CRIMINAL APPEAL
Present: The Hon'ble Justice S.P. Talukdar
A N D
The Hon'ble Justice Prabhat Kumar Dey
Judgment on: 30.04.2010
C.R.A.No. 122 of 1985
Narayan Dutta & Ors.
Vs.
The State of West Bengal

Points:
Criminal Trial: Minor discrepancies whether demolish the prosecution case- The principle of proof beyond reasonable doubt whether mere guideline- Indian Penal Code S.147
Facts:

Smt. Chabirani Biswas approached the Purbasthali Police Station and lodged a complaint to the effect that on 8th July, 1981 (Wednesday), at about 10-30/11 A.M. when she and Khatimon Bibi were engaged in cooking at home, Narayan Dutta, Swapan Dutta, Dilip Pal, Tapan Pal, Santi Das, Nabakrishna Das, Kartick Kirtania, Adhir Pal and Ranjit Das entered into their house and searched for Yunus. In response to their query, she told that he had gone to take bath in the Ganges. Those persons, thereafter, brought her brother from the Ghat. While they were passing by their house, she as well as her mother and sister, Tahiran, asked them as to why her brother was being so taken away. This resulted in their death. There was a theft in the house of accused Narayan Dutta about 5/6 months earlier. Both her brother and Sridam Mondal were suspected to have been involved in the same. On the basis of such recorded statement, a case was started under Sections 148/149/342/304 of the Indian Penal Code. The case was investigated. After completion of investigation, the police authority submitted charge sheet. Subsequently, the learned Trial Court framed charges against as many as 14 persons including the 9 appellants herein for the offences under Section 148 of the Indian Penal Code and Section 302/149 of the Indian Penal Code.All were also found guilty of the offence under Section 147 of the Indian Penal Code and each of them was sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.1, 000/-, in default, to suffer detention for a further period of 1 year.

Held:

Marginal mistakes and minor discrepancies cannot demolish the prosecution case. Credibility of testimony, oral or circumstantial, depends on judicial evaluation of the totality and not isolated scrutiny. Proof beyond reasonable doubt is the guideline and not a fetish. Truth may suffer from infirmity when projected through human process. Para-18

It is well settled that in a case resting on circumstantial evidence, the circumstances put forward must be satisfactory proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Those circumstances are also required to be of conclusive nature and tendency. They should be such as to exclude every hypothesis but the one proposed to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion inconsistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.
Four things are required to be proved: -
1) The circumstances from which the conclusion is drawn should be fully proved;

(2) the circumstances should be conclusive in nature;
(3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence, and

(4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused. Para 28

Where a case depends upon the conclusion drawn from circumstances, it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring the offences home to him beyond any reasonable doubt. Para 29
Cases Cited:
Vijender vs. State of Delhi and with others ----1997 Supreme Court cases (Cri) page 857
Smt. Krishna Rani vs. Chuni Lal Gulati---- AIR 1981 Punjab and Haryana, 119.
S vs. M. K. Anthony------ AIR 1985 SC 48,

For the Appellant: Mr. Sekhar Basu.
For Ld. P. P.: Mr. Asimesh Goswami.

For the State: Mr. R. K. Ghosal
Mrs. Rajyasri Das.

The appellants, namely, Narayan Dutta, Swapan
Dutta, Biren Aich, Dilip Pal, Santi Das, Nabakrishna Das, Tapan Kumar Pal, Ranjit Das and Kartick Kirtania, were found guilty of the offences under Section 302 read with Section 149 of the Indian Penal Code. Each of them was sentenced
to suffer rigorous imprisonment for life and also to pay fine of Rs.10, 000/-, in default, to suffer further imprisonment for 5 years.

2. The said appellants were also found guilty of the offence under Section 147 of the Indian Penal Code and each of them was sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.1, 000/-, in default, to suffer detention for a further period of 1 year.

