

JOYDEEP NEOGI @ BUBAI  
v.  
STATE OF WEST BENGAL  
(Criminal Appeal No. 1285 of 2006)

MAY 8, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR  
GANGULY, JJ.]

*Penal Code, 1860: s.302 – Murder – Missing boy seen last at a particular place – Accused persons also seen there the whole day – Recovery of dead body of boy – Conviction based on circumstantial evidence – Challenged by A1 and A2 – Held: Presence of accused for whole day in a specific place and misleading prosecution witnesses to search in other place and not allowing them to search at a particular place destroys the presumption of innocence – Unnatural, abnormal or unusual behaviour of the accused after the offence relevant circumstance against them – Circumstances establishing accusations so far as A-1 is concerned – His conviction is upheld – But circumstances not sufficient to fasten guilt on A-2 – His conviction is set aside – Evidence – Circumstantial evidence.*

*Evidence: Conduct which destroys the presumption of innocence can be considered as relevant and material – Unusual and abnormal conduct on part of accused create adverse presumption against them.*

**Prosecution case was that on 6.11.2001, son of PW-1 was playing in the playground. He did not return home after usual hour and his mother started searching for him. At 1.30 P.M., a telephone call was received by mother of deceased regarding the wrongful detention of deceased. When PW-1 returned home, he also made search for his son but without any result and ultimately he lodged**

A complaint. The appellants were detained for few hours in connection with the case on the basis of written complaint of PW-1 but later released. On 16.11.2001, dead body of deceased was recovered on the information given by the accused persons. The trial Court convicted the accused person except A-4 and the appellants. High Court upheld the finding of guilt, however modified the order of conviction of appellants under ss.363, 364, 302, 201, r.w. s.34 IPC. A-1 and A-2 filed these appeals.

C Allowing the appeal of A-2 and dismissing the appeal of A-1, the Court

HELD: 1. From the evidence it is clear that on 6.11.2001, the deceased was last seen in the Uttararmath. At that time, four accused were also seen there and upon questioning by the witnesses they gave false explanations and misled the witnesses so that they did not go to the western side of the area. This unusual and abnormal conduct on the part of the accused, no doubt created an adverse presumption against them. P.W.1 went out to search his son in the said math along with other local people and his brother. At that time, they also found the four accused persons in that place. Part of his evidence is corroborated by the evidence of his brother P.W.7 who stated that at about 2.15 P.M. his brother PW-1 returned home from his office, they narrated the incident to him and then he along with his brother and some other people went to search for the child in the ponds near the Uttararmath and when they were about to enter the Math area, accused came towards them and asked P.W.7 as to where they were going, to which P.W.7 replied that they were searching for son of PW-1 in the pond. The accused stated that they searched for the child in those ponds but he was not there and after hearing the same, they came back to their house. This was

corroborated by PW-1, PW-4 and PW-7. [Paras 7 and 8] A  
[296-G-H; 297-A-F]

