

THE ROLE OF CRIME INVESTIGATION IN SECURING EFFECTIVE, EFFICIENT AND FAIR ADMINISTRATION OF CRIMINAL JUSTICE

Chaudhry Hasan Nawaz

The address of this paper is to the current problems in securing effective, efficient and fair administration of criminal justice; which, amongst other things, is in direct acknowledgement of the consideration that the solution of those problems is necessary to bring about such healthy social conditions, as would be conducive to the achievement of multi directional progress, relevant for the spiritual elevation of man-kind. We must contrive a system of criminal administration of justice, as would ensure a speedy relief from such cases to people, so that they may be able to play their roles in other constructive fields as healthy members of the society. I regard it a matter of great significance and importance that those involved in such cases as parties should be saved from wasting their time and energy in their conduct and be able to prove their worth in their avocations, which will be productive of positive, useful and visible results.

2. This is also in acknowledgement of the fact that the nature of crime in many parts of the Asian region has undergone a radical change on account of socio-economic development, especially in the wake of rapid industrialization and consequential urbanization, such has been exerting a greater strain on our system of the criminal justice. The crime situation is deteriorating both in terms of quantum and the forms and dimensions in which it is manifesting. Without derogating any thing from the importance of other measures to improve the situation, it must be admitted that improvement in the quality of services for the administration of criminal justice will play a vital role in ameliorating the situation.

3. Administration of criminal justice involves three stages which are investigation, prosecution and judgment. I have had the advantage of presiding over subordinate criminal courts as a Magistrate and then appellate criminal courts as a Sessions Judge for a number of years. My experience is that the basic malady giving rise to all kinds of problems including growth in the commission of crime, emanates from delay in the disposal of criminal cases. Therefore, we must strive for ensuring such measures as would result in speedy dispensation of

criminal Justice. This can be possible only if substantial improvements are made in the methods of investigation and trial.

4. Investigation in my country belongs exclusively to the police department which was set up long before independence by the then rulers of the country mainly for executive administration, with a special emphasis on law and order situation. In addition, their main duty is to prevent the commission of offences, which we call under the Code of our Criminal Procedure as the preventive police jurisdiction. In exercise of this jurisdiction, the police department are mainly responsible to prevent the commission of crime by having recourse to detention and such other measures. Even a perfunctory application to the relevant provisions of the Code would justify a surmise that wide powers have been given to the police department for putting the preventive measures into effect.

5. This apart, the police department assists the Magistrates in exercise of their magisterial preventive jurisdiction under the Code. In their capacity as executive Magistrates they deal with the security cases, unlawful assemblies, public nuisances and disputes with regard to immovable property. It is through the police agency that they exercise their executive powers including maintenance of law and order within the local limits of their jurisdiction. In addition, it is also the business of the police agency to serve processes on the witnesses issued by the courts in criminal cases. Execution of warrants of search and arrest is also one of their duties.

6. This is not all. In addition to their multifarious duties emanating from the Code, those responsible for investigation of cases, are frequently called upon to perform functions in connection with the offences under numerous local laws. We have a Penal Code, but there are various other enactments, under which certain omissions and commissions have been declared by the legislature as offences. No separate machinery having been devised for those offences, the police department have been entrusted with the task of dealing with them, which occupies much of their time.

7. The same department is responsible for investigation under different provisions of the Code of Criminal Procedure after the commission of offences; whence it necessarily follows that amongst other more important responsibilities, they just happen to be the investigators.

Therefore, I would venture to record the undesirable accumulation of responsibilities requiring different qualities, methods and approach, in one person as our main and basic problem. Evidently, I do not consider it necessary to emphasize that performance of these different functions requires absolutely different qualities and mental aptitudes; to say nothing of the fact that engagement of police officers with law and order situation and the exercise of preventive jurisdiction, leaves very little time for devotion to the investigation of cases, vast majority of police stations are under staffed and the occupation of police officers in connection with law and order situation and various other connected duties adversely affects the investigation of crime business, which directly results in mal-functioning of the agency, entrusted with the most important business of tracing and apprehending an accused and then collecting satisfactory evidence in support of his guilt before the case is taken to a dispenser of justice.

8. Investigation is an art which requires the employment of a highly trained and educated agency, such as should have the element of in-tuition or felicity of inspiration in the choice of methods to be applied to the treatment of a case. If it be regarded even though by fiction, a complete science with general principals and special theorems, the investigator will have to operate in harmony with certain rules for the solution of a case. It is necessary for the success of an investigation that the police officer engaged in this business should be well versed in this art, which can hardly be possible if he is called upon to perform other duties like maintenance of law and order and the prevention of crime.

9. The main function of a criminal investigator is the collection of facts to accomplish a three fold aim:

namely to identify and locate the guilty party and to provide evidence of his guilt. The methods he ordinarily presses into service to achieve this end are information, interrogation and instrumentation, for which a great deal of perseverance is required. In addition, he must have a certain native ability, an intelligence which enables him to acquire information easily and rapidly and which also makes him capable to use it to his advantage.

