Dayal Singh & Ors vs State Of Uttaranchal on 3 August, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3046, 2012 (8) SCC 263, 2012 AIR SCW 4488, AIR 2012 SC (CRIMINAL) 1481, (2013) 1 UC 264, 2012 (3) SCC(CRI) 838, 2012 (7) SCALE 165, (2012) 3 CHANDCRIC 7, (2012) 2 ORISSA LR 879, (2012) 3 CURCRIR 310, (2012) 3 ALLCRIR 2377, (2012) 4 ALLCRILR 149, (2012) 7 SCALE 165, (2012) 53 OCR 252, (2012) 3 RECCRIR 949, (2012) 3 DLT(CRL) 384

Author: Swatanter Kumar

Bench: Swatanter Kumar, Fakkir Mohamed Ibrahim Kalifulla

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.529 OF 2010

Dayal Singh & Ors. … Appellants

Versus

State of Uttaranchal … Respondent

J U D G M E N T

Swatanter Kumar, J.

1. Settled canons of criminal jurisprudence when applied in their correct perspective, give rise to the following questions for consideration of the Court in the present appeal:

a) Where acts of omission and commission, deliberate or otherwise, are committed by the investigating agency or other significant witnesses instrumental in proving the offence, what approach, in appreciation of evidence, should be adopted?

b) Depending upon the answer to the above, what directions should be issued by the courts of competent jurisdiction?

c) Whenever there is some conflict in the eye-witness version of events and the medical evidence, what effect will it have on the case of the prosecution and what

would be the manner in which the Court should appreciate such evidence?

2. The facts giving rise to the questions in the present appeal are that the fields of Gurumukh Singh and Dayal Singh were adjoining in the village Salwati within the limits of Police Station Sittarganj, district Udham Singh Nagar. These fields were separated by a mend (boundary mound). On 8th December, 1985, Gurumukh Singh, the complainant, who was examined as PW2, along with his father Pyara Singh, had gone to their fields. At about 12 noon, Smt. Balwant Kaur, PW4, wife of Pyara Singh came to the fields to give meals to Pyara Singh and their son Gurumukh Singh. At about 12.45 p.m, the accused persons, namely, Dayal Singh, Budh Singh & Resham Singh (both sons of Dayal Singh) and Pahalwan Singh came to the fields wielding lathis and started hurling abuses. They asked Pyara Singh and Gurumukh Singh as to why they were placing earth on their mend, upon which they answered that mend was a joint property belonging to both the parties. Without any provocation, all the accused persons started attacking Pyara Singh with lathis. Gurumukh Singh, PW2, at that time, was at a little distance from his father and Smt. Balwant Kaur, PW4, was nearby. On seeing the occurrence, they raised an alarm and went to rescue Pyara Singh. The accused, however, inflicted lathi injuries on both PW2 and PW4. In the meanwhile, Satnam Singh, who was ploughing his fields, which were quite close to the fields of the parties and Uttam Singh (PW5) who was coming to his village from another village, saw the occurrence. These two persons even challenged the accused persons upon which the accused persons ran away from the place of occurrence. Pyara Singh, who had been attacked by all the accused persons with lathis fell down and succumbed to his injuries on the spot. Few villagers also came to the spot. According to the prosecution, pagri (Ex.1) of one of the accused, Budh Singh, had fallen on the spot which was subsequently taken into custody by the Police. Gurumukh Singh, PW2, left the dead body of his deceased father in the custody of the villagers and went to the police station where he got the report, Exhibit Ka-3, scribed by Kashmir Singh in relation to the occurrence. The report was lodged at about 2.15 p.m. on 8th December, 1985 by PW2 in presence of SI Kartar Singh, PW6. FIR (Exhibit Ka-4A) was registered and the investigating machinery was put into motion. The two injured witnesses, namely, PW2 and PW4 were examined by Dr. P.C. Pande, PW1, the medical officer at the Public Health Centre, Sittarganj on the date of occurrence. At 4.00 p.m., the doctor examined PW2 and noticed the following injuries on the person of the injured witness vide Injury Report, Ex. Ka-1.

PW-2 “1. Lacerated wound of 5 cm X 1 cm and 1 cm in depth. Margins were lacerated. Red fresh blood was present over wound. Wound was caused by hard and blunt object. Wound was at the junction of left parietal and occipital bone 7 cm from upper part of left ear caused by blunt object. Advised X- ray. Skull A.P. and lateral and the injury was kept under observation.

2. Contusion of 6 cm X 2.5 cm on left side of body 3 cm above the left ilic crest. Simple in nature caused by hard and blunt object.” According to the Doctor, the injuries were caused by hard and blunt object and they were fresh in duration.

On 8.12.1985 at 7.30 p.m. Dr. P.C. Pande (PW1) examined the injuries of Smt. Balwant Kaur PW4 and found the following injuries on her person vide injury report Ex.Ka.2:

PW-4

1. Contusion 6 cm X 3 cm on left shoulder caused by hard and blunt object.

2. Contusion of 5 cm X 2 cm on lateral side of middle of left upper arm. Bluish red in colour caused by hard and blunt object.

