

Provisions of Retrial in a Criminal Case on Prayer of the Victim or Victim Party on the Ground of Incomplete Investigation

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“Should Law sit limply while those who defy it go scott free; and Those who seek its protection lose hope”²

Abstract

In some serious criminal offences such as murder, rape the police fails to conduct a comprehensive investigation. Evidence could be overlooked, certain suspects could go un-interrogated, proper witnesses could go unexamined and there could be undue external influence. Due to these factors, the victim’s family may feel that justice hasn’t been dully served even if the accused is convicted, especially when they believe that other perpetrators may also be involved and go interrogated. Even the independent investigating agency like CBI are not always flawless. There are cases where victims or their family raise serious concerns regarding the CBI’s handling of the investigation, arguing about the lack of supporting evidence, unexplored documents, unexamined relevant witnesses or not bringing all suspects to trial, leading to a miscarriage of justice. In such circumstances, Indian courts allows the victims to knock the door of the court and ask for a retrial where the trial process starts all over again from the scratch. Courts may also order de novo investigation where the investigating authorities or agencies start their investigation from the beginning if the court is satisfied that the previous investigation was incomplete and failed to carry out a fair and just investigation.

Keywords:

Criminal Investigation, Retrial, De Novo Investigation, Miscarriage of Justice, Victim Rights

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² (Jennison v Baker)

This paper explains how and when a victim or their family can approach the court for a retrial because of an incomplete investigation, and what the law and courts say about such cases.

- Brief overview of criminal trials in India.
- Role and rights of the victim in the criminal justice system.
- Definition and relevance of retrial.
- Importance of ensuring justice when the investigation is incomplete or flawed.

1. Meaning of Retrial

Retrial means that the accused should be tried again. Such trial may be from the very inception (known as a de novo trial); or it may be from a particular stage³. Since an order of retrial wipes off the evidence on the record, and a retrial cannot be ordered merely to fill up any lacuna in the prosecution evidence at the original trial⁴. It follows that an appellate Court cannot, after setting aside the conviction, remand the case, with a direction to afford an opportunity to the prosecution to examine certain witnesses who could not be examined at the original trial.⁵ nor can such direction be construed as a direction to take additional evidence under s. 391 (old s. 428), because in the case, the appeal should have been kept pending; there is no question of setting aside the judgment of the trial Court under that section.⁶

2. Legal Basis of Retrial in Indian Criminal Law

Section 386 (b) (i) of the Cr.P.C., 1973 (Section 427 of BNSS)

Under Section 386(b)(i), the appellate court has been given the power to order for retrial of a case by a court of competent jurisdiction which is subordinate to such appellate court. This section permits an Appellate Court to review any criminal case at their discretion. The Court's duty is to examine records, hear appeals, and

³ Lakshmanan v. State of Kerala, (1990) Crlj 1800 (para 26) Ker.

⁴ Ukha Kolhe v. State of Maharashtra, AIR 1963 SC 1531

⁵ Samuna v. State of Bihar, (1975) Crlj 862 (864)Pat

⁶ Samuna v. State of Bihar, (1975) Crlj 862 (864)Pat ; Sri Krishna v. Emp., AIR 1936 Pat 438 .

give decisions on cases having sufficient ground for interference. The court can dismiss the appeals for want of sufficient reason, reverse convictions or acquittals, alters sentences or order re-trials, reduce or enhance sentence as per the nature of appeal Safeguard fair and just sentencing, safeguarding that no extreme punishment is imposed without sufficient reason. Section 427 BNSS is significant for Indian's criminal justice system as it gives the Appellate Court the ability to ensure that trials are conducted properly, unjust convictions can be overturned, and the rights of the accused are defended. It enhances the ability of the Appellate Court to further review the decisions and adjust them to promote justice, equity, and openness within the judicial process.

Section 401 (Section 442 in BNSS)

The **Revisional powers of the High Court** are mentioned under section 401 which allows the court to review cases where an error may have arisen, ensuring to maintain judicial fairness by correcting the **miscarriages of justice**.

Section 311 (Section 348 in BNSS)

Section 311 allows Courts to recall, summon, and re-examine witnesses at any stage of proceeding or trial, so that all important evidences are to be brought before the Court, ensuring a just and fair decision.

Constitution of India

Article 21 – Right to life and fair trial as a part of due process. Victim's Rights under Article 21 – Evolving jurisprudence from passive complainants to active participants.