2. From the evidence of P.W.5 it appears that in the mean time on the same day i.e. on 6.11.2001 at about 1/ 1.30 P.M. there was a telephone call in male voice to his house and he was asked to call some one from the house of PW-1. This call was attended by P.W.3. From her evidence it appears, while she attended the telephone call one male person in low voice said that deceased was with them and asked her not to search for him or inform the police and when she enquired who was speaking and from where, the voice on the telephone stopped. According to PW3, she narrated the incident before her husband PW 7, PW4, PW11 and many other persons. All these PWs. corroborated this part of evidence of PW 3. [Paras 10] [299-A-D] B  
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3. From the evidence of PW1, PW 2, PW 3, PW 4, PW7, it is clear that the four accused were found in the Uttarar Math since morning of 11 A.M. to 5 P.M. when it was dark. When a case rests purely on circumstantial evidence, the circumstances from which the inference of guilt is sought to be proved must be cogent and firmly established, and that should unerringly point towards the guilt of the accused, and that must make a chain complete to form a view that the crime was committed by the accused alone and none else. The accused told the P.Ws not to search in a specific side of the Uttarar Math and asked them to search deceased on the other sides. The P.Ws i.e. even the parents and other relatives of the deceased did not suspect anything. They relied upon the accused on good faith. A criminal trial is not an enquiry into the conduct of an accused 'for any purpose' other than to determine his guilt'. It is not disputed that piece of conduct which is not connected with the guilt of the accused is not relevant. But at the same time, however, unnatural, abnormal or E  
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A unusual behaviour of the accused after the offence may be relevant circumstance against him. Such conduct is inconsistent with his innocence. So the conduct which destroys the presumption of innocence can be considered as relevant and material. So, the presence of  
B the accused for a whole day in a specific place and misleading the P.Ws to search in other place and not allowing them to search in a specific place certainly creates a cast iron cloud over the innocence of the accused persons. [Paras 11, 12 and 13] [299-E-H; 300-A-D]  
C D]

4. The circumstances clearly establish the accusations, so far as the appellatant A-1 is concerned. There is no scope for interference in the appeal filed by him. But the circumstances are not sufficient to fasten  
D guilt on A-2. His conviction is set aside and he is acquitted of the charges. [Para 15] [302-C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1285 of 2006.

E From the Judgment & Order dated 25.08.2006 of the High Court of Calcutta at Calcutta in Crl. Appeal No. 149 of 2005.

WITH

F Crl. Appeal No. 122/2007.

Surinder Singh, C.K. Sasi, Parthiv Goswami, S.K. Dubey and Rajiv Mehta for the Appellant.

G Avijit Bhattacharjee and Bikas Kar Gupta for the Respondent.

The Judgment of the Court was delivered by

H DR. ARIJIT PASAYAT, J. 1. These two appeals are inter linked and are therefore disposed of by a common judgment. Challenge in these appeals is to the judgment of the Division

Bench of the Calcutta High Court upholding the conviction of the appellants except that the order of conviction was modified and the appellants were convicted for offences punishable under Sections 364,302,201 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). Seven persons faced trial before learned Additional Sessions Judge Alipurduar. Six of them i.e. present appellants were convicted and one of them i.e. accused No. 4 was acquitted. While accused No.2 Joydeep Neogi is the appellant in Criminal Appeal No. 1285 of 2006, Debasish Das-accused no.1 is the appellant in Criminal Appeal No. 122 of 2007. Accused nos. 3 and 6 are proforma respondents in Criminal Appeal No. 122 of 2007.

2. The prosecution version as unfolded during trial is as follows:

On 6 November, 2001 Ranadip (hereinafter referred to as "deceased") son of Kr. Mallick Gupta was playing on a nearby playground of his house and as he did not return even after the usual hour, his mother and other relatives started searching for him, but without any result. At about 1.30 P.M., an anonymous telephone call was received by a neighbour wherefrom information was gathered about wrongful detention of Ranadip. When de facto complainant returned from his office, he also made a search for his son, but, without any result and ultimately the complaint was lodged with the local P.S. alleging kidnapping of Ranadip with some dishonest intention.

It appears from record that on receipt of the FIR of de facto complainant, S.I. Laskar of Alipurduar P.S. took up the investigation and on 6th November, 2001 itself the present appellants were detained for a brief period in connection with the case started on the basis of written complaint of de facto complainant, but subsequently on the same date the appellants were released.

On 16th November, 2001 getting information about locating of dead body of Ranadip at a place near Buxer forest

A on the basis of information given by appellant Debasish @  
Sona and another accused Raju. On getting information about  
involvement of other persons in the murder of Ranadip and  
removal of his dead body, all the seven persons including the  
present appellants were arrested on 16th November, 2001 and  
B thereafter after recording the statement of witnesses, on receipt  
of post mortem report of Ranadip, recovery of certain  
incriminating articles at the instance of the appellants and on  
the basis of confessional statement of accused Choton Sarkar,  
S.I. Laskar being the investigating officer of the case found a  
C strong prima facie case against seven persons including the  
appellants under Section 363/364/302/201/34 IPC and on  
completion of investigation, charge sheet was accordingly  
submitted against seven persons including the present  
appellants.