3. Contusion of 4 cm X 2 cm on left parietal bone 6 cm from left ear caused by hard and blunt object.

According to Dr. Pande, these injuries were caused by hard and blunt object and the duration was within 12 hours and the nature of the injuries was simple. According to Dr. Pande the injuries of both these injured persons could have been received on 8.12.1985 at 12.45 p.m. by lathi."

3. As noted above, according to Dr. Pande, the injuries were caused by a hard and blunt object and duration was within 12 hours. Thereafter, SI Kartar Singh, PW6, proceeded to the place of occurrence in village Salwati. He found the dead body of Pyara Singh lying in the fields. In the presence of panchas, including Balwant Singh, PW8, he noticed that there were three injuries on the person of the deceased, Pyara Singh and prepared Inquest Report vide Ex. Ka-6 recording his opinion that the deceased died on account of the injuries found on his body. After preparing the site plan, Ext. Ka-10, he also wrote a letter to the Superintendent, Civil Hospital, Haldwani for post mortem, being Exhibit Ka-9. The dead body was taken to the said hospital by Constable Chandrapal Singh, PW7. Dr. C.N. Tewari, PW3, medical officer in the Civil Hospital, Haldwani, performed the post mortem upon the body of the deceased and did not find any ante-mortem or post-mortem injuries on the dead body. On internal examination, he did not find any injuries and could not ascertain the cause of death. Further, he preserved the viscera and gave the post-mortem report, Exhibit Ka-4. After noticing that there was no injury or abnormality found upon external and internal examination of the dead body, the doctor in his report recorded as under:

"Viscera in sealed jars handed over to the accompanying Constables.

Jar No.1 sample preservative saline water.

Jar No.2 Pieces of stomach Jar No.3 Pieces of liver, spleen and kidney.

Death occurred about one day back.

Cause of death could not be ascertained. Hence, viscera preserved."

4. It appears from the record that the deceased's viscera, which allegedly was handed over by doctor to the police, was either never sent to the Forensic Science Laboratory (for short, the 'FSL') for chemical examination, or if sent, the report thereof was neither called for nor proved before the Court. In fact, this has been left to the imagination of the Court.

5. The accused persons, at about 5.45 p.m. on the same day, lodged a written report at the same Police Station, which was received by Head Constable Inder Singh, who prepared the check report

Exhibit C-1 and made appropriate entry. The case was registered under Section 307 of the Indian Penal Code, 1860 (IPC) against PW2, Gurumukh Singh. Dayal Singh was arrested in furtherance of the FIR, Exhibit Ka-4A. He was also sent for medical examination and was examined by Dr. K.P.S. Chauhan, CW2. After examining the said accused at about 7.45 p.m., the doctor found two injuries on his person and prepared the report (Exhibit C-4). According to Dr. Chauhan, the injuries on the person of the accused could have been received by a firearm object and injuries were fresh within six hours.

6. The investigating officer completed the investigation and filed charge sheet (Exhibit Ka-11) against the accused persons on 15th January, 1986. It may be noticed that in furtherance to Exhibit C-2, neither any case was registered nor any charge-sheet was presented before the Court of competent jurisdiction. The accused also took no steps to prove that report in Court. They also did not file any private complaint.

7. Considering the ocular and other evidence produced by the prosecution, the learned Trial Court vide its judgment of conviction and order of sentence, both dated 29th June, 1990, found the accused persons guilty of offences under Section 302 read with Section 34 IPC as well as under Section 323 read with Section 34 IPC. The Trial Court, while dealing with the arguments of the accused for application of Section 34, as well as the submission that the witnesses had not attributed specific role to the respective accused persons, held as under:

> "The attack was premeditated and the accused had come fully prepared to do the overt act. The injury was caused on the head of the deceased which is a vital part of the body at which it was aimed by employing lathi, it was clear that the accused persons had intended to cause death by giving blow on vital part of the body of the deceased. After receiving the injuries, the deceased fell down and even thereafter he was attacked by the accused persons and he died on the spot immediately. This all goes to show that the accused persons who all were armed with lathis and had attacked in furtherance of their common intention by surrounding Sri Pyara Singh. At that juncture when the occurrence took place suddenly and the witnesses were at some distance it was quite natural for the witnesses not to have noted as to whose lathi blow caused the injuries on Sri Pyara Singh and also on the injured persons. It was thus quite natural in such circumstances for the witnesses not to have noted the minute details of the incident. The Hon'ble Supreme Court has held in 1971 Cri.L.J. 1135 Har Prasad vs. State of Madhya Pradesh that in view of the large number of accused involved in the occurrence it is quite natural for the prosecution witnesses to get a bit confused. In fact, no cross- examination was made on this respect of the case which has been discussed by me above. The fact that the accused persons had gone to the place of occurrence fully armed with lathis and immediately on the basis of 'mend' started attacking the deceased Sri Pyara Singh indicates that they had gone there with premeditation and prior concert. All the four accused were physically present at the time of the commission of offence. The criminal act was done by the accused persons and they all had shared the common intention by engaging in that criminal enterprise for which they had come fully prepared. The prosecution has

