ultimate sufferer of the same. The role of the courts starts and depends upon the edifice of a criminal case built and set-up by the investigating agencies. The fate of the criminals and their cases in the court depends upon the quality of investigations and the evidence collected against them by the investigating agencies during the investigation of crimes. Unless the police personnel engaged in the task of investigation of crimes are aware of need of collection of relevant and material evidence against the criminals during the investigations and that too keeping in view the nature and magnitude of the offences committed by the offenders, the charge sheet or the case submitted and set-up by the investigating agencies before the court would be weak and chances of deriving its benefit by the accused would be high. The task of collection of relevant and material evidence according to the nature and requirement of particular offences is the duty of the investigating agencies and if they have failed in doing that with required level of professionalism and efficiency, the courts during enquiry and trial of such cases set-up on weaker footings can play only very little role in preventing the harm being caused to the cause of justice. The proper investigation of the crimes is therefore all the more necessary for proper prosecution of the accused persons but for success of the investigating agencies in the trial of cases as well. The various factors and causes responsible for weaker, defective and incomplete investigations by the investigating officers can be studied under the heads noted below.

**3.** **<u>Certain major factors responsible for defective or incomplete investigation of Crimes</u>** : Investigating officers commit many mistakes and leave behind many shortcomings during the investigation of crimes. Certain important causes behind such defective investigations are enumerated as under :

(i) Ignorance of the relevant law relating to investigations.
(ii) Lack of proper training of the investigating officers.
(iii) Non-availability of scientific and technical assistance.
(iv) Work load
(v) Non-professionalism & perfunctory approach towards investigation.

(vi) Delayed reaching to the scene of crime.
(vii) Transfer and change of investigating officers during investigations.
(viii) Investigating agencies being ill equipped.
(ix) Non-accountability of I.Os. in the event of loosing the case.
(x) Extraneous factors.

**4.** **Incomplete or defective investigation & its effect :** Any irregularity or deficiency in investigation by I.O. need not necessarily lead to rejection of the case of prosecution when it is otherwise proved. The only requirement is use of extra caution in evaluation of evidence. A defective investigation cannot be fatal to prosecution where ocular testimony is found credible and cogent. See :

1. C. Muniappan Vs. State of TN, 2010 (6) SCJ 822
2. Acharaparambath Pradeepan vs. State of Kerala, 2007(57) ACC 293 (SC)
2. State of Punjab vs. Hakam Singh, (2005) 7 SCC 408
3. Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654
4. Dashrath Singh vs. State of U.P., (2004) 7 SCC 408

**5.** **IO can summon documents or information u/s 91 CrPC for investigation**: When investigating officer is in need of certain documents/information for verification with reference to investigation, it is but proper to produce all materials u/s 91 CrPC. There is no need to approach the High Court to obtain a specific direction for each and everything. See : CBI Vs. V. Vijay Sai Reddy, (2013) 7 SCC 452.

**6.** **Blood stained earth & clothes etc. not taking into possession from the spot** : It is often seen that the investigating officers do not collect blood stained earth, clothes and other incriminating articles from the scene of the crimes which costs shadow of doubt on the case of prosecution. However if the case of prosecution is otherwise proved beyond all reasonable doubts by the ocular reliable testimony or by credible circumstantial evidence, the liability for guilt can still be fastened to the neck of the accused even if the blood stained earth, clothes, weapons etc. from the place of occurrence were not taken by the investigating officer into possession and not sent for examination to expert and not produced before the court during trial. See :

1. State of W.B. vs. Swapan Kumar, 2009 Cr.L.J. 3851 (Cal.—D.B.)
2. Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654

**7.** **Blood stained earth & clothes when not sent for chemical examination & its effect?** : Non sending of blood stained earth and clothes of the deceased or injured to chemical examiner for chemical examination is not fatal to the case of the prosecution if the ocular testimony is found credible and cogent. See :