1. Retrial, when may be ordered

The general principle is that a man should not be placed on trial for the same offence more than once. This is constitutionally prohibited by Art. 2(2) of the Constitution. A retrial, being a continuation of the same trial, it is considered to be an exception to the constitutional prohibition. But even then it should be allowed only in exceptional circumstances.⁷ A power to direct a retrial is conferred on the appellate Court by all the Cls. (a)-(b)-(c). 2. But since a retrial wipes out the earlier proceeding (from which the appeal was preferred), and

⁷ Abinash Chandra Base v. Bimal Krishna Sen, AIR 1963 SC 316

exposes the accused to another trial which affords the prosecution an opportunity to rectify the defects of the earlier trial, this power should not be exercised by the appellate Court except in exceptional cases, and only in the interests of justice.⁸

Cases where retrial may be ordered:

- When the trial court had no jurisdiction or the trial was held at the wrong place.
- When the decision was based on inadmissible evidence.
- When there was no proper trial due to illegality, irregularity, or fraud.
- When the trial was affected by misunderstanding of the nature of proceedings.
- When either party was prevented from presenting material evidence, or the court denied a fair opportunity.
- When cases of co-accused are interconnected and one is ordered for retrial.
- When important facts were ignored by the trial court, requiring fresh consideration.
- When investigation was dishonest or faulty.
- When wrong charges were framed causing prejudice to both prosecution and accused, requiring fresh trial on proper charges.

5. Circumstances in which retrial is not ordered

- Retrial should not be ordered just to let the prosecution fill gaps or present evidence it failed to produce earlier.
- It should be avoided where the accused has already undergone long post-conviction detention, especially in serious cases like death sentence.

⁸ Ukha Kolhe v. State of Maharashtra, AIR 1963 SC 1531

- If the issue can be resolved by taking additional evidence, retrial is unnecessary.
- Minor procedural defects (like lack of territorial jurisdiction or transfer of case) without prejudice do not justify retrial.
- Appellate courts cannot order retrial merely to cure weaknesses in the prosecution's case.
- Retrial should not be ordered after long delay, especially in appeals against acquittal.
- It cannot be ordered just because a witness (e.g., Investigating Officer) was not examined.
- No retrial can be directed for offences for which the accused has already been acquitted and the acquittal is final.

6. Incomplete or Tainted Investigation and its

In many cases while dealing with criminal matters by courts there exist investigative lapses and shortcomings by police officers that go unnoticed or unaddressed, even by senior levels of the police administration and independent investigating agencies like CBI. These deficiencies in the investigation process are sometimes arise due to lack of awareness, negligence, carelessness, or even wilfulness of the investigating officers who are influenced politically. Thus an investigation is said to be incomplete when relevant evidences are either hidden or not presented and important witnesses are not examined which will help to uncover the truth, thus these lapses affects the overall outcome of the case. Generally there are several common factors that led to incomplete investigations these are including, insufficient training, not having proper access to scientific tools which help to detect modern crimes, heavy workload on the officers further reduces their effectiveness, further having careless attitude toward investigations, and lastly officers are made less accountable and responsible when a case does not stand due to a poor investigation, officers are rarely held responsible. Apart from these below are some of the major factors of an incomplete investigation:

1. Suppression of Material Evidence

This is one of the most serious faults in any investigation where the concerned authority withheld, ignored, or intentionally suppress material evidence and crucial information such as CCTV footage, forensic reports, documents, or recovered items. Such suppression in many cases are caused in order to protect certain individuals or to mislead the court. When material evidence is not presented, it deprives the right to justice of the victim.

2. Failure to Examine Key Witnesses

Another common flaw is the failure to produce, examine, or record statements from crucial witnesses especially those having first-hand knowledge or present at the crime scene. These witnesses could help to establish the chain of events. Such Ignorance and carelessness of them can lead to major gaps in the investigation denying justice to victim. Sometimes, witnesses are deliberately not questioned if their statements are likely to contradict the version presented by the investigating officer or if it involves powerful individuals. In both of the cases, such failures undermine the credibility and completeness of the investigation.

3. Biased Investigative Officers

For an investigation to be trustworthy, the officer investigating it must be impartial and free from any political or personal influence. Unfortunately, there are some cases, where officers show bias or act under pressure by manipulating evidence, overlooking leads, or steering the investigation in a particular direction to favour or protect certain persons. This kind of misconduct whether done by pressure from influential figures, corruption and personal interest, seriously compromises the investigation and puts justice at risk.