He should have the capacity to think through situations which is all the more necessary in view of the ingenuity of a present day offender.

10. The factor of intelligence would embrace the willingness and desire to continue to learn and be susceptible to experience. He should be alive to new ideas, techniques and suggestions which will put him on the path of discovery and revelation. He must be watchful to avoid low spirits created by mental passiveness. He may not accept every new thing or idea, but it is essential that he gives the new concept at least recognition, thought and trial before rejection, which must be based on factual grounds and not emotional.

11. Another important quality of an investigator is honesty in the sense of personal integrity and incorruptibility. He is subjected to all kinds of temptations: physical, emotional and natural. In the present day social atmosphere, where he is called upon to perform his duties as an investigator, he can have many temptations for personal gains, which he is in a position to accomplish, on the strength of his position, by merely failing to do a particular thing, which is to say the least. Personal integrity includes a multitude of factors involved in individual character and a primary factor of this integrity is a sincere desire to arrive at a conclusion based upon facts.

12. An understanding of the people and the environments in which they live is an additional qualification for an investigator to achieve a measure of success. He must know what prompts people to act as they do in a particular way in various situations. He must know their weaknesses and strength to be able to use them to his advantage, particularly during interrogations. A knowledge of psychology of human behavior is essential with appropriate knowledge of the society they form. He should be aware of the factors within the social pattern which contribute to the kinds of behavior exhibited by the individual.

13. In a system such as ours, where a investigator is charged with multifarious duties of different natures, it is extremely difficult to make him the repository of aforesaid qualifications necessary for the success of an investigation. An investigator requires a propensity of mind, which is impossible to achieve in the case of a police officer who is called upon to perform duties in connection with the maintenance of law and order and prevention of crime. It exposes him to weaknesses which are fatal for effective and successful practice of the art of investigation. Therefore, in so far as we are concerned, the system of investigation requires a total reformation for a substantial contribution towards the administration of criminal justice.

14. We require a segregation of the investigating agency from all other agencies connected with various other tasks; which we can accomplish by ensuring different methods of recruitment and by providing the members of this agency with training facilities in recognized and efficient

institutions. We must also see that the members of investigating agency are well paid, so that the possibilities of temptation to monetary gains may be possibly minimized. It is also necessary to ensure for them a proper place in our social structure, so that they sheer themselves off the complex of inferiority, which is frequently the main cause of in competency, lack of integrity, obtuseness and mal-practices.

15. This was the problem within the investigating agency; but there are other numerous problems, which are without. The emanate from those whom the investigator is called upon to deal with during the performance of his functions. The nature of these difficulties depends largely upon and is necessary wedded with the nature of different offences. It is not infrequent that the investigator would come across people who are interested in misleading him to wrong and perverse conclusions and for the achievement of this end, they do not hesitate to apply every available method, including offers of illegal gratification. Further, there are offences against human body as also property where attempts are made, some times successfully, to destroy all possible evidence leading towards the identification, discovery and arrest of the criminal. In such situations, the job of an investigator becomes all the more difficult and he cannot exonerate himself of his responsibilities without the employment of a special skill.

16. Further, under the prevalent social conditions, it has become extremely difficult to collect evidence in support of the commission of a crime, as can stand the test of a trial. The problem is that nobody is prepared to offer himself as a witness, which is partly because of fear from the accused and partly because of either the system of trial or the typical conditions which prolong a litigation, thereby entailing a wastage of time, which a witness can ill afford under the present circumstances of all embracing socio-economic progress. Fear of the accused mostly comes from the valid apprehension that the case will fail and the culprit will go free to be able to deal with the witnesses. I realise that it is not possible for every case to succeed in a court of law because of various circumstances. Whatever be its reason, the acquittals nevertheless do have intimidating effect. Therefore, what we do require is some change in the system of administration of criminal justice, which will guarantee speedy and fair disposal of criminal cases. I am conscious of the fact that it may not be possible to achieve all the desired results, but what is important is to achieve as much as possible, and as far as I am concerned, even serious consideration and genuine efforts for amelioration will be quite enough under the circumstances,

for this will establish not only an awareness of the worsening conditions, but also demonstrate the will to rise to the occasion and strive for improvements.

17. There are certain other problems for an investigator in my country which are caused by certain provisions of the Evidence Act. Amongst other things it provides that statements made to a police officer during investigation are not admissible in evidence; unless they lead to a recovery. The result of this provision is that most of the investigators try to provide the cases with recoveries even where it is not possible. They procure false evidence by planting recoveries, thereby imparting a colour of falsehood to the entire case which may otherwise be sound.