> succeeded in showing the existence of common purpose or design. All the accused persons were confederates in the commission of the offence and they had participated in that common intention. Each of the accused person is liable for the fact done in pursuance of that common purpose of design. The acts done by the accused persons are similar as they all had come prepared armed with lathis and lathi blows were struck on the deceased Sri Pyara Singh by the accused persons in furtherance of their common intention. Each of them is liable for the blows struck with lathi on the deceased and also on the injured persons. It is proved beyond all reasonable doubt that lathi blow was struck on the head of Sri Pyara Singh which was a vital part and he died on the spot due to injuries. Whoever may have struck that lathi blow, each of the accused person is liable for the lathi blows struck on the vital part of the deceased. Since the ladhi blow was struck on the head of the deceased which is a vital part, the offence amounts to murder (See 1972 SCC (Cri) 438 Gudar Dusadh Vs. State of Bihar). The death of Sri Pyara Singh was caused in the occurrence and it is proved to the hilt and beyond all reasonable doubt that he died on the spot on account of lathi blows inflicted on him. It is nobody's case that he died natural death. The accused persons have committed offence punishable under Section 302/34 I.P.C. for committed offence punishable under Section 323/34 I.P.C. for causing voluntary hurt to Sri Gurumukh Singh and Smt. Balwant Kaur."

8. The above judgment of the Trial Court was assailed by the accused persons in appeal before the High Court. The High Court, vide its judgment dated 17th March, 2008, dismissed the appeal and affirmed the judgment of conviction and order of sentence passed by learned Trial Court giving rise to the present appeal.

9. From the narration of the above facts, brought on record by the prosecution and proved in accordance with law, it is clear that there are three eye-witnesses to the occurrence. Out of them, two are injured witnesses, namely PW2 and PW4. PW2 is the son of the deceased and PW4 is the wife. Presence of these two witnesses at the place of occurrence is normal and natural. According to PW4, she had gone to the place of occurrence to give food to her husband and son around 12 noon, which is the normal hour for lunch in the villages. The son of the deceased had come to the field with his father to work. They were putting earth on the mend which was objected to by the accused persons who had come there with lathis and with a premeditated mind of causing harm to the deceased. Upon enquiry, the deceased informed the accused persons that the mend was a joint property of the parties. Without provocation, the accused persons thereupon started hurling abuses upon Pyara Singh and his son, and assaulted the deceased with lathis. PW2 and PW4 intervened to protect their father and husband respectively, but to no consequence and in the process, they suffered injuries. In the meanwhile, when the accused persons were challenged by PW5 and Satnam Singh, who were close to the place of occurrence, they ran away. The presence of PW2, PW4 and PW5 cannot be doubted. The statement made by them in the Court is natural, reliable and does not suffer from any serious contradictions. Once the presence of eye-witnesses cannot be doubted and it has been established that their statement is reliable, there is no reason for the Court to not rely upon the statement of such eye witnesses in accepting the case of the prosecution. The accused persons had come with pre-meditated mind, together with common intention, to assault the deceased and all

of them kept on assaulting the deceased till the time he fell on the ground and became breathless.

10. This Court has repeatedly held that an eye-witness version cannot be discarded by the Court merely on the ground that such eye-witness happened to be a relation or friend of the deceased. The concept of interested witness essentially must carry with it the element of unfairness and undue intention to falsely implicate the accused. It is only when these elements are present, and statement of the witness is unworthy of credence that the Court would examine the possibility of discarding such statements. But where the presence of the eye-witnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence and the occurrence itself, it will not be permissible for the Court to discard the statements of such related or friendly witness. The Court in the case of Dharnidhar v. State of Uttar Pradesh [(2010) 7 SCC 759] took the following view :

> "12. There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the court. It will always depend upon the facts and circumstances of a given case. In Jayabalan v. UT of Pondicherry (2010) 1 SCC 199, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under: (SCC p. 213, paras 23-24) "23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.
>
> 24. From a perusal of the record, we find that the evidence of PWs 1 to 4 is clear and categorical in reference to the frequent quarrels between the deceased and the appellant.

They have clearly and consistently supported the prosecution version with regard to the beating and the ill- treatment meted out to the deceased by the appellant on several occasions which compelled the deceased to leave the appellant's house and take shelter in her parental house with an intention to live there permanently. PWs 1 to 4 have unequivocally stated that the deceased feared threat to her life from the appellant. The aforesaid version narrated by the prosecution witnesses viz. PWs 1 to 4 also finds corroboration from the facts stated in the complaint."

13. Similar view was taken by this Court in Ram Bharosey v. State of U.P. AIR 1954 SC 704, where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a

person out of vengeance or enmity or due to disputes and deposes before the court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same."