1. Maqbool vs State of A.P., AIR 2011 SC 184.
2. Sheo Shankar Singh vs. State of Jharkhand, 2011 CrLJ 2139(SC)
3. Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654

**8.** **Weapons of assault, cartridges, empties & pellets when not sent for ballistic examination & its effect?** :Non sending of weapons of assault, cartridges and pellets to ballistic experts for examination would not be fatal to the case of the prosecution if the ocular testimony is found credible and cogent. See :

1. Maqbool vs State of A.P., AIR 2011 SC 184
2. State of Punjab vs. Hakam Singh, 2005(7) SCC 408
3. Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654

**9.** **Delayed recording of FIR & statements u/s. 161 CrPC** : In many cases FIRs are registered with unexplained and undue delays which costs shadow of doubt over the case of the prosecution. In cases where the complainants lodge their FIRs with the police with unexplained delays, the investigating officers must question the informant during investigation about the delay and record his explanatory statement behind the delays in his statement u/s. 161 of the CrPC It is often seen that a complainant who was not interrogated by the investigating officer on the point of delay during investigations, tries to explain the delay for the first time in the witness box in the court during trial of the case when he is confronted by the defence counsel as cross examiner. Such improvements are new statements which had not been recorded by the investigating officer u/s. 161 of the CrPC during investigation is looked upon with suspicion by the courts and unless otherwise found cogent and reliable is discarded. It is, therefore obligatory on the part of an investigating officer to put questions to the complainant eliciting from him explanatory information behind the delayed lodging of FIR so that the same be used by the prosecution to satisfy the court during trial of the case as supportive explanation of the depositions of the complainant as prosecution witness before the court. It has been the settled law that if the delay behind registration of FIR is satisfactorily explained by the complainant witness then the delay in lodging FIR does not adversely affect the prosecution case. If causes are not attributable to any effort to concoct a version and the delay is satisfactorily explained by prosecution, no consequence shall be attached to mere delay in lodging FIR and the delay would not adversely affect the case of the prosecution. Delay caused in sending the copy of FIR to Magistrate would also be immaterial if the prosecution has been able to prove its case by its reliable evidence. Certain important judicial pronouncements of the Supreme Court on delayed FIRs and their consequences are as under :

1. Mahesh vs. State of Maharashtra, (2009) 3 SCC (Criminal) 543
2. State vs. Rajendran, (2009) 3 SCC (Criminal) 957
3. N.H. Muhammed vs. State of Kerala, (2009) 3 SCC (Criminal) 982
4. Ashok Kumar Chaudhary vs. State of Bihar, 2008 (61) ACC 972 (SC)
5. Rabindra Mahto vs. State of Jharkhand, 2006 (54) ACC 543 (SC)
6. Ravi Kumar vs. State of Punjab, 2005 (2) SCJ 505

**10.** **Delayed recording of statements under 164 CrPC** : Investigating officers should get the statements of the witnesses recorded u/s. 164 CrPC by the Magistrate at the earliest otherwise it requires an explanation from the I.O. during trial as to why he could not got the statements of the witnesses recorded u/s. 164 CrPC See : State vs. Rajendran, (2009) 3 SCC (Criminal) 957.

**11.** **Delayed sending of FIR to Magistrate u/s. 157 CrPC** : According to Sec. 157 CrPC copy of chick FIR should be sent to the court of Judicial Magistrate having territorial jurisdiction over the concerned police station within 24 hours from the time of recording of the FIR otherwise it requires some explanation as to why the delay was caused in late sending the copy of FIR to the magisterial court concerned. However delay in sending copy of FIR to the area Magistrate is not material where the FIR is shown to have been lodged promptly and investigation had started on that basis. Delay is not material in the event when the prosecution has given cogent and reasonable explanation for it. See :

