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A Legal Critique on the Importance of Lead Witness Examination: An Analysis of Gaurav Maini v. State Haryana (2024)

LOKESH MITTAL[1] AND SANIGHDHA[2]

ABSTRACT

It is known in common parlance that India follows an adversarial system of criminal justice. The confines of the criminal law and grievance redressal are defined and purported by the Indian Evidence Act (now, the Bhartiya Sakshya Adhiniyam 2023), the Criminal Procedure Code 1973 (Bhartiya Nagarik Suraksha Samhita, 2023), and the Bhartiya Nyaya Sanhita 2023 (formerly the Indian Penal Code 1860). It is these laws that from the bulk of criminal law in India and hence the procedural aspects of justice delivery are also mentioned in it. In any case, whether it is civil or criminal, the witnesses are extremely important. As Bentham has stated that witnesses are the eyes and ears of justice, it is true that without witnesses, and in exceptional cases, only the witnesses; it is very difficult to reach to a justified and legally sensible conclusion of a case. In the case that is meant to be analyzed and commented upon, in the present submission, the Apex Court highlighted the importance of the duty of trial courts in examining the vital or the lead witnesses in a case. It also commented upon the negative effect that such non-examination has on the trial. The very basis of a criminal trial is the investigation process and its final report, the examination of the witnesses, appreciation of the evidence collected and produced and other procedural phases. However, witnesses are the most important cog in the wheel of the whole process. Thus, the present case comment strives to lay down an introductory explanation, followed by the factual matrix of the case and the arguments reproduced by the learned counsels on both sides and the judgment. Apart form this, the discussion and analysis part strives to delve deeper into the importance of the witnesses and thus take important phrases from landmark judgments while analyzing the present one.

Keywords: *Witnesses: Indian Penal Code, Criminal Procedure Code; Indian Evidence Act; Supreme Court; Trial.*

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I. Introduction

In the landmark case of Mahendra Chawla v Union of India[3], Retd. Supreme Court justice A.K. Sikri, had very well opined the importance of witnesses in a case, especially a criminal case, highlighting and establishing the statement that Bentham gave, as a true statement within the confines of justice. He stated, via his judgement that, *"in an adversarial system, which is prevalent in India, the court is supposed to decide the cases on the basis of evidence produced before it. This evidence can be in the form of documents. It can be oral evidence as well, i.e., the deposition of witnesses. The witnesses, thus, play a vital role in facilitating the court to arrive at correct findings on disputed questions of facts and to find out where the truth lies. They are, therefore, backbone in decision making process. Whenever, in a dispute, the two sides come out with conflicting version, the witnesses become important tool to arrive at right conclusions, thereby advancing justice in a matter. This principle applies with more vigor and strength in criminal cases inasmuch as most of such cases are decided on the basis of testimonies of the witnesses, particularly, eye-witnesses, who may have seen actual occurrence/crime. It is for this reason that Bentham stated more than 150 years ago that "witnesses are eyes and ears of justice".*[4]" This statement and a very relevant portion of a decided case law is reproduced, because of the importance and indispensability that it holds in the light of the present case comment. The present case that is meant to be analyzed is dealing with the prosecution's failure to examine the lead witness in a given circumstance, whereby, the lead witness was the one who gave the information to the police. Here, the Supreme Court directed all the trial courts to actually be cognizant in all terms, of the fact that a lead witness (especially the one who gave the initial information) must be examined, by all means and ends, in a particular criminal case. It is the bounden duty of the Court, according to the Apex Court directions, that a witness who is a lead/star witness from the prosecution's side must be examined, so as to lead the Honourable Courts to a clear picture of the case. The judgment in the present case comment/ analysis strives to push this established practice of legal realm and hence, through this miniscule effort, the authors try to analyse the observations, holistically.

