

## Brady Ruling, 1963 U.S. Supreme Court: Sifting from being heard to open trial American and Indian context.

Jaidev

### Abstract

*The Criminal proceeding start with the allegations of commuting an offense but mere allegations or false allegation without evidence has no consequences. In modern world, in every country there is flood of false allegations. In such circumstances it become necessary for the court, public prosecutor to check the sufficient grounds to proceeds, and inform to the defense, exculpatory evidence, if any, in his favor.*

### Key Word

Fair trial, Exculpatory evidence, natural justice.

### Introduction

Fair trial is the essential principle of natural justice. It means during civil or criminal trial procedure should be such that both the parties should have full opportunity to represent.

Opportunity to represent depends upon certain thing:

- Whether the court is open court?
- Whether accuse knows the all evidence against him?
- Whether accused able to represent himself?

This paper will try to answer the above question in the light of American and Indian Laws on the subject.

### Brady Ruling 1963.....

U.S. Supreme Court in 1963 ruled that prosecutors shall fully disclose to the accused all exculpatory evidence in their prosecution and suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilty or punishment, irrespective of the good faith or bad faith of the prosecution<sup>1</sup>. The court justified the above decision on the ground that the prosecutors as the representative of the sovereignty whose aim in criminal case should not only to win but also ensure that justice has been done<sup>2</sup>.

### Conclusion of Brady, Giglio, Kyles Ruling:

Prosecutors' duty to disclose the accused all exculpatory evidence in their possession, it includes: impeachment evidence<sup>3</sup>, favorable evidence in the absence of a request by the accused<sup>4</sup>, evidence in possession of police<sup>5</sup>.

### Exculpatory Evidence or material definition<sup>6</sup>

---

Jaidev, Phd. Research Scholar, Department of Law, M.D.U. Rohtak, jaidevshroha@gmail.com

<sup>1</sup> Brady v Maryland 373 U.S. 83 (1963)

<sup>2</sup> Kyles v Whitly , 514 U.S. 419, 437(1995)

<sup>3</sup> Giglio v United States, 405 U.S. 150, 153-54 (1976)

<sup>4</sup> United State v Agurs, 427 U.S.419, 437 (1995)

<sup>5</sup> Kyles v Whitly , 514 U.S. 419, 437(1995)

<sup>6</sup> D. Mass. L.R. 116. 2(B) cited in Report to the Advisory Committee on Criminal Rules of the Judicial Conference of the United States,2004.

- Information that would tend directly to negate the defendant's guilt concerning any count in the indictment or information.
- Information that would cast doubt on the admissibility of evidence that the government anticipates offering in its case-in-chief and that could be subject to a motion to suppress or exclude, which would, if allowed, be appealable under 18U.S.C. § 3731.
- A statement whether any promise, reward, or inducement has been given to any witness whom the government anticipates calling in its case-in-chief, identifying by name each such witness and each promise, reward, or inducement, and a copy of any promise, reward, or inducement reduced to writing.
- A copy of any criminal record of any witness identified by name whom the government anticipates calling in its case-in-chief.
- A written description of any criminal cases pending against any witness identified by name whom the government anticipates calling in its case-in-chief.
- A written description of the failure of any percipient witness identified by name to make a positive identification of a defendant, if any identification procedure has been held with such a witness with respect to the crime at issue.
- Any information that tends to cast doubt on the credibility or accuracy of any witness whom or evidence that the government anticipates calling or offering in its case-in-chief.
- Any inconsistent statement, or a description of such a statement, made orally or in writing by any witness whom the government anticipates calling in its case-in chief, regarding the alleged criminal conduct of the defendant.
- Any statement, or a description of such a statement, made orally or in writing by any person, that is inconsistent with any statement made orally or in writing by any witness the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant.
- Information reflecting bias or prejudice against the defendant by any witness Whom the government anticipates calling in its case-in-chief.
- A written description of any prosecutable federal offense known by the government to have been committed by any witness whom the government anticipates calling in its case-in-chief.
- A written description of any conduct that may be admissible under Fed. R. Evid. 608(b) known by the government to have been committed by a witness whom the government anticipates calling in its case-in-chief.
- Information known to the government of any mental or physical impairment of any witness whom the government anticipates calling in its case-in-chief, that may cast doubt on the ability of that witness to testify accurately or truthfully at trial as to

any relevant event.

- Exculpatory information regarding any witness or evidence that the government intends to offer in rebuttal.
- A written summary of any information in the government's possession that tends to diminish the degree of the defendant's culpability or the defendant's Offense Level under the United States Sentencing Guidelines.