1. N.H. Muhammed vs. State of Kerala, (2009) 3 SCC (Criminal) 982
2. Moti Lal vs. State of Rajasthan, (2009) 3 SCC (Criminal) 444
3. State of Punjab vs. Hakam Singh, (2005)7 SCC 408
4. Anil Rai vs. State of Bihar, (2001) 7 SCC 318

12. **Recording of hearsay statement of witnesses u/s. 161 CrPC** : According to Sec. 60 of the Evidence Act, a hearsay statement of a witness recorded by the investigating officer u/s. 161 CrPC cannot be converted by the witness into substantive evidence u/s. 3 of the Evidence Act during trial. The investigating officers should therefore try to avoid recording of hearsay versions of the witnesses and instead prefer to record direct version of the occurrences from the witnesses. Hearsay deposition of a witness is not admissible and cannot be read as evidence. Failure to examine a witness who could be called and examined is fatal to the case of prosecution. See : Mukul Rani Varshnei vs. Delhi Development Authority, (1995) 6 SCC 120

13. **Non recording of complete statement of witnesses u/s 161 CrPC & its consequences** : Sometimes it is seen that the investigating officers do not record complete statement of the witnesses u/s. 161 CrPC with the result that such witnesses make improvements and additions covering the unrecorded statements before the court during trial. But such addition in statements and improvements are looked upon with suspicion and are normally discarded as such statements are for the first time made by the witness before the court. The investigating officer should therefore always record complete statements of the witnesses u/s. 161 CrPC "If the PWs had failed to mention in their statements u/s. 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance. See :

    1. Rudrappa Ramappa Jainpur vs. State of Karnataka, (2004) 7 SCC 422
    2. Vimal Suresh Kamble vs. Chaluverapinake, (2003) 3 SCC 175

    If a relevant fact is not mentioned in the statement of the witness recorded u/s. 161 CrPC but the same has been stated by the witness before the court as P.W., then that would not be a ground for rejecting the evidence of the P.W. if his evidence is otherwise credit worthy and acceptable. Omission on the part of the police officer would not take away nature and character of the evidence. See : Alamgir vs. State of NCT, Delhi, (2003) 1 SCC 21

14. **Delayed inspection of spot by I.Os. & effects thereof ?** :The investigating officers should promptly visit the spot and make inspections of the same otherwise not only the actual position of the spot can be interfered with by the accused or others but the same may also result into alteration of the real scene of the occurrence. The incriminating articles like weapons of assault, cartridges, pellets, clothes and other personal belongings of the victim or the accused can be caused to disappear which may adversely the affect the case of prosecution. See : State of U.P. vs. Satish, 2005(51) ACC 941 (SC)

15. **Precautions in preparation of map of spot by I.O.** : The investigating officer should not only prepare the correct site plan of the place of occurrence but they should also prepare the site plan of the places from where the accused was arrested and some incriminating article was recovered. Since in many cases the investigating officers do not have personal knowledge about the facts of the cases and the places of the occurrence and recovery and they have to borrow their knowledge from the witnesses who had seen the place of occurrence and the incident and as such the testimony of the I.O. on the point of place of occurrence is often 'hearsay' within the meaning of Sec. 60 of the Evidence Act. An investigating officer therefore must record the statement of witnesses who had personal knowledge regarding the place of occurrence. Certain important case laws on the site plans prepared by the investigating officers are quoted below : Ram Gulam Chowdhary vs. State of Bihar, 2001(2) JIC 986 (SC)

Note : *It was a murder trial u/s. 302/149, 201 IPC. The map of the place of occurrence was not proved by prosecution as the I.O. could not be examined as PW by the prosecution. But the prosecution had proved the place of occurrence by direct and credible testimony of eye witnesses. Upholding the conviction of the accused, the Supreme Court held that since the I.O. was not an eye witness to the incident and the reliable eye witnesses had proved the place of occurrence by their testimony, so non proving the map by I.O. was not fatal to the prosecution case.*

