



# CHHATTISGARH

Judicial Services Exam

CIVIL JUDGE CADRE

High Court of Chhattisgarh

**Judgement**

**Volume - 1**



# CHHATTISGARH JUDICIAL SERVICES

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## [Circumstantial Evidence]

**Circumstances on which the case is based should be of conclusive nature and tendency as to exclude every hypothesis but the one proposed to be proved**

Chandru @ Chandrasekaran

Versus

State Rep. By deputy superintendent of Police cb cid and Anr

**Division Bench of the Hon'ble Supreme Court**

Hon'ble Kishan Kaul and Deepak Gupta. JJ.

**Dated:** July 11, 2019.

**Delivered by:** Deepak Gupta, J.

### **Law Point**

1. Where the evidence is of a circumstantial nature:

- \* The circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused.
- \* The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.
- \* There must be a chain of evidence to complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as so show that within all human probability the act must have been done by the accused.

2. Sir Alfred wills in his book wills laid down the following Rules to observe in the circumstantial evidence

**Rule 1:** The facts alleged as the basis of any legal inference must be clearly proved, and beyond reasonable doubt connected with the factum probandum.

**Rule 2:** The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability.

**Rule 3:** In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.

**Rule 4:** In order to justify the inference of guilt's the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

**Rule 5:** If there by any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

## **Brief Facts**

The deceased Arun was a friend of accused Siva @ Sivaprakash, A1. The deceased along with A1 and Chandru @ Chandrasekaran, A2, travelled to Chennai on 30.10.2004. They went to Meena Guest House, run by M, Sheik Davood (PW-3) at about 9 p.m. where room no. 203 was allotted to them. At about 9.30 p.m. Venkatesh @ Venki came to the room. Venki injected 4 ml of Tidijesic drug, into the left wrist of deceased Arun. Venki also used 2 ml drug for himself. Thereafter, Venki left the guest house.

Next morning Siva and Chandru called Venki since Arun did not get up. The room boy of the lodge viz., Sankar (PW-4) complained to the Manager of the lodge that a lot of people were coming into room no. 203. It was found that Arun was dead. Thereafter, Iqbal (PW-2), working as Manager in the company owned by father of the deceased Arun and Ponselkar (PW-1), maternal uncle of the deceased came to the room.

PW-1 filed a complaint on 31.10:2004 at 9/45 a.m., in which he stated that his nephew Arun was earlier studying in an engineering college at Chennai. However, he was not studying properly and had developed some bad habits and, therefore, he was shifted to a college at Thoothukudi. The relevant portion of the complaint is to the effect that on 31.10.2004 at about 7.30 a.m. he had received a call from Iqbal (PW-2) informing him that his nephew Arun, who stayed the night in Room No.203 of Meena Guest House had consumed heavy dose of a drug through injection and is unconscious. He immediately went to the guest house where he found that his nephew was dead. He thereafter went to Triplicane Police Station and lodged the report.

The FIR was registered and the body of the deceased was sent for post mortem. According to the (PW6) Doctor conducting post mortem stated that the cause of the death is uncertain but it was possible that it was happened by drug injection. Venki was arrested and he allegedly made a confessional statement to the police on 8/11/2004 which led to the discovery of Tidifesc cumpoule etc.

PW1 filed petition in the High Court of Madras in February, 2005 seeking transfer of the investigation to some other agency since he was not happy with the manner in which the case was being investigated. The High Court vide order dated 28.02.2005 transferred the investigation to the CB CID, Tamil Nadu. There were three suspects before the police i.e. Venkatesh @ Venki, Sivaprakash @ Siva and Chandrasekaran @ Chandru. All three were subjected to Polygraph, Brainmapping and Narcoanalysis tests at a Forensic Science Laboratory. According to the investigating Officer (DW-4), who carried the investigation, the two appellants herein cleared the said tests and there was no suspicion against them since they disclosed no signs of deception. However, during the tests, Venki's answers were found deceptive

In the year 2006, PW-5, father of the deceased, filed a petition in the Madras High Court for transferring the investigation of the case to the Central Bureau of Investigation (CBI). This petition was rejected by the high Court on 08.02.2006. After more than three years of the incident, charge sheet was filed by CB CID under section 173 CrPC only against Venkatesh @ Venki under section 304 Part II of IPC. Remaining two accused were cited as prosecution witnesses in chargesheet.