3. Being aggrieved by the said judgment and order of conviction and sentence dated 30th March, 1985, the appellants preferred the instant appeal. The backdrop of the present case may briefly be stated as follows: -

4. Smt. Chabirani Biswas approached the Purbasthali Police Station and lodged a complaint to the effect that on 8th July, 1981 (Wednesday), at about 10-30/11 A.M. when she and Khatimon Bibi were engaged in cooking at home,
Narayan Dutta, Swapan Dutta, Dilip Pal, Tapan Pal, Santi Das, Nabakrishna Das, Kartick Kirtania, Adhir Pal and Ranjit Das entered into their house and searched for Yunus. In response to their query, she told that he had gone to take bath in the Ganges. Those persons, thereafter, brought her brother from the
Ghat. While they were passing by their house, she as well as her mother and sister, Tahiran, asked them as to why her brother was being so taken away. As they resisted, those persons threatened them and forcibly took Yunus towards
the Western field. They could learn that a friend of Yunus, namely, Sridam Mondal, was also taken by them. Both of them were assaulted with fists, blows and lathies. This resulted in their death. There was a theft in the house of accused Narayan Dutta about 5/6 months earlier. Both her brother and Sridam
Mondal were suspected to have been involved in the same.

5. On the basis of such recorded statement, a case was started under Sections 148/149/342/304 of the Indian Penal Code. The case was investigated. After completion of investigation, the police authority submitted charge sheet.
6. Subsequently, the learned Trial Court framed charges against as many as 14 persons including the 9 appellants herein for the offences under Section 148 of the Indian Penal Code and Section 302/149 of the Indian Penal Code.

7. Prosecution in order to discharge the burden of proving the charges examined as many as 14 witnesses in this case.

8. Of them, P.W. 1 is the de facto complainant who in her evidence in chief stated that one of the victims, Yunus Biswas @ Pir Box was her cousin. She stated as on 23rd Ashar, about 3 years prior to her giving evidence, at about 11/12 hours, some young men of the locality went to the house of Yunus through the house where she used to live. She gave the names of the persons as Narayan Dutta, Swapan Dutta, Dilip Pal, Tapan Pal, Biren Aich, Ranajit Das, Nabakrishan Das, Santi Das and Kartick Kirtania. On their way, they asked about whereabouts of her cousin, Yunus. They were told that he had gone to take
bath in the Ganges. The bank of the said river was close to their house. Yunus was brought back to their house. He was asked to accompany them to Parulia More and despite objections being raised by Yunus, they dragged him out of the house. Yunus was being dashed and beaten up at that time. Her husband returned home at about 2 P.M. P.W.1 reported the matter to him. Pishima of P.W.1, who used to be addressed as mother, followed those persons. Soon afterwards she returned and reported that Yunus had been murdered. P.W.1 further deposed that one friend of Yunus, namely, Sridam Mondal, was also
murdered.

9. The police officer recorded the statement of P.W.1. She put her L.T.I. on such recorded statement. She was then taken to the place called Talibhata at Parulia More in a Jeep. They found the dead body of Yunus over there. P.W.1 identified the accused persons as those who abducted her brother, Yunus. P.W.1 stated that she did not know the motive behind such abduction and murder. In her cross-examination, P.W.1 stated that she did not have any knowledge as to how and under what circumstances Yunus died. P.W.1 referred to the accused

persons as members of the local Congress Party. She stated that neither she norm her husband belonged to any party but the local M.L.A., Monoranjan Debnath, whom she used to address as Jyathamosai, is of C.P.I. (M) party.

10. P.W.2 is the mother of the victim, Yunus. She in her evidence in chief corroborated the evidence of P.W.1. While stating that they had no 'bad blood or hostility with the accused persons', she deposed that the persons who took away her son, Yunus, did not give her any opportunity to talk to him. Like P.W.1, P.W.2 also could not say as to how her son had died and under what circumstances. P.W.3 in his evidence in chief stated that on 23rd Ashar, Wednesday, about 3 years back, when he was returning from Parulia at about 2.30/3 P.M., he found an assembly of some villagers. He identified the accused persons as those persons. He further stated that some of them had Lathies with them. Seeing him, those persons ran away helter-skelter. After he went back to his home, his wife, mother-in-law (P.W.2) reported that Yunus was abducted by those persons as identified by him. Subsequently, he was told about the death of Sridam Mondal and Yunus Biswas. They were taken by the police officer in a vehicle to a place called Talibhata within the village Parulia. They found the dead
body of Yunus over there. Like P.W.1 and P.W.2, P.W.3 also admitted in cross- examination that it was not possible for him to narrate the actual circumstances in which Yunus was murdered.