D 3. Accused persons abjured guilt and therefore trial was  
held.

E 4. Since the case is based on circumstantial evidence, the  
trial Court referred to various circumstances and held that the  
appellants were guilty while directing acquittal of A4. As noted  
above, the judgment of the trial court was assailed in appeal  
before the High Court. In both appeals the High Court, except  
the modification of the conviction, upheld the finding of guilt and  
dismissed the appeals.

F 5. Learned counsel for the appellants submitted that the  
circumstances highlighted do not present a complete chain of  
circumstances and therefore the judgments of the trial court and  
the High Court are not correct.

G 6. Learned counsel for the respondent-State supported the  
judgment of the trial court as upheld by the High Court.

H 7. From the evidence it is clear that on 6.11.2001 Ranadip  
was last seen in the Uttaramath. At that time, these above  
named four accused were also seen there and upon questioning

by the witnesses they gave false explanations and misled the witnesses so that they did not go to the western side of the area. This unusual and abnormal conduct on the part of the accused, no doubt creates an adverse presumption against them. A

8. Now the 2nd phase of this case comes out from the evidence of P.W.1 i.e. the defacto complainant. It appears that after returning from his duty and being informed regarding the entire matter he went out to search his son Ranadip in the said math along with other local people and his brother. At that time, they also found the four accused persons in that place. Part of his evidence is corroborated by the evidence of his brother Manik Kr. Mallick Gupta i.e. P.W.7 who stated that at about 2.15 P.M. his brother Rabindra Mallick Gupta (Defacto complainant) returned home from his office, they narrated the incident to him and then he along with his brother and some other people went to search for Ranadip in the ponds near the Uttararmath and when they were about to enter the Uttarar Math area, accused Sona, Tuhin, Choton and Bubai came towards them and asked addressing P.W.7 as Manik Dan as to where they were going, to which P.W.7 replied that they were going to search for Ranadip in the pond. The accused named above stated that they searched for Ranadip in those ponds but Ranadip was not there and after hearing the same, they came back to their house. P.W.4 corroborated this and stated that after return of Rabindra Mallick Gupta to his house from duty at about 2.30 P.M., he along with Rabindra Mallick Gupta and many other people went to search for Ranadip in the ponds of Uttarar Math and near the same math they saw accused Sona, Bubai, Tuhin and Choton and they stated to Rabindra Mallick Gupta that they had searched for Ranadip in the side of pond and jungle and asked him to search for Ranadip on other sides. The above named four accused persons were found present in the Uttarar Math on 6.11.2001 on and from 11.15 A.M. till 2.30 P.M. On 6.11.2001 failing to find out his son Rabindra Mallick Gupta, the defacto complainant at about 3.45 P.M. along with others B  
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A went to the Alipurduar P.S. and lodged a written complain there. The complaint is marked as Ext.1. It comes out from the evidence of PW 1 (father of the deceased) that after lodging of the same in the P.S. on 6.11.2001, police came to his house and asked him and his neighbours to show the place where

B Ranadip was last seen playing. Accordingly, PW1 accompanied police to the ground on the northern side of his house where Ranadip was last seen playing. At that time also they found that these four accused Sona, Tuhin, Bubai and Choton were present there and when police personnel were

C going to make a search on the western side of the same ground, these four accused stated to them that they made search on the said western side jungle and there was no necessity to proceed towards that side. Accordingly, police did not proceed towards the western side. Thereafter making