### **Federal Rule 16 of Criminal Procedure...**

It entitles the defendant to receive, upon request, the following information:

- statements made by the defendant;
- the defendant's prior criminal record;
- documents and tangible objects within the government's possession that are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant;
- reports of examinations and tests that are material to the preparation of the defense; and
- written summaries of expert testimony that the government intends to use during its case in chief at trial<sup>7</sup>.

### **Disclosure Requirements**

#### **(1) Types of information required to be disclosed**

All of the states require, at a minimum, disclosure of the types of evidence that Rule 16 permits to be disclosed before trial:

- written or recorded statements, admissions, or confessions made by the defendant;
- books, papers, documents, or tangible objects obtained from the defendant;
- reports of experts in connection with results of any physical or mental examinations made of the defendant, and scientific tests or experiments made;
- records of the defendant's prior criminal convictions; and
- Written lists of the names and addresses of persons having knowledge of relevant facts who may be called by the state as witnesses at trial.

Some states, however, go beyond this basic list of information and specify other material for disclosure:

- any electronic surveillance of any conversations to which the defendant was a party;
- whether an investigative subpoena has been executed in the case;
- whether the case has involved an informant;
- whether a search warrant has been executed in connection with the case;
- transcripts of grand jury testimony relating to the case given by the defendant, or by a codefendant to be tried jointly;
- police, arrest, and crime or offense reports;
- felony convictions of any material witness whose credibility is likely to be critical to

<sup>7</sup> Fed. R. Cri. P. 16(a)(1)(A)-(E)

the outcome of the trial;

- all promises, rewards, or inducements made to witnesses the state intends to present at trial;
- DNA laboratory reports revealing a match to the defendant's DNA;
- expert witnesses whom the prosecution will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to the prosecution;
- any information that indicates entrapment of the defendant; and
- any other evidence specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interests of justice<sup>8</sup>.

## **(2) Mandatory disclosure without request**

Massachusetts State describes as being "mandatory discovery for the defendant" the following items of evidence:

- Any written or recorded statements and the substance of any oral statements, made by the defendant or a co-defendant.
- The grand jury minutes, and the written or recorded statements of a person who has testified before a grand jury.

---

<sup>8</sup> Indiana Crim. L.R. 21, cited in Report to the Advisory Committee on Criminal Rules of the Judicial Conference of the United States, p.21-22.

- Any facts of an exculpatory nature.
  - The names, addresses, and dates of birth of the Commonwealth's prospective witnesses other than law enforcement witnesses . . .
  - The names and business addresses of prospective law enforcement witnesses.
  - Intended expert opinion evidence, other than evidence that pertains to the defendant's criminal responsibility . . . .
  - Material and relevant police reports, photographs, tangible objects, all intended exhibits, reports of physical examinations of any person or of scientific tests or experiments, and statements of persons the Commonwealth intends to call as witnesses.
  - A summary of identification procedures, and all statements made in the presence of or by an identifying witness that are relevant to the issue of identity or to the fairness or accuracy of the identification procedures.
- (ix) Disclosure of all promises, rewards or inducements made to witnesses the Commonwealth intends to present at trial<sup>9</sup>

---

<sup>9</sup> Mass. Cri. P. Rule 14. (As amended, effective September.7, 2004).

**States with Specific Time Limits<sup>10</sup> for Prosecutorial Disclosure of Evidence Favorable to the Defendant:**

State	Authority	Time Requirement
Alabama	Ala. R. Cr. P. 16.1	Within 14 days after the request has been filed in court. □
Arizona	Ariz. St. R. Cr. P. 15.6(c)	Not later than 7 days prior to trial. □
California	Cal. Penal Code § 1054.7	Not later than 30 days prior to trial.
Colorado	Colo. Cr. P. R. 16(b)	Not later than 20 days after filing of charges.
Connecticut	Conn.Gen. Stat. § 54-86(c)	Not later than 30 days after defendant pleads not guilty
Delaware	Del. Super. Ct. Crim. R. 16(d)(3)(B)	Within 20 days after service of discovery request. □
Florida	Fla. R. Cr. P. 3.220(b)(1)	Within 15 days after service of discovery request.
Georgia	Ga. Code Ann. § 17-16-4(a)	Not later than 10 days prior to trial
Hawaii	Haw. R. Penal P. 16(e)(1)	Within 10 calendar days after arraignment and plea of the defendant
Idaho	Idaho Cr. R. 16 (e)(1)	Within 14 days after service of discovery request
Indiana	Ind. R. Trial P. 34(B)	30 days after service of discovery request
Kansas	Kan. Stat. Ann. § 22-3212(f)	Within 20 days after arraignment
Maine	Me. R. Crim. P. 16(a)(3)	Within 10 days after arraignment
Maryland	Md. R. 4-263(e)	Within 25 days after appearance of counsel or first appearance of defendant before the court, whichever is earlier □
Massachusetts	Mass. Crim. P. Rule 14(1)	At or prior to the pretrial conference
Michigan	Mich. Ct. R. 6.201(F)	Within 7 days after service of discovery request
Minnesota	Minn. R. Crim. P. 9.03; Minn. Bd. of Judicial Stand. R. 9(e)	Within 60 day after service of discovery request; by the time of the omnibus hearing □
Missouri	Mo. Sup. Ct. R. 25.02	10 days after service of discovery request