**16.** **Recovery memo & duty of police officer (u/s 27, Evidence Act)** : If any thing or weapons etc. are recovered at the instance of the accused only in the presence of police party and there is no public witness to such recovery or recovery memo, the testimony of the police personnel proving the recovery and the recovery memo cannot be disbelieved merely because there was no witness to the recovery proceedings or recovery memo from the public particularly when no witness from public could be found by the police party despite their efforts at the time of recovery. Seizure memo need not be attested by any independent witness and the evidence of police officer regarding recovery at the instance of the accused should ordinarily be believed. The ground realities cannot be lost sight of that even in normal circumstances, members of public are very reluctant to accompany a police party which is going to arrest a criminal or is embarking upon search of some premises. See :

1. Tejpal vs. State of U.P., 2005(53) ACC 319 (Allahabad—D.B.)
2. Karanjeet Singh vs. State of Delhi Administration, 2003(46) ACC 876 (SC)
3. Praveen Kumar vs. State of Karnataka, 2003(47) ACC 1099 (SC)
4. State Govt. of NCT of Delhi vs. Sunil & others, 2001(1) SCC 652
5. Revindra Santaram Sawant vs. State of Maharashtra, AIR 2002 SC 2461.

**17.** **Non-mentioning of the fact of non-availability of public witnesses in recovery memo & its consequences ?** : A police officer while seizing any property from possession of the accused or on his pointing u/s. 102 CrPC r/w. Sec. 27 Evidence Act, he should ensure the presence of two respectable persons to witness the recovery proceedings and in case no such witness from the public is available or the place is lonely one where no person from public is present to witness the recovery proceedings, the fact of non-availability of the witnesses from public despite due effort for the same by the police officer must be mentioned in the recovery memo and only thereafter the recovery should be made and witnessed by the police personnel alone. If the presence of the witnesses from public could not be procured by the police officer making the recovery despite due effort and the recovery is made and memo thereof prepared and witnessed only by the police personnel seizing the property, then the recovery proceedings and the recovery memo could be valid as laid down by the Supreme Court in the cases noted below :

1. Tejpal vs. State of U.P., 2005(53) ACC 319 (Allahabad—D.B.)
2. Karanjeet Singh vs. State of Delhi Administration, 2003(46) ACC 876 (SC)
3. Praveen Kumar vs. State of Karnataka, 2003(47) ACC 1099 (SC)
4. State Govt. of NCT of Delhi vs. Sunil & others, 2001(1) SCC 652
5. Revindra Santaram Sawant vs. State of Maharashtra, AIR 2002 SC 2461

**18.** **Identity of the articles recovered & the duty of I.O.** : When the articles recovered can easily resemble with the similar other articles of the same shape, size, make, quality, colour etc., it is then the duty of the I.O. to establish the identity of the recovered articles by recording the statements of the witnesses u/s. 161 CrPC so that the identify of the recovered article may be established by such witnesses before the court. If the recovery of certain ornaments u/s. 27, Evidence Act and identification thereof is doubtful and such ornaments of silver and of ordinary design are easily available in every house of villages, then in the absence of independent witnesses to recovery, the testimony of only police witness cannot be believed. See :

1. Bharat vs. State of M.P., 2003 SAR (Criminal) 184 (SC)

2. Hardayal Prem vs. State of Rajasthan, 1991 (Suppl.) 1 SCC 148

**19.** **Illiterate/rustic/villager/lady witnesses & the duty of I.O. :** Where the witnesses to any incident of offences are illiterate, semi-literate, rustic, villagers or female witnesses from rural areas, the investigating officers should exercise a little more caution in recording their statements u/s. 161 CrPC as such witnesses because of their illiteracy and non-exposure etc. have only very little idea of accurately narrating the real version of the happenings with precision. The questions by investigating officers to such witnesses should, as far as possible, be put to them in their language understand and the real account of the happenings should be attempted to be elicited from them. It is impossible for an illiterate villager or rustic lady to state with precision the chain of events as such witnesses do not have sense of accuracy of time etc. Expecting hyper technical calculation regarding dates and time of events from illiterate/rustic/villager witnesses is an insult to justice-oriented judicial system and detached from the realities of life. In the case of rustic lady eye witnesses, court should keep in mind her rural background and the scenario in which the incident had happened and should not appreciate her evidence from rational angle and discredit her otherwise truthful version on technical grounds. See :