Venki died after filing of the charge sheet but before trial. PW1 filed a private complaint before the Court, in which he introduced new facts which were not there in earlier complaint/ FIR. He stated that when he went to the room no. 203, Venki was present and told the complainant that the accused has given excess narcotic drugs on the left inner portion of the arm due to which the deceased died. It was also stated that immediately after PW1 visited the guest house on 31/10/2004, he had gone to the Triplicane Police Station, where the police forcibly obtained his signatures on two blank papers. It was alleged that the Firewas lodged by the police in connivance with the two accused. In complaint it was also mentioned that there were marks of

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injecting two injections and, according to the report of the Forensic Science Laboratory, a huge amount of narcotic substance had been injected into the deceased which caused his death. In this complaint it was also alleged that the accused Siva had close association with PW-10 (hereinafter referred to as 'R'). According to the complainant, R 10) was introduced to the deceased Arun and they used to regularly talk to each other (phone every day and therefore, accused Siva could not tolerate that his girlfriend should shift loyalty to some other person. Therefore, he approached Chandru, who was a student in a medical college and with his help injected excess dose of Tidijesic with the intention of killing Arun.

The Metropolitan magistrate recorded the statement of seven witnesses and found sufficient grounds for proceeding with the case under section 302 IPC. The case was committed to the court of sessions and charges were framed against the accused. Accused pleaded not guilty.

### **Decision of the Trial Court and High Court**

Trial Court convicted the accused for committing the offence punishable under section 302 IPC read with section 120B IPC and sentence them to undergo life imprisonment.

Aggrieved Appellant accused filed two separate criminal appeals before High Court.

The High Court dismissed the appeals filed by the Appellant and affirmed the decision of the Trial Court.

Assailing the said decision the Appellant accused filed appeal before the Hon'ble Supreme Court.

### **Point of determination**

Whether the High Court was justified in affirming the decision of the Trial Court and dismissing the appeals of the Appellant accused?

## Decision of the Hon'ble Supreme Court

In the light of given facts and circumstances the Hon'ble Supreme Court observed that:

There were no eye witnesses to the case and it is a case of circumstantial evidence. In *Hanumant v. State of Madhya Pradesh*<sup>13</sup> the Hon'ble Supreme Court inundated the law with regard to appreciation of circumstantial evidence and held that where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. There must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

Sir Alfred wills in his book wills laid down the following Rules to observe in the circumstantial evidence:

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**Rule 5:** If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

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## **Circumstances relied upon by the prosecution**

The Hon'ble Supreme Court discussed the various circumstances relied upon by the prosecution, and observed as follows:

### **1. Last Seen Together**

PW1 states that one Jeyaraj, an employee of PW5 informed him over the phone at about 6 or 7 p.m. of 30/ 10/2004 that the deceased Arun along with his friend Siddharth was coming to stay in the night with PW 1 at Chennai. A few minutes later, PW1 talked to his nephew Arun, who also told him that he would be coming to his uncle's house but did not come.

Siddharth is the son of Comti Pandian (PW7). According to her, Siddharth told her that he was going to Chennai along with his friend Arun (deceased) to purchase some clothes. She was reluctant to send her son with his friend but then she talked to Arun who told her that they would be going to Chennai by bus and convinced her to send Siddharth with him. She dropped Siddharth at the bus stand. Later she came to know that her son Siddharth had gone to Chennai along with the deceased Arun and three other persons in a car which had met with an accident.

