
WHY CASES FAIL

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1. The concept of a reasonable and fair trial would be one in which the accused as well as the victim or the aggrieved person gets justice.
2. It has been observed that the rate of conviction all over the country has been falling. The Supreme Court itself has observed that the conviction rate in the country has gone down to 39.6 percent. This shows that more than 60% of the cases end in failure. Why do cases fail?
3. Various reasons can be cited for the failure of cases, broadly speaking they are :
 - a. Faulty investigation;
 - b. Failure to take recourse to scientific investigation by the investigating agency;
 - c. Witnesses turning hostile;
 - d. Delay in trials; and
 - e. Insufficient effort being put in by the prosecutor.
4. Let us take the first reason, that is, **faulty investigation**. Many of the cases fail on account of faulty investigation. In cases of robbery, dacoity, murder by hirelings, the accused are usually unknown to the victim/eye witness. Where the witness has not seen the accused prior to the incident, the identity of the accused is fixed at the investigation stage by holding a test identification parade, or T. I. P. as it is more commonly known.
5. In some cases, although the accused is known, the T. I. P. is not held at all. In such cases, directly identifying the accused in the Court is of no use and the case ends in acquittal. So

also delay in holding a T. I. P. after the arrest of an accused adversely affects the case and may result in failure of the case.

6. Certain essentials are necessary for a T. I. P. to be held reliable. Certain guidelines are to be followed and if they are not followed the T. I. P. becomes unreliable. In such cases, even if the accused is later on correctly identified in the Court, it does not help the prosecution and the result is acquittal of the accused.
7. To give a few examples:
 - a) Not more than two accused can be put in one T. I. P.
 - b) If two accused are put in one T. I. P. they should not be totally dissimilar in appearance i.e. one accused being five feet tall and the other six feet four inches tall or one being very dark and the other being absolutely fair and so on.
8. Let me make it clear that the police themselves do not and cannot hold a T.I.P. but it is held by a Magistrate, i.e. Special Executive Magistrate or Special Judicial Magistrate, on the request of the police. It may be that the Magistrates themselves may not know the guidelines which are to be followed as they do not have access to the guidelines, or if they have a copy of the guidelines, they do not follow them scrupulously. Therefore, the fault is not always with the police if there is a faulty investigation, but may be due to a variety of factors.
9. Another glaring example of faulty investigation is when there is recovery of blood-stained weapons or blood-stained clothes or any contraband substance. It is sometimes seen that the investigation agency does not seal the article in question. This flaw of not sealing proves to be fatal to the prosecution case, as in such cases, the defence rightly argues that there is chance of tampering because the article is in an open condition. The result of failure to seal is that the Court does not rely on the circumstance of recovery and an important link is lost which results in losing a case wherein the evidence is circumstantial in nature.

10. Another flaw at the investigation stage occurs when the articles are not forwarded to the Chemical Analyst (C.A.) in time and remain lying in the “Malkhana” / Police station for one and a half to two months or more. This sometimes leads to disintegration of valuable evidence; for example, the blood on the weapon may disintegrate or a sample may change in appearance or characteristics, due to heat or damp conditions in the Malkhana. Let me give an example of how this affects the prosecution case. Take a case in which at the instance of the accused, that is, under Section 27 of the Evidence Act, a blood-stained sword is recovered. Obviously if the sword is immediately sent to the C.A. it would show the blood group of the deceased is say A, AB, or O etc., which would be a clinching circumstance against the accused. In cases of circumstantial evidence, the prosecution has to rely on such circumstances or links to establish the guilt of the accused. However, if the blood-stained sword is sent after fifty or sixty days to the C.A., then on account of disintegration of the blood the C.A. would not be able to determine the blood group, and in many cases the C.A. may not even be able to tell if the blood is human blood, which would be a major blow to the prosecution as a very important and clinching circumstance would be lost.
11. In some cases, the articles are not sent to the C.A. at all, that is the investigating agency does not take recourse to scientific analysis, for example, by not sending blood stained clothes, weapons, etc. to the C.A. Frankly, such cases are rare but it is not as if they are non-existent.
12. I remember one case, the Ohol murder case from Pune, where all the persons in the family who were at home were murdered by the nephew and his friends who had come to the house late in the night for a visit. The case was one of circumstantial evidence, as all the persons had died and there were no eye witnesses. In this case, all the accused persons had smoked cigarettes and the stubs were still there when the police broke into the bungalow in the morning. These stubs were sent to the C.A. and one of the reasons for fixing the identity of these accused was that the blood group of the spit on the cigarette stubs exactly matched the blood group of the accused. The result of the case was not only that the accused were convicted but that they were given the death penalty, which was confirmed by this High Court. However, in cases of this nature it depends on the presence

of mind and experience of the investigation officer as to what should be seized and what should be sent to the C.A.