1. Dimple Gupta (minor) vs. Rahiv Gupta, AIR 2008 SC 239
2. State of Punjab vs. Hakam Singh, (2005) 7 SCC 408
3. State of H.P. vs. Shreekant Shekari, (2004) 8 SCC 153
4. State of Rajasthan vs. Kheraj Ram, (2003) 8 SCC 224
5. State of Punjab vs. Hakam Singh, (2005) 7 SCC 408

**20.** **Chance witnesses & duty of Investigating Officers.** : If an incident has been witnessed only by chance witnesses, the investigating officer must put questions to such witness and record his statement regarding the reasons for which the chance witness was present on the spot at the time of the occurrence so that if such chance witness turn up before the court to depose in favour of the prosecution case, he may not be for the first time before the court telling the reasons for his being present on the scene of the occurrence at the time of its happening. However, it is not the rule of law that chance witness cannot be believed. The reason for a chance witness being present on the spot and his testimony requires close scrutiny and if the same is otherwise found reliable, his testimony cannot be discarded merely on the ground of his being a chance witness. Evidence of chance witness requires very cautious and close scrutiny. See :

1. Jarnail Singh vs. State of Punjab, 2009 (67) ACC 668 (SC)
2. Sarvesh Narain Shukla vs. Daroga Singh, AIR 2008 SC 320
3. Acharaparambath Pradeepan vs. State of Kerala, 2007(57) ACC 293 (SC)
4. Sachchey Lal Tiwari vs. State of U.P., 2005 (51) ACC 141 (SC)

**21.** **Effect of non recovery of dead body & absence of PMR :** Where murder of deceased by accused persons was proved by direct evidence of mother, sister and neighbourer of deceased, dead body was taken away by the accused and could not be recovered and Post Mortem not done, blood stained mud and Lungi seized by I.O. but not produced, I.O. not examined then the Supreme Court held that non-production of these items did not cause any prejudice to the convicts/appellants and their conviction by trial court based upon direct evidence was proper. See : Ram Gulam Chowdhary vs. State of Bihar, 2001 (2) JIC 986 (SC).

**22.** **Police personnel can also be treated as ballistic experts :** Police personnel having certificate of technical competency and armour technical course and also having long experience of inspection, examination and testing of fire arms and ammunition must be held to be an expert in arms u/s. 45 of the Evidence Act. See : Brij Pal vs. State of Delhi Administration, (1996) 2 SCC 676.

**23.** **TIP not a right of the accused (Sec. 9, Evidence Act)** : Test Identification Parade is not a right of the accused under the provisions of the **Identification of Prisoners Act, 1920**. Investigating Agency is not obliged to hold TIP. Question of identification arises where accused is not known to the witness. See the cases noted below :

1. Mahabir vs. State of Delhi, AIR 2008 SC 2343
2. Heera vs. State of Rajasthan, AIR 2007 SC 2425
3. Simon vs. State of Karnataka, (2004) 2 SCC 694

**24.** **Signatures of the witnesses or the accused on the statements recorded by police to be avoided** : In view of the provisions u/s. 162 CrPC, obtaining signatures of the witnesses on their statements recorded u/s. 161 CrPC should normally be avoided by the investigating officers. However if the investigating officer has obtained such signature of the witnesses on their statements, the same would not be vitiated and would be still read. Obtaining signature of the accused on seizure memo u/s. 27 Evidence Act does not tantamount to illegality and the proceedings of seizure do not get vitiated by that. The Bar contained u/s. 162 CrPC operates against the investigating officer and not against the court. See :

