

LEGALFOXES LAW TIMES

CASE ANALYSIS OF BEST BAKERY

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INTRODUCTION:

In any judicial system to conduct a fair trial, the system needs four important elements. They are a judge who can ensure that proper and fair trial should be conducted, second is a good investigating officer who can ensure that proper investigation should conduct, keenly examine or collect crucial evidence, and make sure that they are destroyed or manipulated by anyone. The third is prosecution whose duty is to place the entire evidence in a legalistic manner at the time of trial. Fourth is witness. According to the Bentham “ Witnesses the eye and ear of justice. The witness is a golden stick for investigating officer with the help of which he assures that investigation is going in the right direction. For a prosecution, if proper examination of witnesses takes place by him then, it can help the prosecution to give proper justice to the aggrieved party. The proper direction is given by the witness during the investigation of offence and truthful testimony given by him during examination help judge to draw the good and legal sound judgment. However, if the main witness turns hostile due to some kind of deadly threat or some pressure from the goons or political persons then it is difficult to image the fair and impartial trial. The same incidence took place in case of the **Best Bakery Case.** This case is the classic example which can show how hostile witness and how the negligent and irresponsible conduct of the prosecution and court results into miscarriage of justice.

**ZAHIRA HABIBULLA H SHEIKH AND ANR VS STATE OF GUJARAT AND
ORS (2004) 4 SCC 158. (BEST BAKERY CASE).**

FACTS OF THE CASE:

1. On 02.03.2002 , Best bakery at Vadodara was burnt down by a mob of large number of people. In this incident 14 people died. The attacks were stated to be a part of retaliatory action to avenge killing of 56 persons burnt to death in the Sabarmati Express.
2. In this case Zaheera named women was the main eye witness who lost family members including innocent children and helpless women in the incident. A day after the bakery was burnt the owners daughter Zaheera Sheikh lodged a police complaint against the 21 persons accused.
3. In this , Zaheera turned hostile , her mother and her brothers retracted their statements in the court. Zaheera said that she was on the terrace while the incident took place and couldn't identify the accused.
4. Zaheera along with her mother told the Sunday express that she lied in the court because she feared for her life.
5. The NHRC filed a special leave petition in the supreme court and asked for a retrial in a court outside Gujrat.
6. In a sworn affidavit to the Supreme Court, Zaheera said she turned hostile because when she reached the court premises she met Chandra Kant Batthoo, who threatened her . He told her that if she stuck to her earlier statements , the remaining four members of her family will be killed.
7. Supreme court Division Bench ordered retrial of the Best Bakery case outside Gujrat in Maharashtra.
8. While transferring the case to Mumbai ,the supreme Court stated, “ The State of Gujrat shall also ensure that the witnesses are produced before the concerned court, whenever they are required to attend them so that they can depose freely without any apprehension of threat or coercion from any person. In the case, if any witness asks for any protection, then the state of Maharashtra shall also provide such protection as deemed necessary, in addition to the protection to be provided for by the state of Gujrat”.

ISSUE:

1. Whether the case needed to be transferred to another state for fair justice.
2. Whether the proper examination of witness took or not.

3. Whether the high court correctly used its power not.

JUDGEMENT:

1. The court held that the case should be transferred to Maharashtra high court for fair, just, and reasonable inquiry of the case.
2. The court give order of punishment of Imprisonment for one year and to pay the cost of Rs. 50,000 to Zaheera for changing continuously changing her statement.
3. The court order State Government to appoint another Public Prosecutor.
4. The court give direction to all the documents and records are forthwith transferred to the Court nominated by the Chief Justice of the Bombay High Court. It also ensure that the witnesses are produced before the concerned Court whenever they are required to attend that Court. Necessary protection shall be afforded to them so that they can depose freely without any apprehension of threat or coercion from any person.

CRITICISM OF HIGH COURT JUDGEMENT:

1. IGNORE THE NEGLIGENT AND BIASED CONDUCT OF PROSECUTION AND TRIAL COURT:

- In this case, in many instances, the trial court and Prosecution seeing acting negligently and making a mockery of the serious issue. The prosecution in this case in many instances failed to perform its duty.
- For instance in this case there were large number of witness which were going to examined however all were become hostile. In affidavit the reason was given by the star witness Zaheera that threat was given to her for not giving true statement before the court. Even after this prosecution was failed to provide protection to the main witnesses.
- Another instance is that the prosecution drop the name main witness from examination just because the summons (which were served to him thrice) were not served to him.
- Also another star witness who had identify four accused was not rejected to be examined because according to prosecution the witness was unsound mind. And surprisingly this story of prosecution was accepted by the trial court without even

examined the material evidence which can prove whether the witness was sound mind or not.

- Prosecution rejected all the important witness to be examined and in all these trial court become a mute spectrum without raising any reasonable question. And unfortunately this kind of conduct was accepted by the High court.

2. **NOT USING THE POWERS GIVEN UNDER SECTIONS 311 AND 391 OF CODE CRIMINAL PROCEDURES:**

Section 311 of the Code gives power to the court to summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. In this case, the instances which are discussed in point one clearly show that there was a need for re-examination of witness and evidence. Here the High court was in obligation to use power section 311 of the code and order the re-examination of all the witness and evidence. However, the denied conducting the re-examination of the witness and evidence.

Similarly, the court also failed to use its power under 391 which give the court the power to call additional evidence to arrive into complete justice. Here the court rejects the plea of the petitioner to submit the affidavits as evidence as through them the court can understand that under what circumstances the trial was conducted.

THE HIGHLIGHT OF SUPREME COURT JUDGEMENT

FOLLOWING ARE THE HIGHLIGHTS OF SUPREME COURT JUDGMENT:

1. On the role of prosecution: The court held that the prosecution was completely failed to perform its duty. During the examination of the main witness of the case, the prosecution was miserably failed to conduct a fair, unbiased and proper examination. It failed to provide protection to the main witness even after the affidavit by the star witness that threat was given to her.

2. On the role of the High court: Under sections 391 and 311 of Criminal Procedure code the high court has the power to ensure that complete justice should be done. It appears on the face of the case that there were pieces of evidence and witness which needed to be called and examined by the court. However, the court did not use its power under the above-mentioned section. And upheld the decision of the trial court which needs to be reconsidered.
3. Witness Protection: Bentham once observed that if the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it can no longer constitute a fair trial.
4. The witness may turn hostile on account of threat, coercion, lures, and monetary considerations or because of power wielded by political clouts. Thus to ensure that a mockery is not created out of a courtroom trial, the state has to protect the witnesses.
5. On the Right of fair hearing: The court held that proper and fair hearing must be given to both the accused as well as the victim.
6. Transfer of the case: The court transferred the case to Bombay high court to ensure complete, fair and reasonable justice should be given to the parties.

CONCLUSION



This case is a classic example to show the disengagement between the four elements of justice delivering system can cause a gross miscarriage of justice. In the judgement, the court had quoted the **Stanza 18 " Manusmriti**

PadodharmasyaKartaramPadahsakshinomruchhatiPadahsahasadahasarbanpadorajanmruchhati".

Means In the dharma flowing from the wrong decision in a Court of law, one fourth each is attributed to the person committing the dharma, witness, the judges and the ruler. It is true that if the initial investigation of the case did not take place then it will affect the whole trial.