11. Similar view was taken by this Court in the cases of Mano Dutt & Anr. v. State of UP [(2012 (3) SCALE 219] and Satbir Singh & Ors. v. State of Uttar Pradesh [(2009) 13 SCC 790].

12. With some vehemence, it has then been contended on behalf of the appellant that the post mortem report and the statement of PW3, Dr. C.N Tewari, specifically state that no external or internal injuries were found on the body of the deceased. In other words, no injury was either inflicted by the accused or suffered by the deceased. In face of this expert medical evidence, the statement of the eye-witnesses cannot be believed. The expert evidence should be given precedence and the accused persons are entitled to acquittal. This argument is liable to be rejected at the very outset despite the fact that it sounds attractive at first blush. No doubt the post mortem report (Exhibit Ka-4) and the statement of PW3 Dr. C.N. Tewari, does show/reflect that he had not noticed any injuries upon the person of the deceased externally or even after opening him up internally. But the fact of the matter is that Pyara Singh died. How he suffered death is explained by three witnesses, PW2, PW4 and PW5, respectively. Besides this, the statement of the investigating officer, PW6, also clearly shows that the body of the deceased contained three apparent injuries. He recorded in his investigative proceedings that the accused had died of these injuries and was found lying dead at the place of occurrence. It is not only the statement of PW-6, but also the Panchas in whose presence the body was recovered, who have endorsed this fact. The course of events as recorded in the investigation points more towards the correctness of the case of the prosecution than otherwise. Strangely, Dayal Singh and other accused persons not only took the stand of complete denial in their statement under Section 313 of the Code of Criminal Procedure, 1973 (CrPC) but even went to the extent of stating that they had no knowledge (pata nahin) when they were asked whether Pyara Singh had died as a result of injuries.

13. We have already discussed above that the presence of PW2, PW4 and PW5 at the place of occurrence was in the normal course of business and cannot be doubted. Their statements are reliable, cogent and consistent with the story of the prosecution. Merely because PW3 and PW6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground. Reference in this regard can usefully be made to the case of C. Muniappan v. State of Tamil Nadu {AIR 2010 SC 3718 : (2010) 9 SCC 567}.

14. Now, we will deal with the question of defective or improper investigation resulting from the acts of omission and/or commission, deliberate or otherwise, of the Investigating Officer or other material witnesses, who are obliged to perform certain duties in discharge of their functions and then to examine its effects. In order to examine this aspect in conformity with the rule of law and keeping in mind the basic principles of criminal jurisprudence, and the questions framed by us at the very outset of this judgment, the following points need consideration:

i) Whether there have been acts of omission and commission which have resulted in improper or defective investigation.

ii) Whether such default and/or acts of omission and commission have adversely affected the case of the prosecution.

iii) Whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case.

iv) If the dereliction of duty and omission to perform was deliberate, then is it obligatory upon the court to pass appropriate directions including directions in regard to taking of penal or other civil action against such officer/witness.

15. In order to answer these determinative parameters, the Courts would have to examine the prosecution evidence in its entirety, especially when a specific reference to the defective or irresponsible investigation is noticed in light of the facts and circumstances of a given case.

16. The Investigating Officer, as well as the doctor who are dealing with the investigation of a criminal case, are obliged to act in accordance with the police manual and the known canons of medical practice, respectively. They are both obliged to be diligent, truthful and fair in their approach and investigation. A default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An Investigating Officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution. It is possible that despite such default/omission, the prosecution may still prove its case beyond reasonable doubt and the court can so return its finding. But, at the same time, the default and omission would have a reasonable chance of defeating the case of the prosecution in some events and the guilty could go scot-free. We may illustrate such kind of investigation with an example where a huge recovery of opium or poppy husk is made from a vehicle and the Investigating Officer does not even investigate or make an attempt to find out as to who is the registered owner of the vehicle and whether such owner was involved in the commission of the crime or not. Instead, he merely apprehends a cleaner and projects him as the principal offender without even reference to the registered owner. Apparently, it would prima facie be difficult to believe that a cleaner of a truck would have the capacity to buy and be the owner, in possession of such a huge quantity, i.e., hundreds of bags, of poppy husk. The investigation projects the poor cleaner as the principal offender in the case without even reference to the registered owner.