13. Nowadays, cases under the Narcotics, Drugs and Psychotropic Substances Act (N.D.P.S. Act) are on the rise. In such cases, the investigating agency may be the police, the customs or the Narcotic Cell Bureau (N.C.B). It is now well settled that certain provisions under the Act have to be followed by the investigating agency. If there is non-compliance with certain provisions of the N.D.P.S. Act, it results in an acquittal. In a case of murder, normally only one person loses his life and one family is affected. However, one person who deals in drugs in any manner is affecting not only one life but many lives and affecting a large number of families and ultimately society at large. In such cases, compliance with a few simple procedures would ensure conviction. For example, Section 50 and Section 42(2) of the N.D.P.S. Act are considered mandatory. Non-compliance with these sections would end in acquittal. Under section 50 of the Act, the raiding party or officer in question has to inform the accused whether he wants his search to be taken in front of a Gazetted officer or a Magistrate. If the accused is not so asked and if he is not given both options, the case ends in acquittal. Under Section 42(2) of the Act, if any information pertaining to any narcotic or psychotropic substance is received by any agency, be it the NCB police, customs etc., the information has to be noted in writing and a copy thereof to be sent forthwith to the immediate official superior. Non-compliance with this section would generally result in acquittal. Thus, it is seen that if a few simple provisions are complied with then there would be almost full chances of success in the case.

14. Sometimes a case may be very well investigated and yet it may fail. The reason is that the witness/witnesses turn hostile. The witness may be an eye-witness or a pancha witness or any other witness. In cases where there is direct evidence and the eye-witness turns hostile and refuses to identify the accused, the result is acquittal. In cases of circumstantial evidence predominantly consisting of recovery, when the pancha or panchas turn hostile the case fails. In cases of a circumstantial nature, if the witness who turns hostile is one relating to "last seen" or extra-judicial confession, then the case becomes very weak and the result is failure. The Supreme Court has observed that "For

successful prosecution of criminal cases, protection to witnesses is necessary as the criminals have often access to the police and the influential people.”

15. Some effort has to be made by the investigating agency and the Courts to remove the feeling of fear from the minds of the witnesses. This would go a long way in ensuring the success of the case and to provide protection to witnesses who really require it.
16. Delay in trials also affects the rate of success in a criminal trial. Due to delay, sometimes the witnesses are won over, sometimes they die simply on account of passage of time or they change their place of residence and thereafter, it is not always possible to trace the witnesses. Therefore, the faster the trial is completed, the better the rate of success.
17. One cannot sit back and put the entire blame on the investigating agency. Many a times, the investigation is excellent but the prosecutor conducting a case does not put necessary time and effort into a case, which results in failure. The Courts depend almost entirely on prosecutors. Some of the prosecutors do not know the basic legal position on common issues or the current prevailing case law. This results in failure of cases. Thus a well investigated case may also end in failure solely because of an incompetent prosecutor.
18. To achieve success not only in the case at hand but also in future cases, the prosecutors have a role to play. Cases at hand can be saved by putting in a little effort by reading the papers carefully, by application of mind as to how loopholes can be plugged and being aware of the current case law. Future cases can be saved by the prosecutors informing the investigating agency of the recent changes in the law, or any new interpretation of the law laid down by the Supreme Court or High Court. For example in the N. D. P. S. cases, at the initial stage section 42 (2) was not held mandatory but as soon as it was held to be mandatory, it was the job of the Chief Public Prosecutor in the Sessions Court or High Court to inform the investigating agencies that at least henceforth the said provision must be complied with.
19. Earlier, in Maharashtra, T. I. Ps. were held even at the police station, However, once a Judge of this Court held that a T. I. P. should not be held at a police station and a T. I. P.

held at a police station is not reliable and no conviction can be based on it. At that time I was a prosecutor, so I wrote and informed the police agency about the said judgment and asked them to take necessary steps in future cases. This effort has to be put in by the concerned prosecutors. I know that a few of the prosecutors are making this effort but that is not enough. All of them should be conscious of their role and do their duty.

20. Of course the above reasons are not the only reasons for cases ending in acquittal. They are however, some of the main reasons for acquittal. A little bit of extra effort on the part of the investigating agency and the prosecutors and there would be a substantial increase in the rate of convictions.

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