Mathesh, son of Kala Devi (PW8), was also travelled in the same car. PW8 told that her son Mathesh told her that he was going to Coimbatore. Next morning she received a call from his brother's son who told her that the case in which Mathesh was travelling has met with an accident and Mathesh along with his friends Siva, Chandru, Siddharth and Arun came to the house of her brother and from there Mathesh returned to home.

The Hon'ble Supreme Court opined that the assumption regarding last seen together by both the courts below was based on no evidence as it was clear that the accused did not organize the trip but it was the deceased who had organized the trip and therefore, it cannot be said that the accused had taken the deceased to the guest house with the intention of killing him.

## 2. Medical Evidence

Medical evidence clearly indicates that the deceased died due to overdose of Tidijesic. The evidence of Dr. R. Baskaran (PW1), clearly shows that after chemical analysis it was found that the amount of the offending substance found in the blood of the deceased would be equal to injecting 40 ml of Tidijesic. He further stated that if a 20 ml syringe is used then about 40 ml of Tidijesic could be injected in two attempts. However, if a 5 ml syringe is used, it would require 80 attempts.

Dr. A.N. Shanmugham (PW6) in his statement had stated that injuries caused by the needle due to injection of medicine were found in fore arm; ankle of front foot, front and middle fore arm.

But in post mortem report clearly mentioned two injection marks one in front of left elbow joint and one in middle of left fore arm, no other external or internal injuries seen over the body.

He has not been able to give a proper explanation why he did not mention other injuries in the post mortem report.

The case of the prosecution that on the first occasion the deceased was injected with 4 ml Tidijesic. Therefore, 36 ml could not have been injected in one go on the next occasion.

The police has not recovered any syringe or other material from the room.

As per the prosecution case, the lodge was locked at about 10.30 p.m. The next morning the deceased was found dead. No recoveries of any ampoules or syringe have been made from the accused or at their instance to connect them with the offence. The prosecution, by means of the aforesaid medical evidence, has failed to link the accused with the death of the deceased. The deceased first injected an injection between 9.30 p.m. to 10.00 p.m. As per doctor, the effect of this could end in about six hours.

Therefore, the possibility of the deceased getting up himself in the middle of the night inject himself cannot be ruled out.

### 3. Motive

The motive put forth is that R (PW10) was close to accused Siva, who introduced her to Arun.

The prosecution case is that, two had developed a close relationship and were regularly chatting with each other on phone and through senses. This was not liked by Siva and therefore he conspired with Chandru to kill the deceased by overdosing him. < (PW10) in her statement has not at all supported the prosecution case and according to her, she had never met Arun but had talked to him over phone and that too occasionally. She also denied that she had any special relationship with Siva no other evidence has been led to prove that R (PW10) had any special relationship with accused Siva or that she had developed any special relationship with deceased Arun

The only evidence in this regard is the statement of R (PW 10), which does not support the prosecution case at all.

### 4. Chandru was a medical student

Chandru had no motive to kill Arun. Chandru was a medical student, studying in a profession meant to save lives and not to kill people. There are no evidence that Chandru had injected the poisonous substance into the body of the deceased. From the evidence on record it stands established that the deceased was a drug addict and had been taking ingestible drugs for a long time and such drug addicts can inject themselves.

Therefore, the inference drawn by the High Court as well as the trial Court that Siva and Chandru had conspired of had the common intention of murdering Arun is not based on any cogent or reliable evidence.

## Circumstances against the prosecution

Further, the Hon'ble Supreme Court discussed the circumstances which go against the prosecution

### 1. Inconsistency in the statement of PW1:

- \* In PW 1's first complaint there was no reference to R (PW10) or other facts which have been stated at a later stage.
- \* The Private complaint filed by him 4 years later was contrary the first complaint filed.

- \* He alleged that he was asked to sign on two blank papers by the police. No reason was there as to why the police in a case of this nature would try to help the accused and shield the actual criminal.
- \* Despite a pointed query to the counsel for the original complaint and the informant and the state they failed to point out whether any such complaint had been made by PW1 or PWS
- \* The version of PW1 that his signatures were obtained on blank sheets of papers not accepted by the Hon'ble Court and also casts a doubt on the veracity of the state.