11. P.W.4 being informed about the murder of Sridam Mondal accompanied some other villagers to a field within the village Parulia. There he found the dead body of Sridam Mondal lying in the bushes of Mesta Crop. P.W.4 was declared hostile by the prosecution. P.W.5 is an eyewitness to the incident. According to him, he along with other students while in school came to know about beating up of a young man. Out of curiosity, they sneaked out of the school and went to Parulia Bazar. P.W.5 found that a young man was being beaten up at Parulia Bazar by a number of persons. While returning, he found Yunus Biswas lying on a village road leading to Nabapalli. Such P.W.5 was declared hostile by the prosecution. There is nothing worth mentioning in the evidence of P.W.6 who was also declared hostile. The complexion remained unchanged, since P.W.7, who too was declared hostile, could add little to the prosecution case. P.W.8 deposed about an incident, which does not seem to have any bearing to the case under consideration. Prosecution could derive very little support and strength

from the evidence of P.W.9. He only heard that persons being caught as thieves had been beaten to death. P.W.10 was also declared hostile by the prosecution.

12. P.W.11 is a formal witness. On 8th July, 1981 along with one Dinabandhu he escorted dead body of Yunus Biswas and that of Sridam Mondal to the morgue at S.D.Hospital, Kalna for their post-mortem examination. P.W.12 was just tendered by the prosecution. P.W.13 is the police officer who referred to the
statement made by the de facto complainant, which was recorded by him and thereafter, read over and explained to the complainant i.e., P.W.1. He filled in the formal F.I.R. on the basis of such complaint. With this, Purbasthali P.S. Case
No.12 dated 8.7.1981 was started. P.W.13 took over charge of investigation. He narrated about various steps taken by him including recording of statements of the witnesses under Section 161 of the Code of Criminal Procedure.

13. P.W.14 is the doctor who stated that Dr. Samanta who conducted postmortem examination was dead. Such P.W.14 then proved the carbon copy of the post-mortem report, which was in the handwriting of Dr. Samanta who had his signature in it. He further referred to carbon copy of another post-mortem report in the handwriting and under the signature of Dr. Samanta. Those two reports thus had been marked exhibits.

14.This is, in a nutshell, all about the prosecution evidence on record in the case. The accused persons were examined under Section 313 of Cr.P.C. They pleaded innocence.

15. The defence case, as it appears from the trend of cross-examination and the statements made during examination under Section 313 of Cr.P.C. is denial of the prosecution allegations and the plea of innocence.
16. Learned Counsel, Mr. Sekhar Basu, appearing for the appellants, first sought to assail the impugned judgment on the ground that the learned Trial Court failed to appreciate the evidence on record in its proper perspective. He referred to the evidence of P.W.1 and P.W.2 while submitting that there are
material discrepancies. P.W.2 in her evidence did not mention that P.W.1 had any conversation with the persons who came to their house in search of Yunus who was forcibly taken away. It was submitted that the learned Trial