<sup>10</sup> Report to the Advisory Committee on Criminal Rules of the Judicial Conference of the United States, 2004, by Laural L. Hooper, Jennifer E. Marsh, and Brian Yeh, p 24-25.

Nevada	Nev. Rev. Stat. § 174.285	Not later than 30 days prior to trial
New Hampshire	N.H. Sup. Ct. R. 98(A)(2)	Within 30 days after defendant pleads not guilty <input type="checkbox"/>
New Jersey	N.J. Ct. R. 3:13-3(b)	Not later than 28 days after the indictment
New Mexico	N.M. R. Crim. P. 5-501(A)	Within 10 days after arraignment
New York	N.Y. Consol. Law Serv. Crim. P. Law § 240.80(3)	Within 15 days after service of discovery request <input type="checkbox"/>
Ohio	Ohio R. Crim. P. 16(F)	Within 21 days after arraignment or 7 days prior to trial, whichever is earlier <input type="checkbox"/>
Oklahoma	Okla. Stat. § 2002(D)	Within 21 days after arraignment or 7 days prior to trial, whichever is earlier <input type="checkbox"/>
Rhode Island	R.I. Super. R. Crim. P. 16(g)(1)	Within 21 days after arraignment or 7 days prior to trial, whichever is earlier <input type="checkbox"/>
South Carolina	S.C. R. Crim. P. 5(a)(3)	Not later than 30 days after service of discovery request <input type="checkbox"/>
Washington	Wash. Super. Ct. Crim. R. 4.7(a)(1)	No later than the omnibus hearing

### Indian Criminal trial and Brady Ruling...

Sec. 207 of the Criminal Procedure Code, 1973 provides that..... In any where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

- The police report;
- The FIR recorded under Sec. 154;
- Statements recorded under Sec. 161 (3).
- Confession and statements under Sec. 164.
- Any other documents or relevant extract forwarded to the Magistrate under Sec. 173 (5).

It does not speak about the following substance:

- Electronic record, e.g. CD, DVD, Video, etc.
- Tangible objects.
- Expert witness report.

However, as per Sec. 173 of Cr. P.C., Police Report includes: name of the parties, nature of the offense, name of the person acquainted with the circumstance of the case ext., it prepared by a police officer who is either tenth or graduate standard, so he never submit to the such evidence which is favorable to the accused, because Section 170 of Cr. P.C. 1973 says that cases to sent to the Magistrate when evidence is sufficient and the public prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilty

of the accused, then discharge, charge, argument, conclusion of the trial. In such kind of legal foundations it accused who suffer despite favorable evidence. Criminal Procedure Code, 1973, which is applicable to the criminal trials in India nowhere state that the public prosecutors shall disclose to accuse all exculpatory evidence in their possession as the Brady ruling.... required. In India only the Court supply to accuse particular mentioned above under Section 207, it cannot be considered as disclosing the accused all exculpatory evidence against the accused. In *Bhole v. State of M.P.*<sup>11</sup>, it was that Sec. 207 and 173 is only directory in nature and not mandatory. Therefore non compliance of these provisions has not the result of vitiating the trial. But in *Sheikh Maheboob v. State of Maharashtra*<sup>12</sup> the Supreme Court held that non production of documents despite application by accused will be considered suppression of documents, however, this case does not make any fair guideline as in the Brady case.

## Conclusion

The non compliance of Sec. 207 does not vitiate a trial unless material prejudice is cause to the accused person, it means first all accuse has to face rigorous trail and prove his innocence, and suppose he convicted because procedure of fair trial is not followed he has to prove that non compliance of Sec 207 had

caused material prejudice to him. The perusal of Indian Criminal Procedure shows that the prosecution come to the court only to punish accuse and not for justice, so such trial cannot be termed as fair trial.

---

<sup>11</sup> 1985 Car. LJ (NOC) 108 Orissa

<sup>12</sup> 2005 Cri. LJ 2136 (SC)