D search police went away. This part of the evidence of P.W. 1 is corroborated by Ashit Bose (P.W.4) and Manik Kr. Mallick Gupta (P.W.7). From the evidence of P.W.4 it appears at about 5 P.M. in his presence police reached the house of Rabindra Mallick Gupta. (P.W.1) and the members of the house narrated the incident to police and he also at that time stated to the

E police that on the same date at about 11/11.15 A.M., while he was coming through Uttarar Math, he found accused Sona, Bubai, Tuhin and Choton were loitering here and there in the same math and deceased Ranadip, Bittu and Sayan were also found playing there. According to P.W.4 he along with Daroga

F Babu and others went to the same math when it was dark. But at the same time they found these four above named accused to be loitering in the same Math and they again stated also to Daroga Babu that they had searched for Ranadip in jungle and other places but Ranadip was not there.

G 9. P.W.7 also corroborated this by stating that towards the evening on the same day at about 5.30 P.M. police came to their house and they narrated the incident to them and also the incident of Uttarar Math and then they along with the police

personnel went to Uttarar Math where they again saw accused Choton, Sona, Bubai and Tuhin present there. A

10. From the evidence of P.W.5 i.e. one Swapan Roy it appears in the mean time on the self same date i.e. on 6.11.2001 at about 1/1.30 P.M. there came a telephone call in male voice to his house and he was asked to call some one from the house of Mallick Gupta. This call was attended by Sipra Mallick Gupta. This Sipra Mallick Gupta is examined as P.W.3 in this case and from her evidence it appears, while she attended the telephone call one male person in low voice saying "Chela Amader Kachaa Achara, Khoja Khuji Kariban naa, policea Khabar Deban Naa", (Ranadip is with us. Do not search for him. Do not inform police) and when she enquired who was speaking and from where, at that time the voice on the telephone was stopped. According to PW3, she narrated the incident before her husband Manik Mallick Gupta, (PW 7), Ashit Bose (PW4), Bhupen Debnath (PW11) and many other persons. All these PWs. have corroborated this part of evidence of PW 3. B C D

11. From the evidence of PW1, PW 2, PW 3, PW 4, PW7 i.e. Rabindra Kumar Mallick Gupta, Nupoor Mallick Gupta, Sipra Mallick Gupta, Ashit Bose and Manik Mallick Gupta, it is clear that the four accused named above were found in the Uttarar Math since morning of 11 A.M. to 5 P.M. when it was dark. When a case rests purely on circumstantial evidence, the circumstances from which the inference of guilt is sought to be proved must be cogent and firmly established, and that should unerringly point towards the guilt of the accused, and that must make a chain complete to form a view that the crime was committed by the accused alone and none else. E F G

12. From the trend of evidence discussed above it can be presumed like Ranadip (deceased) all the four accused i.e. Sona, Tuhin, Bubai and Choton are the para boys. The accused told the P.Ws not to search in a specific side of the H

- A Uttar Math and asked them to search Ranadip in other sides. The P.Ws i.e. even the parents and other relatives of the deceased did not suspect anything. They relied upon the accused on good faith. A criminal trial is not an enquiry into the conduct of an accused 'for any purpose other than to determine his guilt. It is not disputed piece of conduct which is not connected with the guilt of the accused is not relevant. But at the same time, however, unnatural, abnormal or unusual behaviour of the accused after the offence may be relevant circumstance against him. Such conduct is inconsistent with his innocence. So the conduct which destroys the presumption of innocence can be considered as relevant and material.

13. So, the presence of the accused for a whole day in a specific place and misleading the P.Ws to search in other place and not allowing them to search in a specific place certainly creates a cast iron cloud over the innocence of the accused persons.

14. The circumstances noticed by the trial Court and the High Court are as follows:

- (1) Debashish Das @ Sona (A-1), Joydeep Neyogi @ Bubai (A-2), Choton Sarkar (A-4) and Babban Talukdar @ Tuhin (A-6) were present in the Uttar-Math at about 11.15 A.M. when the deceased along with Saiyan and Bittu were playing there. This has been stated by Ashit Bose (PW-4), Sudipta Das (PW-9), Krishnan Sen Gupta (PW-10) and Bhupin Dev Nath (PW-11).