II. Brief facts

The present case was decided by the single judge Bench of Honourable Justice B.R. Gavai and the judgement was given on 9 July, 2024. For the better understanding and analysis of the case, it is pertinent to go through the facts that have been so recorded, in the Supreme Court's

[3] Mahendra Chawla v Union of India (WP Criminal) 156/2016 (India).
[4] *Ibid.*

reportable judgment. The facts are represented in a simplified manner, below:

- In the present case the appellants were tried to in the Court of Learned Additional Sessions Judge, Panchkula (Haryana) for the offences, as stated in the final challan report under Sections 364A, 392 and Section 120 B of the Indian Penal Code (1860). It must be noted that the IPC has now been replaced by the Bhartiya Nyaya Sanhita 2023. The learned trial court held the appellants guilty for the offences mentioned and decided their quantum of punishments, accordingly.
- After having been declared guilty, the appellants approached the Punjab and Haryana High Court, but to no avail as the judgment was reaffirmed by the Honourable High Court, after which this present appeal was bought before the Honourable Supreme Court, on 19th January 2009.
- On 15th April, 2003 Jai Singh, SI(PW-27), Police Station, Sector-5, Panchkula, while being present near the market of Sector 16, Panchkula along with the police team in connection with patrol duty and crime checking, claimed to have received a secret information to the effect that a gang was operating in Panchkula which was indulged in demanding ransom from parents after kidnapping the children and in case of non-payment of ransom, threats were given to eliminate the kidnapped children. It was further divulged in the information that such type of incident had already occurred in Kothi No. 81-A, Sector 17, Panchkula.[5] The police started with their investigation and recovered a number of incriminating evidence and also investigated the persons, in the know-how of the present happenings.
- Pankaj Bansal, Gobind, Amit Verma and Gaurav Maini were arrested on 29th April, 2003. It was alleged that Gaurav Maini suffered a disclosure statement under Section 27 of the Indian Evidence Act, 1872(hereinafter being referred to as 'Evidence Act') divulging that he, along with Gaurav Bhalla, Sanjay @ Sanju and Munish Bhalla had kidnapped Sachin Garg (PW-2), who was released after collecting an amount of Rs.1 crore as ransom. The accused Gaurav Bhalla was arrested on 1st May, 2003 and he too suffered a disclosure statement under Section 27 of the Evidence Act. Likewise, the accused Munish Bhalla and Sanjay @ Sanju also made disclosures to the Investigating Officer (PW-37) under Section 27 of the Evidence Act.[6] In pursuance of these disclosure statements, a lot of discoveries were made, which were then used in the prosecution's

[5] Gaurav Maini v State of Haryana 92024) Live Law (SC) 471.
[6] *Ibid.*

case. It was in pursuance, of this that the case was tried by the sessions court, decision was upheld by the High Court and the appeals of the aggrieved, finally reached the Supreme Court. Thus, the present case, was now before the Apex Court, for decision-making.

III. Arguments advanced

- *Appellants:* The learned counsel, on behalf of the appellants, vehemently and fervently resorted to saying that this was a cooked-up case with no basis of its own, on the foundational facts that- there was no police report by the family members after the kidnapping took place, the investigating officer took no heed to recording the statement of the PW-2 (Sachin Garg), even though he was present at the time of investigation process, that the entire account of recovery of money and other articles is fabricated, tendering the case totally baseless and in utter disregard of established investigative principles. Further, it was stated that there is no evidence or official record of the secret information that was recorded by the police, which led to the whole investigation process, and thereby, juxtaposing the same with ignorance of defence witness statements by subsequent Courts, the appellants thereby plead to be released.
- *Respondents:* The learned counsel, in the given case, fervently and vehemently opposed the submissions of the appellants and discarded the importance of trivial evidence overlooking, as stated forward by the opposing counsel. He further argued that trivial contradictions cannot lead to the acquittal of the accused and the prosecution witnesses, have proven the case, beyond doubt. Thereby, the Court considered the submissions and pronounced its decision.

IV. Judgement

The appellants were acquitted and their bail bond was discharged, by the Court. The Honourable Court stated that the whole prosecution case was shrouded in the cloud of doubt and thus the Court had to acquit the appellants, in order to prevent the occurrence of miscarriage of justice. The minor contradictions were not considered, that minor by the Apex Court and put to fore, for reasoning their decision. The non-production of important discoveries, recoveries, currency notes and important items was considered irresponsible and a main reason behind the decision of the Court. The delay in recording of FIR, the sheer overlooking of basic facts by both the Courts (Sessions and High Court) and the mismanagement of evidence production, as well as non-production of important records.