1. Govinda vs. State of U.P., 2008 (61) ACC 486 (All)
2. Meenu Kumari vs. State of Bihar, (2006) 4 SCC 359
3. State of Rajasthan vs. Teja Ram, 1999 (38) ACC 627 (SC)

**25.** **Dead body & its identification** : Whenever question of identity of dead body of the deceased is involved, the investigating officer should exercise a little more caution and every attempt should be made to secure the identity of the dead body from such witnesses who are generally known to the deceased and also from his near and dear ones. Securing identity of the dead body from strangers or from such persons who had generally no acquaintance with the deceased should be avoided. See : **N.H. Muhammed vs. State of Kerala, (2009) 3 SCC (Criminal) 982**

**26.** **Inquest report & duty of I.O. (Sec. 174 CrPC)** : Delay in preparing inquest report also casts doubt on the genuineness of the entries contained in the inquest report and the investigating officers should therefore prepare the inquest report at the earliest possible opportunity. The causes behind delayed preparation of inquest report should be explained by the I.O. in his depositions before the court. See :

1. Mahesh vs. State of Maharashtra, (2009) 3 SCC (Criminal) 543
2. Moti Lal vs. State of Rajasthan, (2009) 3 SCC (Criminal) 444

**27.** **Dying Declaration when recorded by police :** DD recorded by police in presence of other prosecution witnesses is valid. Such DD is reliable and cannot be doubted on the ground that the statement not produced to police but produced before the court directly for the first time. See : Doryodhan vs. State of Maharashtra, 2003(1) JIC 184 (SC)

**28.** **Scientific tests & their different kinds** : In modern times for proper and effective investigation of crimes, several scientific tests are also applied which give sufficient lead not only to the investigating agency in working out the critical criminal cases but also helps in tracing and apprehending the real perpetrator of the crimes. Some of the main scientific tests generally applied in detecting the crimes and criminals are as under :

(i) DNA (Deoxy Nucleic Acid)
(ii) RNA (Ribo Nucleic Acid)
(iii) Lie-Detector Test
(iv) Polygraph Test
(v) Brain-Mapping Test (P300)

(vi) Narco Analysis Test (Also known as Truth Serum Test)
(vii) Voice Analysis Test
(viii) Finger Print Test
(ix) Handwriting Test
(x) Typewriter Test

**29.** **DNA profiling test of the person of victim of rape (Sec. 164-A (2) (iii) CrPC w.e.f. 2006) : (A)** An investigating officer, u/s. 164-A(2)(iii) CrPC, can get a victim of rape not only medically examined by a registered medical practitioner but can also get the material taken from the person of the woman (victim of rape) through a registered medical practitioner for DNA profiling. But according to the provisions under sub sections (4) & (7) to Sec. 164-A CrPC the woman (victim of rape) cannot be subjected to DNA test without her consent and in case of the woman being minor or otherwise incompetent to give consent then with the consent of some person competent to give consent on her behalf.

**30.** **Tape recorded conversation & its admissibility in Evidence (S. 7, Evidence Act) :** Tape recorded conversation is admissible in evidence provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible u/s. 7 of the Evidence Act. It is also comparable to a photograph of a relevant incident. A tape recorded statement is admissible in evidence subject to the following conditions :

1. The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.
2. The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.
3. Possibility of tampering with, or erasure of any part of, the tape recorded statement must be totally excluded.
4. The tape recorded statement must be relevant.
5. The recorded cassette must be sealed and must be kept in safe or official custody.
6. The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances. See :

(i) State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 : (known as Parliament attack case)
(ii) Ram Singh & others vs. Col. Ram Singh, 1985 (Suppl) SCC 611
(iii) R.M. Malkani vs. State of Maharashtra, AIR 1973 SC 157