Court failed to consider that P.W.2 admitted that she was tutored by the local M.L.A and the member of the Panchayet. Inviting attention of the court to the F.I.R., it was submitted that the same also does not exactly tally with the evidence of P.W.1. In this context it may be mentioned that it is not necessary to mention everything in
details in the First Information Report. It is not a substantial piece of evidence either. What had not been said cannot be a matter of scrutiny beyond a point. Having regard to the evidence on record, it cannot be denied that the victim,Yunus Biswas, was last seen in the company of the appellants. There is clear evidence that his dead body was subsequently recovered from the brickfield. According to learned Counsel for the appellants, there is nothing to indicate as to
whether Yunus Biswas left the company of the appellants or not. It is well settled that marginal mistakes and minor discrepancies cannot demolish the prosecution case. Credibility of testimony, oral or circumstantial, depends on judicial evaluation of the totality and not isolated scrutiny. Proof beyond reasonable doubt is the guideline and not a fetish. Truth may suffer from infirmity when projected through human process. An attempt was made to cast doubt over the contents of the post-mortem report. It was submitted that carbon
copy of post-mortem report should not have been accepted as evidence. Attention of the court was invited to the decision in the case between Vijender vs. State of Delhi and with others reported in 1997 Supreme Court cases (Cri) page 857 in support of the contention that a carbon copy of post-mortem report is not admissible.

17. Under Section 64 of the Evidence Act, document must be proved by primary evidence, that is to say, by producing the document itself except in the cases mentioned in Section 65 of the Evidence Act. Since the copy of the postmortem report does not come within the purview of any of the clauses of Section
65, it was not admissible on this score alone. This no doubt strikes the prosecution case with a severe blow. But, that by itself cannot brush aside the entire prosecution evidence under the carpet. It was further submitted that no person of the locality of Parulia Bazar had been examined as a witness for the prosecution. It cannot be denied that this is a deficiency in the evidence but the question remains as to whether such deficiency by itself could ruin the prosecution case. We are afraid, it cannot. Learned Public Prosecutor, Mr. Goswami, referred to the F.I.R while submitting that it projects the incident. Mere fact that there is no mention of the surnames,

according to him, could be of little consequence. He categorically mentioned that P.W.2 and P.W.3 are virtually
eyewitnesses. There is clear evidence on record that the victim, since deceased, was forcibly taken away. It really does not make any difference that such victim while being taken away did not raise voice. According to Mr. Goswami, there is clear, cogent and convincing evidence to substantiate the charge. The victim, Yunus Biswas, was lynched by the accused persons and this charge, according to Mr. Goswami, had been established by the well corroborated evidence of a number of witnesses. So far the admissibility of the copy of the post-mortem report is concerned, reference was made to the Single Bench decision in the case between Smt. Krishna Rani vs. Chuni Lal Gulati., as reported in AIR 1981 Punjab and Haryana, 119. It was submitted by Mr. Goswami that the objection regarding admissibility could be raised at the time of introduction of document and not at a subsequent stage.

18. On perusal of the impugned judgment, we find that the learned Trial Court analyzed the evidence on record in minute details. Relying upon the evidence of particularly P.W.1, P.W.2, P.W.3 and P.W.13, the learned Trial Court found that
there could be no scope for any doubt or dispute regarding involvement of the accused persons in commission of murder of victim, Yunus. Yunus was a cousin of P.W.1. Referring to the incident, which took place three years prior to her deposing in court, that is, on 23rd Ashar at about 11/12 hours, P.W.1 stated that the local boys namely, Narayan Dutta, Swapan Dutta, Dilip Pal, Tapan Kr. Pal, Biren Aich, Ranjit Das, to the house of Yunus asked her about his whereabouts. She told them that Yunus had gone to take bath in Ganges. Some of those boys went to the bank of the said river, which was close to the residence of P.W.1. Those boys then brought Yunus to the house of P.W.1. They asked Yunus to accompany them to Parulia More. In spite of objections on the part of Yunus, they dragged him. He was also dashed and beaten up all the while. P.W.1 frankly admitted that she did not follow them up but saw those persons taking Yunus away out of her sight. P.W.1 stated that her Pishi, whom she used to address as ‘Ma’ followed
those persons while Yunus was being taken away by them. She returned soonafter and reported that Yunus had been murdered. P.W.1 being accompanied by her Pishi and husband went to the Purbasthali Police Station and reported the matter. P.W.1 further stated that after F.I.R. was lodged, they were taken by the police officer in a jeep to the place called Talibhata at Parulia More. P.W.1 found the dead body of Yunus on the pathway near that place. P.W.1 identified the accused persons in court and stated that the