## 2. Delay in filing the private complaint:

- \* There was no explanation as to why no protest petition was filed when the police had only made out a case against accused Venki and that too under section 304 IPC not murder.
- \* PW1 and PW5 are not coming to the court with clean hands. The motive has been introduced after four years. The father and the maternal uncle of the deceased never brought up the issue of the deceased never brought up the issue of the deceased having conversations with R (PW10) any earlier stage.

Therefore, the Hon'ble Supreme Court allowed the appeals and set aside the decision of the High Court as well as of session court and held that:

1. The prosecution miserably failed to prove that the accused injected the drugs into the body of the deceased. There was possibility that the deceased injected himself on the second occasion sometime in the middle of the night or early in morning.
2. Doctor who conducted the postmortem did not give any approximate time of death of the deceased.
3. The circumstances proved cannot lead to the inference that it was accused alone who committed the offence.
4. The prosecution even failed to prove, beyond reasonable doubt that the death was homicidal in view of inconsistencies in the medical evidence dealt.

## Question

Arun was a friend of accused Siva @ Sivaprakash. Arun along with siva and chandru @ Chandrasekaran travelled to Chennai on 30.10.2004. They went to Meena Guest House, run by M. Sheik Davood at about 9 p.m. where room no. 203 was allotted to them. At about 9.30 p.m. Venkatesh @ Venki came to the room. Venki injected 4 ml of Tidijesic drug into the left wrist of Arun. Venki also used 2 ml drug for himself. Thereafter, Venki left the guest house.

Next morning Siva and Chandru called Venki since Arun did not get up. The room boy of the lodge viz., Sankar complained to the Manager of the lodge that a lot of people were coming into room no. 203. It was found that Arun was dead. Thereafter, Iqbal, working as Manager in the company owned by father of the Arun and Ponselkar, maternal uncle of the Arun came to the room.

Ponselkar filed a complaint on 31.10.2004 at 9.45 a.m., in which he stated that his nephew Arun was earlier studying in an engineering college at Chennai. However, he was not studying properly and had developed some bad habits and, therefore, he was shifted to a college at Thoothukudi. The relevant portion of the complaint is to the effect that on 31.10.2004 at about 7.30 am. He had received a call from Iqbal informing him that his nephew Arun, who stayed the night in Room No.203 of Meena Guest House had consumed heavy dose of a drug through injection and is unconscious. He immediately went to the guest house where he found that his nephew was dead. He thereafter went to Triplicane Police Station and lodged the report.

FIR was registered and the body of the Arun was sent for post mortem. According the Doctor conducting post mortem stated that the cause of the death is uncertain but it was possible that it was happened by drug injection. Venki was arrested and he allegedly made a confessional statement to the police on 8/11/2004 which led to the discovery of Tidifesic cumpoule etc. PW1 filed petition in the High Court of Madras in February, 2005 seeking transfer of the investigation to some other agency since he was not happy with the manner in which the case was being investigated. The High Court vide order dated 28.02.2005 transferred the investigation to the CB CID, Tamil Nadu. There were three suspects before the police i.c. Venkatesh @ Venki, Sivaprakash @ Siva and Chandrasekaran @ Chandru. All three were subjected