**31.** **Tracker & sniffer dog & its use** : During investigation of crimes, the police officers are sometimes completely clueless and the help of tracker and sniffer dog is taken for the detection of the criminals and the incriminating articles. But the indications and leads given by such tracker and sniffer dog is often not recorded in form of report by the master of the dog. The proceedings and the activities of the dog should also be videographed and produced alongwith the report prepared by the dog's master before the court. The videographed contents in the C.D. are admissible in evidence as Sec. 3 of the Evidence Act, as amended since the year 2006, includes electronic records as well with in the definition of word 'evidence'. The statement of the master of the dog u/s 161 CrPC should also be recorded by the investigating officers so that he may be examined by the prosecution during trial in support of the report prepared by him regarding the leads given by the dog. As regards the evidence relating to the sniffer dog, the law is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be taken as evidence

for the purpose of establishing the guilt of an accused. See : Dinesh Borthakur vs. State of Assam, AIR 2008 SC 2205

**32.** **Cases involving fraud/forgery/embezzlement etc. & duty of IOs. in collection of evidence during investigation :** Since the offences like fraud, forgery and criminal breach of trust and embezzlement of government money do often relate to and emanate from documents, the investigating officers should therefore must collect all the relevant records relating to such offences and submit the same to the court u/s. 173(2) CrPC The oral statements of the accused and the witnesses recorded u/s. 161 CrPC in such cases have only little significance.

**33.** **Investigation by incompetent I.O. & its effect** : If an investigation of offence u/s. 156(2) CrPC has been conducted by some police officer of inferior rank or of a police station within whose local territorial jurisdiction, the offence had not been committed, even then such investigation cannot be called into question on the ground of incompetence of the investigating officer. See :

1. Jai Prakash Dubey vs. State of U.P., 2008 Cr.L.J. (NOC) 920 (All)
2. Union of India Vs. Prakash P. Hinduja, AIR 2003 SC 2612

**34.** **Arrest & duty of arresting officer** : Arrest of a citizen by the police and the treatment with him thereafter by the police has always been the area of concern for the courts. In the case of Joginder Kumar v. State of U.P., (1994) 4 SCC 260, the Hon'ble Supreme Court has clarified that an accused named in a FIR should not be arrested soon after the registration of the FIR. He should be arrested by the investigating officer only after collecting some evidence showing his involvement in the commission of the offence.

In the famous cases of *D.K. Basu v. State of West Bengal, (1997) 1 SCC 416* and *A.K. Jauhari v. State of U.P., (1997) 1 SCC 416,* the Hon'ble Supreme Court has issued following guidelines for the arresting officers to be observed at the time of arrest of a person and treatment thereafter with him :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) The police officers carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable member of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at a particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district and the police station of the area concerned telegraphically within a period of 8 to 10 hours after the arrest.

(5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requires, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body must be recorded at that time. The

"Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and it's copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director Health Services of the state or union territory concerned. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the Memo Of Arrest referred to above should be sent to the Ilaka Magistrate for his record.

(10) The arrestee may be permitted to meet his Lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and the police control room it should be displayed on a conspicuous notice board.

**35.** **Liability for contempt of the Arresting Officer for non-observance of Supreme Court guidelines** : A full bench of the Allahabad High Court has in the matter of Ajeet Singh v. State of U.P., 2006 (6) ALJ 110 (Full Bench), held that any violation of the guidelines issued by Hon'ble Supreme Court in the cases of D.K. Basu and A.K. Jauhari would not only provide a ground to the accused to question the correctness of his arrest but the arresting officer would also stand exposed to the contempt proceedings for non observance of the aforesaid guidelines of the Hon'ble Supreme Court. The guidelines issued by Hon'ble Supreme Court in the cases of D.K. Basu and A.K. Jauhari in the year 1997 have now been incorporated in **Sec. 50-A of the CrPC** through the amendments since June, 2006. Under the newly added **Sec. 50-A (4),** a duty has been cast upon the Magistrates to ensure at the time of production of the arrested accused before them that the guidelines contained in **Sec. 50-A of the CrPC** have been complied with by the arresting officer. The introduction of these provisions in the CrPC through amendment is aimed at protecting the human rights of the arrestee from the tortures and atrocities committed by the police.