17. Even the present case is a glaring example of irresponsible investigation. It, in fact, smacks of intentional mischief to misdirect the investigation as well as to withhold material evidence from the Court. It cannot be considered a case of bona fide or unintentional omission or commission. It is not a case of faulty investigation simplicitor but is an investigation coloured with motivation or an attempt to ensure that the suspect can go scot free. This can safely be gathered from the following:

a) The entire investigation, including the statement of the investigating officer, does not show as to what happened to the viscera which was, as per the statement of PW3, handed over to the Constable, PW7, who, in turn, stated that the viscera had been deposited in the Police Station Malkhana. In the entire statement of the Investigating Officer, there is no reference to viscera, its collection from the hospital, its deposit in the Malkhana and whether it was sent to the FSL at all or not. If sent, what was the result and, if not, why?

b) Conduct of the Investigating Officer is more than doubtful in the present case. In his statement, he had stated that he noticed three injuries on the body of the deceased. He also admitted that in the post mortem report, no internal or external injuries were shown on the body of the deceased. According to him, he had asked PW3 in that regard but the reply of the doctor was received late and the explanation rendered was satisfactory. Firstly, this reply or explanation does not find place on record. There is no document to that effect and secondly, even in his oral evidence, he does not say as to what the explanation was.

c) In his statement, PW3, Dr. C.N. Tewari, stated that he did not find any external or internal injuries even after performing the post mortem on the body of the deceased. This remark on the post mortem report apparently is falsified both by the eye-witnesses as well as the Investigating Officer. It will be beyond apprehension as to how a healthy person could die, if there were no injuries on his body and when, admittedly, it was not a case of cardiac arrest or death by poison etc., more so, when he was alleged to have been assaulted with dandas (lathi) by four persons simultaneously. In any case, the doctor gave no cause for death of the deceased and prepared a post mortem report which ex facie was incorrect and tantamount to abrogation of duty. The Trial Court while giving the judgment of conviction, noticed that medico-legal post mortem examination is a very important part of the prosecution evidence and, therefore, it is necessary that it be conducted by a doctor fully competent and experienced. The Court also commented adversely upon the professional capabilities and/or misconduct of Dr. C.N. Tewari, as follows:

“Whatever may have been the reasons but it is quite evident that Dr. C.N. Tewari failed in his professional duty and he did not perform post mortem examination properly after considering the inquest report and the police papers sent to him. If his finding deferred from the finding of the Panchas he should have informed his superior officers in that regard so that another opinion could have been obtained before the disposal of the dead body. The evidence leaves no room for doubt that Sri Pyara Singh was attacked with lathis as alleged by the prosecution and he received three injuries already referred to above which were mentioned in the inquest report (Ex.Ka-6)....

The case of the prosecution cannot be thrown on account of the gross negligence and apathy of the Medical Officer Dr. C.N. Tewari who had performed autopsy on the

> dead body of Sri Pyara Singh. Since the Medical Officer Dr. C.N. Tewari had conducted in a manner not befitting the medical profession and prepared post mortem report against facts for reasons best known to him and was negligent in his duty in ascertaining the injuries on the body of the deceased, hence it is just and proper that the Director General, Medical health U.P. be informed in this regard for taking necessary action and for eradicating such practices in future." (Emphasis supplied)

18. From the record, it is evident that the learned counsel appearing for the State was also not aware if any action had been taken against Dr. C.N. Tewari. On the contrary, Mr. Ratnakar Dash, learned senior counsel appearing for Dr. C.N. Tewari, informed us that no action was called for against Dr. C.N. Tewari as he had authored the post mortem report and given his evidence truthfully and without any dereliction of duty. He also informed us that since Dr. C.N. Tewari is now retired and is not well, this Court need not pass any further directions.

19. We are not impressed with this contention at all. We have already noticed that PW3, Dr. C.N. Tewari, certainly did not act with the requisite professionalism. He even failed to truthfully record the post mortem report, Exhibit Ka-4. At the cost of repetition, we may notice that his report is contradictory to the evidence of the three eye-witnesses who stood the test of cross-examination and gave the eye-version of the occurrence. It is also in conflict with the statement of PW6 as well as the inquest report (Exhibit Ka-6) prepared by him where he had noticed that there were three injuries on the body of the deceased. It is clear that the post mortem report is silent and PW3 did not even notice the cause of death. If he was not able to record a finding with regard to the cause of death, he was expected to record some reason in support thereof, particularly when it is conceded before us by the learned counsel for the parties, including the counsel for Dr. C.N. Tewari that it was not a case of death by administering poison.

20. Similarly, the Investigating Officer has also failed in performing his duty in accordance with law. Firstly, for not recording the reasons given by Dr. C.N. Tewari for non-mentioning of injuries on the post mortem report, Exhibit Ka-4, which had appeared satisfactory to him. Secondly, for not sending to the FSL the viscera and other samples collected from the body of the deceased by Dr. C.N. Tewari, who allegedly handed over the same to the police, and their disappearance. There is clear callousness and irresponsibility on their part and deliberate attempt to misdirect the investigation to favour the accused.