accused persons abducted her bother. P.W.1 in her usual fairness admitted in cross-examination that she did not have any knowledge as to how and under what circumstances Yunus died. Mr. Bose, as learned Counsel for the appellants sought to read much into such
evidence in cross-examination. We find it difficult to share his stand in this regard. We find such statement of P.W.1 is particularly worthy. It only reveals P.W.1's regard for truth. Such evidence of P.W.1 had been corroborated on all
material points by her Pishi whom P.W.1 used to address as 'Ma' who was examined as P.W.2. Her statement in cross-examination that "while those men came in search of my son, they did not behave in any ill-fashion with me, my daughter or my son. While those persons took away my son, I did not harbour any sort of doubt about their purpose", manifested P.W.2's passion for truth. None of these two witnesses tried to state anything before this court, which they did not actually see, or experience. P.W.2 in course of cross-examination deposed

that "the place where the dead body of my son was recovered was about a mile away from the place Ghoshpara after which place I was not allowed to go". She also stated that "Ghoshpara is about a mile away from our village and at the west of our village. As we reached Ghoshpara some men of that assembly restrained me from going further and others took my son away". She further deposed that "the dead body of my son was recovered from a place which was at the west of the village Parulia".

19. The aforesaid evidence of P.W.2 in cross-examination goes a long way to substantiate the evidence of P.W.1 and thereby, establish the charge against the accused persons.

20.Her further evidence that "I am not in a position to state actually how my son died and under what condition" reflects her regard for truth.

21. Section 134 of the Evidence Act clearly lays down that no particular number of witnesses shall in any case be required for the proof of any fact. The court is required to assess whether prosecution could establish the guilt of an accused person on the basis of the quality of the evidence. It is not necessary
that any minimum number of witnesses is required to be examined for that purpose. P.W.3 was declared hostile by the prosecution but his evidence that

he “did not go to Yunus as he was lying at a distance from the metallic road” plays a
very significant role in completion of the chain of events.

22. A careful scrutiny of the evidence on record, it can very well be said that despite the fact that a number of prosecution witnesses were declared hostile and did not lend any support to the prosecution case, the aforesaid evidence, as referred to earlier, leave very little scope for any doubt or dispute. P.W.13, the police officer who investigated the case, stood the test of cross-examination quite well.

23. Learned Trial Court on the basis of such evidence on record came to the conclusion that the accused persons had committed the murder of Yunus. It may be mentioned that the accused persons during their examination under Section 313 of the Code of Criminal Procedure merely pleaded innocence. There could be no material worth mentioning in support of the claim that P.W.1, P.W.2 and P.W.3 had any personal or any particular grudge against any of the accused persons. Thus, in tune with the findings of the learned Trial Court, we find it difficult, if not impossible, to brush aside such evidence of P.W.1, P.W.2 and P.W.3. Such evidence seems to have harmoniously combined so as to establish the guilt of the accused persons.

24. The evidence on record very well reveals that the victim, Yunus was last seen with the accused persons. There is no such material before this court so as to even remotely suggest that the accused persons parted with such company at any point of time. The next significant aspect is discovery of the dead body of Yunus and recovery of the same. That there could be any person other than the accused persons and the victim in between was not even suggested by the accused persons in their statement under Section 313 of the Code of Criminal Procedure. There was no suggestion to the prosecution witnesses, being P.W.1 to P.W.3, in that regard. The materials on record, thus, conclusively establish that there could be none besides accused persons and the deceased at the time of the
incident. This fact inescapably leads to the conclusion that within all human probability, none other than the accused persons had murdered the victim, Yunus. It is true that mere fact that the accused persons while last seen with the
deceased does not lead to the inference that they had committed murder. But,here in this case the evidence on record is significantly much more than that. It leaves no scope for any confusion or controversy.