to Polygraph, Brainmapping and Narcoanalysis tests at a Forensic Science Laboratory. According to the Investigating Officer (DW-4), who carried the investigation, the two appellants herein cleared the said tests and there was no suspicion against them since they disclosed no signs of deception. However, during the tests, Venki's answers were found deceptive. In the year 2006, PW-5, father of the deceased, filed a petition in the Madras High Court for transferring the investigation of the case to the Central Bureau of Investigation (CBI). This petition was rejected by the High Court on 08.02.2006. After more than three years of the incident, charge sheet was filed by CB CID under section 173 CrPC only against Venkatesh @ Venki under section 304 Part II of IPC. Remaining two accused were cited as prosecution witnesses in chargesheet. Venki died after filing of the charge-sheet but before trial. PW1 filed a private complaint fore the Court, in which he introduced new facts which were not their in earlier complaint/ FIR. He stated that when he went to the room no. 203, Venki was present and told the complainant that the accuse had given excess narcotic dregs on the left inner portion of the arm due to which the deceased died. It was also stated that immediately after PW1 visited the guest house on 31/10/2004, he had gone to the. Miplicane Police Station, where the police forcibly obtained his signatures on two blank apers. It was alleged that the FIR was lodged by the police in connivance with the two accused. In complaint it was also mentioned that there were marks of injecting two injections and, according to the report of the Forensic Science Laboratory, a huge amount of narcotic substance had been injected into the deceased which caused is death. In this complaint it was also alleged that the accused Siva had close association with PW-10 (hereinafter referred to as RA According to the complainant, R W-10) was introduced to the deceased Arun and they used to regularly talk to each other on phone every day and therefore, accused Siva could not tolerate that his girlfriend should shift loyalty to some other person. Therefore, he approached Chandru, who was a student in a medical college and with his help injected excess dose of Tidijesic with the intention of killing Arun. The Metropolitan magistrate recorded the statement of seven witnesses and found sufficient grounds for proceeding with the case under section 302 IPC. The case was committed to the court of sessions and charges were framed against the accused Accused pleaded not guilty. Decide the case in the light of given facts and circumstances as to guilt of the accuse in accordance with the relevant law.

## [Section 102 of Indian Evidence Act, 1872]

**Accused is not required to establish or prove his defense beyond all reasonable doubt.**

Anand Ramachandra Chougule

Versus

Sidarai Laxman Chougala and others

With

State of Karnataka

Versus

Sidarai Laxman Chougala and others

### **Devison Bench of the Hon'ble Supreme Court**

Hon'ble Ashok Bhushan and Navin Sinha JJ.

Dated: August 06, 2019.

Delivered by: Navin Sinha, J.

### **Law Point**

1. The prosecution is required to prove its case beyond a reasonable doubt IAS but the accused can discharge his onus by establishing a mere preponderance of probability.
2. A fair trial is where the prosecution does not conceal anything from the court and discharges its obligations in accordance with law impartially to facilitate a just and proper decision by the court in the larger interest of justice.

### **Brief facts**

The complainant and the Respondent accused (R1, R2, R3 & R4) were related to each other. There was a land dispute between them. A civil suit was also pending between them

On 07:06:2002, the deceased along with others were returning to their village. When they reached near the house of one Yeellappa Patil, the accused persons are alleged to have assaulted them leading to homicidal death.

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The Trial Court convicted all the four accused.

## Decision of the High Court

The High Court in appeal concluded, from the materials on record, that the assault was made on the spur of the moment without premeditation and that both sides having suffered injuries and opined that the conviction ought to be altered under section 304 Part I, IPC.

Therefore, the conviction of the R1 and R2 to life imprisonment under section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') has been altered to one under section 304 Part 1/34 sentencing them to seven years and R3 and R4 have been acquitted were acquitted as their presence was found to be doubtful.

## Contention of the Appellant

Ld. Counsel for the Appellants submitted that:

1. The High Court erred in altering the conviction to one under section 304 Part I, IPC as the assault was premeditated. The accused were armed with axe, koita and bamboo sticks. PWs. 2 and 3 were injured witnesses.
2. Here was no material in support of the plea of self-defense or that the assault took place on the spur of the moment. No such defense was taken 2 under section 313, Cr.P.C. by the accused. PWs. 4 and 5 were also eye witnesses.
3. Minor contradictions and discrepancies in the evidence of the prosecution witnesses were insufficient to doubt the prosecution case.
4. A single assault on the head sufficient to cause death, without provocation in a sudden quarrel or fight justified conviction under Section 302, IPC. [Relied on Pulicherla Nagaraju us. State of A.P., (2006) 11 SCC 444, and State of Rajasthan there Secretary us. Kanhalya Lal, (2019) 5 SCC 639]
5. If the accused took a plea of self-defense, burden was on them under section 105 of the Indian Evidence Act, 1872 to demonstrate that their case would come under any of the general exceptions under the IPC. [Held in Raj Kumar us. State of Maharashtra, (2009) 15 SCC 292,]
6. If the First Information Report lodged by the accused with regard to the same incident was not exhibited by the prosecution or evidence with regard to hospitalization and injury reports of the accused were also not placed, at best it may be a case of defective investigation which cannot