21. This results in shifting of avoidable burden and exercise of higher degree of caution and care on the courts. Dereliction of duty or carelessness is an abuse of discretion under a definite law and misconduct is a violation of indefinite law. Misconduct is a forbidden act whereas dereliction of duty is the forbidden quality of an act and is necessarily indefinite. One is a transgression of some established and definite rule of action, with least element of discretion, while the other is primarily an abuse of discretion. This Court in the case of State of Punjab & Ors. v. Ram Singh Ex. Constable [(1992) 4 SCC 54] stated that the ambit of these expressions had to be construed with reference to the subject matter and the context where the term occurs, regard being given to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it

requires maintenance of strict discipline. The consequences of these defaults should normally be attributable to negligence. Police officers and doctors, by their profession, are required to maintain duty decorum of high standards. The standards of investigation and the prestige of the profession are dependent upon the action of such specialized persons. The police manual and even the provisions of the CrPC require the investigation to be conducted in a particular manner and method which, in our opinion, stands clearly violated in the present case. Dr. C.N. Tewari, not only breached the requirement of adherence to professional standards but also became instrumental in preparing a document which, ex facie, was incorrect and stood falsified by the unimpeachable evidence of eye witnesses placed by the prosecution on record. Also, in the same case, the Court, while referring to the decision in Ram Bihari Yadav and Others v. State of Bihar & Ors. [(1995) 6 SCC 31] noticed that if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law enforcement agency but also in the administration of justice.

22. Now, we may advert to the duty of the Court in such cases. In the case of Sathi Prasad v. The State of U.P. [(1972) 3 SCC 613], this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in the case of Dhanaj Singh @ Shera & Ors. v. State of Punjab [(2004) 3 SCC 654], held, "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."

23. Dealing with the cases of omission and commission, the Court in the case of Paras Yadav v. State of Bihar [AIR 1999 SC 644], enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. In the case of Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors. [(2006) 3 SCC 374], the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The courts have a vital role to play. (Emphasis

supplied)

24. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

25. Reiterating the above principle, this Court in the case of National Human Rights Commission v. State of Gujarat [(2009) 6 SCC 767], held as under:

> "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. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding 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. The 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."

26. In the case of State of Karnataka v. K. Yarappa Reddy [2000 SCC (Crl.) 61], this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the Investigating Officer could be put against the prosecution case. This Court, in Paragraph 19, held as follows:

> "19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well- nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers

> ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."

27. In Ram Bali v. State of Uttar Pradesh [(2004) 10 SCC 598], the judgment in Karnel Singh v. State of M.P. [(1995) 5 SCC 518] was reiterated and this Court had observed that 'in case of defective investigation the court has to be circumspect while 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 investigation officer if the investigation is designedly defective'.

28. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

29. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In Kamaljit Singh v. State of Punjab [2004 Cri.LJ 28], the Court, while dealing with discrepancies between ocular and medical evidence, held, "It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out."

30. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the

court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. {Plz. See Madan Gopal Kakad v. Naval Dubey & Anr. [(1992) 2 SCR 921 : (1992) 3 SCC 204]}.

31. Profitably, reference to the value of an expert in the eye of law can be assimilated as follows:

> "The essential principle governing expert evidence is that the expert is not only to provide reasons to support his opinion but the result should be directly demonstrable. The court is not to surrender its own judgment to that of the expert or delegate its authority to a third party, but should assess his evidence like any other evidence. If the report of an expert is slipshod, inadequate or cryptic and the information of similarities or dissimilarities is not available in his report and his evidence in the case, then his opinion is of no use. It is required of an expert whether a government expert or private, if he expects, his opinion to be accepted to put before the court the material which induces him to come to his conclusion so that the court though not an expert, may form its own judgment on that material. If the expert in his evidence as a witness does not place the whole lot of similarities or dissimilarities, etc., which influence his mind to lead him to a particular conclusion which he states in the court then he fails in his duty to take the court into confidence. The court is not to believe the ipse dixit of an expert. Indeed the value of the expert evidence consists mainly on the ability of the witness by reason of his special training and experience to point out the court such important facts as it otherwise might fail to observe and in so doing the court is enabled to exercise its own view or judgment respecting the cogency of reasons and the consequent value of the conclusions formed thereon. The opinion is required to be presented in a convenient manner and the reasons for a conclusion based on certain visible evidence, properly placed before the Court. In other words the value of expert evidence depends largely on the cogency of reasons on which it is based." [See: Forensic Science in Criminal Investigation & Trial (Fourth Edition) by B.R. Sharma]

32. The purpose of expert testimony is to provide the trier of fact with useful, relevant information. The overwhelming majority rule in the United States, is that an expert need not be a member of a learned profession. Rather, experts in the United States have a wide range of credentials and testify regarding a tremendous variety of subjects based on their skills, training, education or experience. The role of the expert is to apply or supply specialized, valuable knowledge that lay jurors would not be expected to possess. An expert may present the information in a manner that would be unacceptable with an ordinary witness. The common law tried to strike a balance between the benefits and dangers of expert testimony by allowing expert testimony to be admitted only if the testimony were particularly important to aiding the trier of fact. Even in United States, if the helpfulness of expert testimony is substantially outweighed by the risk of unfair prejudice, confusion or waste of time, then the testimony should be excluded under the relevant Rules, and State equally balanced. Expert testimony on any issue of fact and significance of its application has been doubted by the scholars in the United States. Even under the law prevalent in that country, the opinion of an

expert has to be scientific, specific and experience based. Conflict in expert opinions is a well prevalent practice there. While referring to such incidence David H. Kaye and other authors in 'The New Wigmore A Treatise on Evidence – Expert Evidence' (2004 Edition) opined as under :