The non-examination of the grandfather of the first child arrested, Sh. Shamlal Garg, was held

to be fatal for the prosecution case. In the words of the Honourable Court, "Shamlal Garg, grandfather of the kidnapped boy-Sachin Garg (PW-2) was the first person who came into contact of the police officials on 15th April, 2003 and he admittedly disclosed about the incident to Investigating Officer (PW-37). In that background, Shamlal Garg would have been the most vital witness to unfurl the truth of the matter. However, for the reasons best known to the prosecution, Shamlal Garg was not examined as a witness in the case. As a matter of fact, the trial Court should have remained vigilant and it was absolutely essential for the Court to have exercised powers under Section 311 CrPC so as to summon and examine Shamlal Garg in evidence because his evidence was essential for a just decision of the case. Section 165 of the Evidence Act permits the Judge to ask any question as he pleases in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant or may order production of any document or thing.[7]" On the basis of these observations, the Apex Court rightly acquitted the appellants, in the present case.

V. Discussion and analysis

It must be noted that Section 311 of the Code of Criminal Procedure 1973 (CrPC- now the Bhartiya Nagarik Suraksha Samhita, 2023) and Section 165 of the Indian Evidence Act 1872 (now, the Bhartiya Sakshya Adhiniyam) are the pivotal sections that must be kept in mind while dealing with the examination of lead witnesses in a given case. The Court opined that, "A conjoint reading of Section 311 CrPC and Section 165 of the Evidence Act makes it clear that the trial Court **is under an obligation not to act as a mere spectator and should proactively participate in the trial proceedings, so as to ensure that neither any extraneous material is permitted to be brought on record nor any relevant fact is left out.** It is the duty of the trial Court to ensure that all such evidence which is essential for the just decision of the case is brought on record irrespective of the fact that the party concerned omits to do so. This Court in the case of **Pooja Pal v. Union of India and Others** examined the ambit of powers of the Courts under Section 311 CrPC read with Section 165 of the Evidence Act and held as below[8]: - *"54. It was propounded in Zahira Habibullah case [Zahira Habibullah H. Sheikh v. State of Gujarat, (2004) 4 SCC 158] that in a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. That the concept of fair trial entails the triangulation of the interest of the accused, the victim, society and that the community acts through the State and the prosecuting agency was*

[7] Gaurav Maini v State of Haryana 92024) Live Law (SC) 471.
[8] *Ibid.*

authoritatively stated."[9]

This Court observed that the interests of the society are not to be treated completely with disdain and as persona non grata. It was remarked as well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and 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 was underlined in Zahira Habibullah case [**Zahira Habibullah H. Sheikh v. State of Gujarat, (2004) 4 SCC 158**] that if ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interest of justice do not get incapacitated in the sense of making the proceedings before the courts, mere mock trials. While elucidating that a court ought to exercise its powers under Section 311 of the Code and Section 165 of the Evidence Act judicially and with circumspection, it was held that such invocation ought to be only to subserve the cause of justice and the public interest by eliciting evidence in aid of a just decision and to uphold the truth. It was proclaimed that though justice is depicted to be blindfolded, it is only a veil not to see who the party before it is, while pronouncing judgment on the cause brought before it by enforcing the law and administer justice and not to ignore or turn the attention away from the truth of the cause or the lis before it, in disregard of its duty to prevent miscarriage of justice. That any indifference, inaction, or lethargy displayed in protecting the right of an ordinary citizen, more particularly when a grievance is expressed against the mighty administration, would erode the public faith in the judicial system was underlined.[10] Conclusively speaking, the judgement rendered by the Apex Court is in line with the established principles of criminal justice, constitutionalism and natural justice tenets and it is indeed the duty of the Trial Court to look into the matters of examination of lead witnesses and to perform the duty of the office, with full responsibility. It is rightly said in Jennison v Baker (1972- 2 QB 52),

"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."

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[9] *Ibid.*

[10] *Ibid;* Jennison v. Baker [Jennison v. Baker, (1972) 2 QB 52: (1972) 2 WLR 429: (1972) 1 All ER 997 (CA)] , was recalled : (QB p. 66).

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