4. Political or Communal Interference

Further political or communal interference in investigations continues to be a major concern. It is expected in a democratic country like India, law enforcement agencies must remain independent and impartial. There are politically sensitive or communally charged cases where police officers come under pressure to protect certain individuals or to frame others unfairly. This can result in suppression of relevant evidences and misrepresentation of facts. When such instances takes place, the investigation is no longer remain credible and are by ulterior motives, harming public trust in providing justice.

7. Consequences

Due to such incomplete or defective investigations there arises many consequences as well. Firstly, due to lack of proper evidence an accused is not only acquitted, but also there exist the possibility that only one accused is convicted while other culprits go unnoticed. Secondly, in complex criminal cases particularly those involving conspiracies, group offences, or organized crime a poorly conducted investigation may fail to uncover the full extent of criminal involvement. As a result, the legal process ends up convicting only the individual who is immediately visible in the chain of events, leaving others, equally or more culpable, beyond the reach of the law. Thirdly, as technology is growing rapidly many criminals often, those with technical knowledge or higher-level roles in the criminal plan now use different methods to conceal their involvement in the crime. Only the more easily traceable accomplices are arrested and prosecuted. Lastly, such incomplete investigations not only deny justice to victims but also deny the society a fair outcome.

In these circumstances, there arises a strong justification for invoking the provision of retrial, particularly on the application of the victim or the victim party. When it is demonstrated that the investigation was incomplete, biased, or failed to explore all angles including the involvement of other possible accused persons a retrial becomes essential to uphold the principles of natural justice and to ensure that no offender is allowed to escape due to investigative lapses.

8. Landmark Case Laws

1. Zahira Sheikh v. State of Gujarat (Best Bakery Case) – (2004) 4 SCC 158

The Supreme Court of India, in the landmark case of *Zahira Habibulla H. Sheikh And Another v. State Of Gujarat And Others* (2004), commonly referred to as the “Best Bakery Case,” delved deep into critical aspects of the criminal justice system, notably the protection of witnesses and the integrity of the trial process. This case emerged from the tragic communal riots in Vadodara, Gujarat, where the Best Bakery was burnt down by a mob, resulting in the death of 14 individuals, including innocent women and children. Zahira, a key eyewitness, alleged that during the trial, she was coerced into providing false statements, raising serious concerns about the fairness of the trial and the credibility of the judicial process.

The Supreme Court granted special leave to hear the appeal after the Gujarat High Court upheld the acquittal of the accused by the trial court. Zahira contested the acquittal, asserting that her testimony was compromised due to threats and

coercion. Additionally, the State of Gujarat itself questioned the conduct of the trial, alleging improper behavior by the Public Prosecutor and a biased investigation. The Supreme Court found merit in Zahira's claims, highlighting deficiencies in witness protection, prosecutorial conduct, and the overall impartiality of the investigation. Consequently, the Court directed a retrial under the jurisdiction of the Bombay High Court, emphasizing the need for a fair and unbiased judicial process.

2. Satyajit Banerjee v. State of West Bengal – (2005) 1 SCC 115

The case of Satyajit Banerjee And Others v. State Of W.B And Others (2004 INSC 670) adjudicated by the Supreme Court of India on November 23, 2004, delves into the intricate dynamics of revisional jurisdiction exercised by higher courts over lower court acquittals. This case emerged from allegations of cruel treatment under Section 498-A of the Penal Code and abetting suicidal death under Section 306 IPC, following the tragic demise of Kana Banerjee. The primary parties involved included the accused spouses and the State of West Bengal, with the mother of the deceased acting as the petitioner seeking revision of the trial court's acquittal.

The trial court acquitted the accused due to insufficient and unreliable evidence presented by the prosecution. The High Court, upon revision by the deceased's mother, set aside this acquittal and directed a de novo trial, highlighting perceived deficiencies in the original prosecution. The Supreme Court, employing its discretionary powers under Article 136 of the Constitution, upheld the High Court's decision to remand the case for retrial but clarified the boundaries of such revisional interventions. The Supreme Court emphasized that while the High Court may direct retrials in exceptional circumstances, it should not do so by indirectly compelling convictions or overruling established legal principles.

9. Conclusion

Retrial is a powerful but sparingly used remedy. Victim's right to fair trial is integral to the criminal justice system. Courts must carefully balance competing interests to preserve both justice and legal certainty. With evolving jurisprudence, the Indian legal system is increasingly receptive to victim-initiated appeals for retrials in cases of flawed or incomplete investigations. In serious criminal trials, or sessions cases, both the rights of the victim and the accused are at stake. These cases are also important to society as a whole because they impact public

confidence in law and order. That's why criminal investigations must be carried out with great care, and trials should be handled with a strong sense of responsibility.