> "The district court opinion reveals that one pharmacologist asserted "that Danocrine more probably than not caused plaintiff's death from pulmonary hypertension," but it describes the reasoning behind this opinion in the vaguest of terms, referring only to "extensive education and training in pharmacology" and an unspecified "scientific technique" that "relied upon epidemiological, clinical and animal studies, as well as plaintiff's medical records and medical history..." The nature of these studies and their relationship to the patient's records is left unstated. The district court incanted the same mantra to justify admitting the remaining testimony. It asserted that the other experts "similarly base their testimony upon a careful review of medical literature concerning Danocrine and pulmonary hypertension, and plaintiff's medical records and medical history." The court of appeals elaborated on the testimony of two of the experts. The physician "was confident to a reasonable medical certainty that the Danocrine caused Mrs. Zuchowicz's PPH" because of "the temporal relationship between the overdose and the start of the disease and the differential etiology method of excluding other possible causes." Yet the "differential etiology" here was barely more than a differential diagnosis of PPH. The causes of PPH are generally unknown and it appears that the only other putative alternative causes considered were drugs other than Danocrine. It is not at all clear that such a "differential etiology" is adequate to support a conclusion of causation to any kind of a "medical certainty." The pharmacologist, not being a medical doctor, testified "to a reasonable degree of scientific certainty . . . [that] the overdose of Danocrine, more likely than not, caused PPH. . . ." He postulated a mechanism by which this might have occurred: "I) a decrease in estrogen; 2) hyperinsulinemia, in which abnormally high levels of insulin circulate in the body; and 3) increase in free testosterone and progesterone . . . that . . . taken together, likely caused a dysfunction of the endothelium leading to PPH." In sum, plaintiff's experts did not know what else might have caused the hypertension, and they offered a conjecture as to a causal chain leading from the drug to the hypertension. This logic would be more than enough to justify certain clinical recommendations—the advice to Mrs. Zuchowicz to discontinue the medication, for example. But is it enough to allow an expert not merely to testify to a reasonable diagnosis of PPH, or "unexplained pulmonary hypertension," as the condition also is known, but also be able to propound a novel explanation that has yet to be verified, even in an animal model?"

33. The Indian law on Expert Evidence does not proceed on any significantly different footing. The skill and experience of an expert is the ethos of his opinion, which itself should be reasoned and convincing. Not to say that no other view would be possible, but if the view of the expert has to find due weightage in the mind of the Court, it has to be well authored and convincing. Dr. C.N. Tewari was expected to prepare the post mortem report with appropriate reasoning and not leave everything to the imagination of the Court. He created a serious doubt as to the very cause of death

of the deceased. His report apparently shows an absence of skill and experience and was, in fact, a deliberate attempt to disguise the investigation.

34. We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion. Such report is not binding upon the Court. The Court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. Just to illustrate this point of view, in a given case, there may be two diametrically contradictory opinions of handwriting experts and both the opinions may be well reasoned. In such case, the Court has to critically examine the basis, reasoning, approach and experience of the expert to come to a conclusion as to which of the two reports can be safely relied upon by the Court. The assistance and value of expert opinion is indisputable, but there can be reports which are, ex facie, incorrect or deliberately so distorted as to render the entire prosecution case unbelievable. But if such eye-witnesses and other prosecution evidence are trustworthy, have credence and are consistent with the eye version given by the eye-witnesses, the Court will be well within its jurisdiction to discard the expert opinion. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the limitations prescribed and with careful examination by the Court. A complete contradiction or inconsistency between the medical evidence and the ocular evidence on the one hand and the statement of the prosecution witnesses between themselves on the other, may result in seriously denting the case of the prosecution in its entirety but not otherwise.

35. Reverting to the case in hand, the Trial Court has rightly ignored the deliberate lapses of the investigating officer as well as the post mortem report prepared by Dr. C.N. Tewari. The consistent statement of the eye-witnesses which were fully supported and corroborated by other witnesses, and the investigation of the crime, including recovery of lathis, inquest report, recovery of the pagri of one of the accused from the place of occurrence, immediate lodging of FIR and the deceased succumbing to his injuries within a very short time, establish the case of the prosecution beyond reasonable doubt. These lapses on the part of PW3 and PW6 are a deliberate attempt on their part to prepare reports and documents in a designedly defective manner which would have prejudiced the case of the prosecution and resulted in the acquittal of the accused, but for the correct approach of the trial court to do justice and ensure that the guilty did not go scot-free. The evidence of the eye-witness which was reliable and worthy of credence has justifiably been relied upon by the court.