18. There are cases where direct evidence is not available and an investigator has to rely upon circumstantial evidence in support of the prosecution. Here he will be justified in insisting that the recoveries should be effected. As for instance, in case of culpable homicide he will have to rely upon circumstantial evidence like recovery of weapon used in the commission of the crime and other circumstantial evidence in corroboration. He has no other alternative, but be content on such evidence and then depend upon proper and successful presentation of the case before the court. But most of the investigators have a tendency for going in search of circumstantial evidence even in those cases where direct evidence is available. As a trial Judge, I have had the occasion to see that by procuring circumstantial evidence in such cases, where none in actual fact is available, they spoil the entire case; for I have no doubt in my mind that a case with direct evidence available will float on the surface or sink down to the bottom with the success and failure of the direct evidence, and the one available from circumstances would not make any difference. This, of course can be avoided by modifications in the relevant rules governing the essentials of a successful investigation.

19. In our legal system, the First Information Report plays a very important role in the outcome of a criminal case, not necessarily because of its evidentiary value, but because of the fact that it is the first version of how the crime was committed. It fixes a direction for the course of investigation. It is a very basic document, especially in cases of culpable homicide. It frequently happens that these reports are without the support of logic. Some of the reports are so unsound that they are themselves judgments of acquittal. Therefore, it requires a special skill in the investigator to be able to record a plausible report of the commission of crime.

20. It seems rather odd that I should say so, because the First Information Report has to be a religious account of what is stated by the informant. But it must be admitted, though not without a feeling of contrition, that it is not possible in some cases. A closer and meticulous study of the local state of affairs, is quite essential in deciding how should the first report be recorded. It is extremely difficult to lose sight of the fact that those who in fact witness the commission of a crime, are usually unwilling to offer themselves as witnesses and the investigator cannot force them to testify at the trial, without inviting the risk of spoiling his case. What happens in some cases is that the genuine witnesses are interested in favour of the accused and the investigator has to rely upon the statements of others to bring home the guilt of an accused. I am afraid I should not be misunderstood and taken to advocate the propriety of padding and procuring of false evidence by the investigator. I have only pointed out an inevitable situation which requires thoughtful consideration. Whatever the merits of this assessment, it must be listed as one of the problems usually faced by the investigator.

21. Then, in cases involving offences against human body, the usual tendency to rope in even the innocent persons, presents another serious problem, which requires vigilance and circumspection of fairly high degree on the part of an investigator. The First Information Report in such cases, is only a collection of gross falsehood. False evidence is then offered to support a false story. If accepted, the edifice of the prosecution case is built on flimsy and infirm evidence, and falls to the ground at the trial, thereby sometimes resulting in the acquittal of even those who were the real perpetrators of crime. It is, therefore, the foremost duty of the investigator to see that no innocent person is made to face the trials.

22. There is always a motive in cases of culpable homicide amounting to murder, which is because it is always the result of a concerted attack. But sometimes it is difficult to discover that motive. In a situation like that, an inexperienced and untrained investigator often spoils the case by providing it with false motive. It should be left alone, for proof of motive is not always necessary for a conviction.

23. In cases of culpable homicide not amounting to murder, an inefficient investigator sometimes provides them with motive, where non infact existed, in his eagerness to make it a case of deliberate murder, to procure capital punishment for the defendant. But by doing so, he

makes his case inherent unsound so that it cannot stand the test of a trial. It must, therefore, be avoided in the interests of justice.

24. Yet another problem for an investigator becomes available from the fact that after having traced and apprehended the accused and collected necessary evidence in support, he has got nothing to do with the prosecution of the case before the court; which job is entrusted in my country to the members of prosecution agency, which is quite apart from that charged with the responsibility of investigation. What frequently happens is that a prosecutor has got his own eccentricities for evaluating the evidence collected in support of a case. This apart he has his own way of presenting a case before the court, which also sometimes results in unsuccessful trial of the defendant. It can be avoided by devising a system of closer coordination between prosecutor and the investigation officer during the investigation of a case; which I am obliged to say because in view of the present system of trial in most of the Asian countries, it is not probably possible to do without the services of a skillful prosecutor.

25. In the absence of a highly trained and competent investigation agency, the prosecutor should have unfettered powers to check the police file at any stage of the investigation and he too should make himself available for consultation to the investigator.

26. It must be emphasized that a proper investigation is closely linked with the moral ethics of the people expected to be conscious of the civil rights and the rule of law. So long as this standard is not achieved, the ultimate burden shall remain with the judiciary to find out the truth from a heap of exaggerations.

27. Finally, I would make the following proposals for consideration:

a) We should have a agency exclusively concerned with the job of investigation. The investigating officers should not be called upon to perform other duties, which require a different mental aptitude and qualities.

b) Efforts should be made to set up institutions for specialized training of investigating officers. We must procure persons of special skill and integrity to deal with the investigation.

c) Their salaries should be such as would be sufficient to sustain the expenditure required for a comfortable and honourable life, keeping in view the present day inflation. It is of great importance to ensure that they are not exposed to temptation for personal monetary gains.

d) They should be provided with reasonable accommodation for the members of their families.

28. I will conclude by saying that I am indebted to the organizers of this seminar for managing my association with the subject of under discussion. They have created for me an opportunity to learn from the experiences of extent scholars and I am parting with the subject of discussion with a sense of gratitude.