- (2) At about 11.30 A.M. Nupur Gupta (PW-2) and Krishna Dey (PW-6) went in search of the deceased to Uttar Math. When they reached the municipal road, they saw Sona (A-1) coming on a cycle from the northern side of the ground. He asked them as to what had happened. He was informed that the deceased was not being found. Sona stated that the deceased, Bittu and Saiyan were playing on the ground. However, when Saiyan's father took away Saiyan, Bittu and

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the deceased also went away. At that time, Bubai (A-2), Choton (A-3) and Tuhir (A-6) were standing under a tree on the southern side of the ground; A

(3) When Ravindra Gupta (PW-1) and other persons of the locality went in search of the deceased, the accused diverted their search from the western side of the ground. Similarly, when the police went in search of the deceased, these accused diverted the search from the western side of the field. This has been stated by Ravindra Gupta PW-1, Ashit Bose PW-4 and Manik Gupta-PW7; B C

(4) On the same day at about 6.30 p.m. Sona (A-1) was seen driving a motorcycle towards Alipur Duar junction. Raju (A-5) was riding on the pillion and was carrying a bundle (bochka). This has been stated by Debabrata Dhar (P W-12). D

(5) On the same day at about 6.30 P.M. Sona (A-1) made an extra judicial confession to Sudipta Das (PW-9) outside the tea stall of one Malay. At that time Bubai (A-2) and Choton (A-3) were inside the tea stall taking tea. This has been stated by Sudipta Das (PW-9). E

(6) On 16.11.2001 Sona (A-1) was arrested at 1:15P.M. Bubai (A-2) at 1:45 P.M., Chotan (A-3) at 1:25 P.M. and Tuhin (A-6) at 1:05 P.M. They were confined at P.S. Alipur Duar. Proshanta Sen Gupta (PW-15) and Subrata Sen Gupta (PW-16) met them in the lock up. The four accused made extra judicial confessions before them. F

(7) On 16.11.2001 Sona (A-1) and Tony (A-7) made disclosure statements under Section 27 of Evidence Act and discovered the dead body of the deceased. This has been stated by B.K. Laskar I.O (PW-25). In consequence to the information furnished by these two accused, the body of the deceased was discovered near the tonal training office. This has been stated by Proshanta Sen Gupta (PW- G H

A 15), Subrata Sen Gupta (PW16), Provesh Biswas (PW-18), Atual Das (PW-19), Pranav Roy (PW-23), B.K.Laskar I.O (PW-25) and Sanjeev Basu (PW-26). A seizure memo exhibit P-9 and the inquest exhibit P-12 were prepared.

B (8) On 19.11.2007 B.K. Laskar (PW-25) took Sona (A-1), Bubai (A-2) and Raju (A-5) to the western side of the Uttar Math, from there a pair of hawai chappals and a length of nylon rope were seized vide exhibit-2/2. This has been stated by Ravindra Gupta (PW-1), Ashid Bose (PW-4) and B.K. Laskar (PW-25). The hawai slippers were identified by Ravindra Gupta (PW-1) and Nupur Gupta (PW-2) as belongings to the deceased.

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D 15. The circumstances clearly establish the accusations, so far as the appellant Debasis Das (A-1) is concerned. There is no scope for interference in the appeal filed by him. (i.e. Criminal Appeal No.122 of 2007) is concerned. But the circumstances are not sufficient to fasten guilt on Joydeep (A-2) appellant in Criminal Appeal No.1285 of 2006 is concerned. His conviction is set aside and he is acquitted of the charges.  
E His appeal is allowed. He be released from custody forthwith unless required in connection with any other case.

D.G.

Appeal disposed of.