36. Despite clear observations of the Trial Court, no action has been taken by the Director General, Medical Health, Uttar Pradesh. We do not see any justification for these lapses on the part of the higher authority. Thus, it is a fit case where this Court should issue notice to show cause why action in accordance with the provisions of the Contempt of Courts Act, 1971 be not initiated against him and he be not directed to conduct an enquiry personally and pass appropriate orders involving Dr. C.N. Tewari and if found guilty, to impose punishment upon him including deduction of pension. Admittedly, this direction was passed when Dr. C.N. Tewari was in service. His retirement, therefore, will be inconsequential to the imposing of punishment and the limitation of period indicated in the service regulations would not apply in face of the order of this Court.

37. Similarly, the Director General of Police UP/Uttarakhand also be issued notice to take appropriate action in accordance with the service rules against PW6, SI Kartar Singh, irrespective of the fact whether he is in service or has since retired. If retired, then authorities should take action for withdrawal or partial deduction in the pension, and in accordance with law.

38. Lastly, the learned counsel for the appellant had, of course, with some vehemence, argued that the offence even if committed by the appellant, would not attract the provisions of Section 302 IPC and would squarely fall within the ambit of Part II of Section 304 IPC. In other words, he prays for alteration of the offence to an offence punishable under Part II of Section 304 IPC. We are concerned with a case where four persons armed with lathis had gone to the fields of the deceased. They first hurled abuses at him and without any provocation started assaulting him with the dang (lathi) that they were carrying. Despite efforts to stop them by the the wife and son of the deceased, PW4 and PW2, they did not stop assaulting him and assaulted both these witnesses also. Thereupon, they kept on assaulting the deceased until he fell down dead on the ground. Three injuries were noticed by the Police on the body of the deceased including a protuberant injury on the head, which the Court is only left to presume has resulted in his death. In the absence of an authentic and correct post- mortem report (Exhibit Ka-4), the truthfulness of the prosecution eye-witnesses cannot be doubted. In addition thereto, the stand taken by the accused that they had suffered injuries was a false defence. Firstly, according to the doctor, CW2, it was injuries of a firearm, while even according to the defence, the deceased or his son were not carrying any gun at the time of occurrence. Secondly, they did not choose to pursue their report with the police at the time of investigation or even when the trial was on before the Trial Court. The accused persons had gone together armed with lathis with a common intention to kill the deceased and they brought their intention into effect by simultaneously assaulting the deceased. They had no provocation. Thus, the intention to kill is apparent. It is not a case which would squarely fall under Part II of Section 304 IPC. Thus, the cumulative effect of appreciation of evidence, as afore- discussed, is that we find no merit in the present appeal.

39. Having analyzed and discussed in some elaboration various aspects of this case, we pass the following orders:

A) The appeal is dismissed both on merits and on quantum of sentence.

B) The Director Generals, Health Services of UP/Uttarakhand are hereby issued notice under the provisions of the Contempt of Courts Act, 1971 as to why appropriate action be not initiated against them for not complying with the directions contained in the judgment of the Trial Court dated 29th June, 1990.

C) The above-said officials are hereby directed to take disciplinary action against Dr. C.N. Tewari, PW3, whether he is in service or has since retired, for deliberate dereliction of duty, preparing a report which ex facie was incorrect and was in conflict with the inquest report (Exhibits Ka-6 and Ka-7) and statement of PW6. The bar on limitation, if any, under the Rules will not come into play because they were directed by the order dated 29th June, 1990 of the Court to do so. The action even for

stoppage/reduction in pension can appropriately be taken by the said authorities against Dr. C.N. Tewari.

D) Director Generals of Police UP/Uttarakhand are hereby directed to initiate, and expeditiously complete, disciplinary proceedings against PW6, SI Kartar Singh, whether he is in service or has since retired, for the acts of omission and commission, deliberate dereliction of duty in not mentioning reasons for non-disclosure of cause of death as explained by the doctor, not sending the viscera to the FSL and for conducting the investigation of this case in a most callous and irresponsible manner. The question of limitation, if any, under the Rules, would not apply as it is by direction of the Court that such enquiry shall be conducted.

E) We hold, declare and direct that it shall be appropriate exercise of jurisdiction as well as ensuring just and fair investigation and trial that courts return a specific finding in such cases, upon recording of reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution. Further, the Courts would be fully justified in directing the disciplinary authorities to take appropriate disciplinary or other action in accordance with law, whether such officer, expert or employee witness, is in service or has since retired.

40. The appeal is accordingly dismissed.

.....J. (Swatanter Kumar) .....J. (Fakkir Mohamed Ibrahim Kalifulla) New Delhi, August 3, 2012 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO.529 OF 2010 Dayal Singh & Ors. ... Appellants Versus State of Uttaranchal ... Respondent O R D E R Today, by a separate judgment, we have directed that action be taken against PW 3 Dr. C.N. Tewari and PW 6 SI Kartar Singh. The Director General of Police and Director General, Health of State of Uttar Pradesh and/or Uttarakhand whoever is the appropriate authority, to take action within three months from today and report the matter to this Court. List for limited purpose on 15th October, 2012.

.....J. (Swatanter Kumar) .....J. (Fakkir Mohamed Ibrahim Kalifulla) New Delhi, August 3, 2012