dent the credibility of the prosecution case with regard to the premeditated murderous assault with a common intention. [Held in relying on Dayal Singh and others vs. State of Uttaranchal, (2012) 8 SCC 263 and Gajoo vs. State of Uttarakhand, (2012) 9 SCC 532]

## **Contention of the Respondent**

Ld. Counsel for the Respondents-accused submitted that:

1. There was no premeditated attack, the parties being related, and the existence of a land dispute between them, when they met near the house of Yellappa Patil a verbal duel ensued followed by a scuffle in which both sides received injuries.
2. The F.I.R. lodged by the Respondents, their admission to the Hospital for treatment and injury reports have all been suppressed by the prosecution.
3. The fact that the defence may not have been taken under section 313, Cr.P.C. was inconsequential as the prosecution had to prove the charge beyond all reasonable doubt.
4. In absence of a premeditated plan to attack, a sudden quarrel in the background of civil dispute with regard to land pending between the parties, the order of the High Court calls for no interference. [held in Manoj Kumar vs. State of Himachal Pradesh, (2018) 7 SCC 327,]

## **Point of Determination**

Whether the High Court was justified in altering decision of the Trial Court while Acquitting the R3 and R4 and reducing the conviction of the RI and R2 section 304 Part I, IPC?

## **Decision of the Hon'ble Supreme Court**

In light of the facts and circumstances, the Hon'ble Supreme Court held that the prosecution failed to act fairly and place all relevant materials with regard to the occurrence before the court enabling it to take just and fair decision has caused serious prejudice to them. No fault found with the acquittal of accused nos. 3 and 4 by the High. Court giving them the benefit of doubt. There was no reason to interfere with the order of the High Court because of following reasons:

1. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. The accused has only to create a doubt about the prosecution case and the probability of its defense.
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2. If the accused takes a defense which is not doubtful or appears likely and there is material in support of such defense, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.
  3. Even if an accused did not take the defense given under section 313 CrPC, not taking of such defense cannot absolve the prosecution from proving its case beyond all reasonable doubt.
  4. In *Sunil Kundu v. State of Jharkhand*, (2013) 4 SCC 422, the Hon'ble Supreme Court observed that "...When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probablis their defense. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt."
  5. The fact that an F.I.R. was lodged by the accused with regard to the same occurrence, the failure of the police to explain why it was not investigated, coupled with the admitted fact that the accused were also admitted in the hospital for treatment with regard to injuries sustained in the same occurrence, out the injury report was not brought on record and suppressed by the prosecution, creates sufficient doubts which the prosecution has been unable to answer.
  6. In *Partap us. State of U.P.*, (1976) 2 SCC 798, the Hon'ble Supreme Court answered the question regarding burden of proof on the defense under section 105, Indian Evidence Act, 1872 by observing that "It is well settled that the burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing a mere preponderant of probability."
  7. In *Dayal Singh and others us. State of Uttaranchal*, (2012) 8 SCC 263, the Apex court observed that a defective investigation shall be completely different from no investigation at all coupled with suppression of the injury report arising out of another F.I.R with regard to the same occurrence.
  8. A fair trial is where the prosecution does not conceal anything from the court and discharges its obligations in accordance with law impartially to facilitate a just and proper decision by the court in the larger interest of justice. Accordingly, appeals were dismissed.
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