25. Mr. Basu inviting attention of the court to the evidence of P.W.14 submitted that he could not be said to be the best person to prove the post mortem report before this court. The said witness claimed that he was conversant with the handwriting and the signature of the doctor who conducted
post mortem examination over the dead body of the two persons. Copies of such post mortem reports have been exhibited. In the case of Vijendra (supra), the Apex Court referring to Section 64 of the Evidence Act held that document must be proved by primary evidence, i.e., by producing the document itself except in the cases mentioned in Section 65 thereof. But this point was never raised before the learned Trial Court. Such reports were admitted in evidence. There
was no suggestion from the side of the defence to such P.W.14 regarding the genuineness of the post mortem reports.

26.It may, however, be mentioned that the deposition of a Medical Officer in court and not his report is evidence. No fact can be taken from a post mortem report straight way in evidence. The Autopsy Surgeon can use it to refresh his
memory. In absence of any suggestion from the side of the defence regarding the genuineness of the post mortem reports, the fact of death of two persons or in regard to the cause of death, we do not think that there could be any rational
justification for bustling the same aside.

27.No doubt, in the case of circumstantial evidence, the court will have to bear in mind the cumulative effect of all the circumstances in a given case and weigh them as an integrated whole. Any missing link may be fatal to the prosecution
case.

28. It is well settled that in a case resting on circumstantial evidence, the circumstances put forward must be satisfactory proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Those circumstances are also required to be of conclusive nature and tendency. They
should be such as to exclude every hypothesis but the one proposed to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion inconsistent with the innocence of the

accused and it must be such as to show that within all human probability the act must have been done by the accused.
Four things are required to be proved: -
1) The circumstances from which the conclusion is drawn should be fully proved;

(2) the circumstances should be conclusive in nature;
(3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence, and

(4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.

29. Where a case depends upon the conclusion drawn from circumstances, it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring the offences home to him beyond any reasonable doubt.

30. In the present case, P.W.1 and P.W.2 specifically mentioned the names of the accused persons. There could be little scope for raising doubt regarding the evidence on record that those persons, properly identified by such prosecution
witnesses, took away the victim. While being so dragged, the victim was subjected to some sort of humiliation and torture. The victim was taken to a particular spot, quite far from the residence of P.W.1. The dead body of the victim was recovered thereafter. Mere fact that some of the prosecution witnesses were declared hostile could not create any dent in the evidence of P.W.1, P.W.2 and P.W.3. As mentioned earlier, there could be no person other than the accused persons as specifically named and the victims. In the backdrop of such well corroborated, consistent and convincing evidence, there could be little justification for unnecessarily digging up the plea of “the presumption of innocence” and thereby, letting the accused persons free.

31.In the case between

the Apex Court held: -
While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies,

draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here and there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Even honest and truthful witness may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.

32. Question may be raised as to whether the learned Trial Court on the basis of such evidence was justified in convicting the accused persons after finding them guilty for the offence of murder. Taking away of the victim of the appellants/accused persons, that too, forcibly; beating up of the victim while being so dragged; participation of the appellants/accused persons in such acts and that too, being armed with Lathies etc. and finally, recovery of his dead body from the place of occurrence – all these factors leave little scope for any gap and those form a well-corroborated chain of events so as to establish the guilt of the accused persons. It may also be mentioned that in order to establish a charge, the prosecution need not necessarily dot every ‘i’ and cut every ‘t’.

33. Having regard to the nature of the evidence on record, this court does not find any reason so as to convert the charge under Section 302 of I.P.C. and bring it down to Section 304 of I.P.C.

34. Accordingly, the appeal being C.R.A. No.122 of 1985 fails and be dismissed. The judgment and order of conviction and sentence dated 30th March, 1985 passed by the learned Trial Court in S.T. No.6 of 1985 (S.C. No. 241 of 1984), thus, stands affirmed.

Send a copy of this judgment to the Learned Trial Court for information and necessary action.

Trial Court Record be sent back as well.
(S P Talukdar,J)

I agree,
(Prabhat Kumar Dey, J.)