**36.** **Custodial tortures & deaths & liability of police officers** : Torture of an accused in police custody, custodial deaths and atrocities on prisoners in jails have also been one of the major area of concern as regards the human rights. The Hon'ble Supreme Court has in a plethora of cases (noted below) clarified that if a person in the custody of police is subjected to any torture, inhuman treatment or violence or custodial death takes place then courts can not only take appropriate action against the responsible police officer but can also provide **compensation** to the dependents of the deceased or the victim of the illegal torture or violence……

1. Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble, (2003)7 SCC 749
2. Raghbir Singh v. State of Haryana, (1980) 3 SCC 70
3. Gauri Shankar Sharma v. State of U.P., AIR 1990 SC 709
4. Bhagwan Singh v. State of Punjab, (1992)3 SCC 249
5. Nilabati Behera v. State of Orissa, AIR 1993 SC 1960
6. Pratul Krishna v. State of Bihar, 1994 Supp. (3) SCC 100
7. Kewalpati v. State of U.P., (1995) 3 SCC 600
8. Inder Singh v. State of Punjab, (1995) 3 SCC 702

With the introduction of a new **Sec. 176 (1-A)** in the CrPC by the Parliament with effect from June, 2006, a duty has been cast upon the Judicial 0Magistrates exercising local territorial jurisdiction to conduct judicial inquiry in the matters of **fake encounters, custodial deaths or extra judicial killings** caused by the police and subject to the result of the inquiry to take appropriate further legal action in such matters against the responsible police officer or the arresting officer.

**37.** **CJM / ACJM / MM / JM to inquire into the custodial deaths (Sec. 176 CrPC)** : Vide C.L. No. 2/2010 Admin.(G-II), dated 7.1.2010, the Allahabad High Court has issued following directions to the Magistracy in U.P. for conducting inquiry in relation to custodial deaths in their local territorial jurisdiction : "Upon consideration of Letter No. 7165(VI)/Sama-1, dated 04.03.2009 of Inspector General, Prisons Administration & Reforms Services, U.P., Lucknow, the Hon'ble High Court has directed that powers of enquiry on death during custody as provided under Section 176 of the Code of Criminal Procedure be exercised by the Chief Judicial Magistrate/Chief Metropolitan Magistrate/Addl. Chief Judicial Magistrates/ Judicial Magistrates of your Judgeship and copy of the enquiry report alongwith list of evidence collected therein be sent to the Deputy Inspector General, Prisons of the region concerned to take necessary action."

**38.** **Handcuffing of arrestees & duty of police officers** : Putting hand-cuff or bar-fetters on the person of the accused or the prisoners, keeping the prisoner into solitary confinement or subjecting them to any barbarous treatment or any other sort of inhuman treatment has also been deprecated by the Supreme Court as being violative of the fundamental rights under Article 21 of the Constitution and various guidelines have been issued in this regard to the effect that without the prior permission of the courts no authority including jail authorities would hand-cuff or fetter the prisoners. Any violation of the guidelines issued by Hon'ble Supreme Court to that effect has been declared punishable as contempt of court in the following cases :

1. Altemesh Rein Advocate, Supreme Court of India v. Union of India, AIR 1988 SC 1768
2. Prem Shanker Shukla v. Delhi Administration, AIR 1980 SC 1535
3. State of Maharashtra v. Ravikant S. Patil, (1991) 2 SCC 373
4. Sunil Batra v. Delhi Administration, (1978) 4 SCC 494
5. Sunil Gupta v. State of MP, (1990) 3 SCC 119

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