

*CRIMINAL REVISION*

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. 282 of 2005

Fulchand Sahish & 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.148/302

Facts:

One Kriti Mandi lodged a complaint addressed to the Officer-in-charge of the Barabazr Police Station. On the basis of the same, a case being No.70 dated 25.11.1989 under Sections 147/148/149/302/303/304/305 and 306 of Indian Penal Code was started. Police Authority after completion of the investigation submitted charge sheet. The incident took place on 8th of Agrahayan 1396 B.S. at about 6-30 p.m. and it was the day of Lok Sabha election. Identifying himself as a supporter of Congress Party, he stated that even after casting of votes, he along with others were waiting over there under instruction of his party agent, Lambodar Mandi. While returning home at about 5-30/6 p.m., the accused persons stopped them in front of the party office of the C.P.I (M) Immediately thereafter, thereafter, Phulchand Sahish, Gopal Mahato, Monohar Mahato, Paban Mahato, Mahindi Mandi, Gobinda Sahish, Brajaram Soren, Rashik Majhi, Kaliram Majhi, Jugal Majhi, Naren Majhi and Nakro Majhi starting assaulting him and others. P.W.1 stated that Lambodar Mandi was assaulted by Monorath Mahato. Gobinda Sahish assaulted him on his head with an axe. Other persons also started assaulting him, Lambodar, Bhivu and they drove away Bhajahari Mandi. Of them, 3 (three) persons namely Binonda Mahato, Jagannath Mahato and Ganesh Sahish said that they should be killed since they belonged to Congress Party, Jharkhand Party etc. They directed their companions to finish them. P.W.1 and others ran started towards the North. They, however, found Bhajahari being assaulted by Phulchand Sahish, Monorath Mahato, Gopal Mahato, Mahindi Mandi, Rasik Majhi, Kaliram Majhi, Naren Majhi and Nekro

Majhi. Being frightened, P.W.1 took shelter in the house of Jaladhar Murmu of village Sonadah. Lambodhar and Bhivu also reached there. They discussed the matter amongst themselves and spent night over there. Three (3) of them their companions namely, Brojahari Mandi, Gahiram Soren and Ramjit Mandi were not traceable. Next morning Jaladhar Murmu was sent to find them out. Ramji Mandi and Gahiram Soren could be located but Bhajahari could not be found out. Thereafter they could find the dead body of Bhojahari lying in the paddy field of Raju Mahato. The alleged occurrence took place in November 1989 when the son virtually states, question of any identification of the assailants could not arise. Prosecution case refers to identification by respective voice and in the light of the torch. The learned Trial Court by impugned judgment found the present appellants guilty of the offence under Section 302/149 as well as under Section 148 of I.P.C. Appellants No.1 & 3 were further held guilty of the offence under Section 323 of I.P.C. The learned Trial Court further held that charges under Sections 325/149 and 326/149 of Indian Penal Code could be not be established.

Held:

In order to establish the guilt of the accused persons, the prosecution is required to establish that the incident happen on the date and at the time and place and in the manner as claimed by it. Para 36

It is well settled credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny. Marginal mistakes and minor discrepancies do not necessarily demolish the prosecution case. No doubt, proof beyond reasonable doubt is a guideline and not a fetish. It cannot be disputed that truth some time suffers from infirmity when projected through human process. But keeping all these factors in mind, it is necessary for the court to satisfy itself as to whether the charges could be established beyond the shadow of reasonable doubt. Para- 37

Cases Cited:

Musakhan & Ors. vs. State of Maharashtra, ---AIR 1976 SC 2563

Ram Kumar Pande vs. The State of Madhya Pradesh----AIR 1975 Supreme Court 1026.

For the Petitioners: Mr. Dipak Sengupta  
Mr. Himangshu De,  
Mr. Navanil De,  
Mr. J. Adhikari,  
Mr. A. Bera.

For the State: Mr. Asimesh Goswami  
Mr. Ranjit Kr. Ghoshal,  
Mr. Subir Ganguly.

The Court:

More than a couple of decades back, one Kriti Mandi lodged a complaint addressed to the Officer-in-charge of the Barabazr Police Station. On the basis of the same, a case being No.70 dated 25.11.1989 under Sections 147/148/149/302/303/304/305 and 306 of Indian Penal Code was started. Police Authority after completion of the investigation submitted charge sheet. The case was, thereafter committed to the learned Court of Sessions and subsequently transferred to the learned Court of Additional Sessions Judge, Fast Tract Court No.3, Purulia.

2.Learned Transferee Court on the basis of the available materials framed charge sheet under Sections 148, 325/149, 302/149, and 326/149 of the Indian Penal Code against as many as 13 accused persons.

3.The said accused persons pleaded not guilty to the said charges.

4. Prosecution in order to establish the guilt of the accused persons examined as many as 19 witnesses in its support.

5. Of them, P.W.1 is the defacto-complainant who in his elaborate evidencein- chief has to substantiate the allegations made in the written complaint. P.W.1 deposed that the incident took place on 8th of Agrahayan 1396 B.S. at about 6-30 p.m. and it was the day of Lok Sabha election. Identifying himself as a supporter of Congress Party, he stated that even after casting of votes, he along with others were waiting over there under instruction of his party agent, Lambodar Mandi. While returning home at about 5-30/6 p.m., the accused persons

stopped them in front of the party office of the C.P.I (M) Immediately thereafter, Phulchand Sahish, Gopal Mahato, Monohar Mahato, Paban Mahato, Mahindi Mandi, Gobinda Sahish, Brajaram Soren, Rashik Majhi, Kaliram Majhi, Jugal Majhi, Naren Majhi and Nakro Majhi starting assaulting him and others. P.W.1 stated that Lambodar Mandi was assaulted by Monorath Mahato. Gobinda Sahish assaulted him on his head with an axe. Other persons also started assaulting him, Lambodar, Bhivu and they drove away Bhajahari Mandi.

6. Of them, 3 (three) persons namely Binonda Mahato, Jagannath Mahato and Ganesh Sahish said that they should be killed since they belonged to Congress Party, Jharkhand Party etc. They directed their companions to finish them. P.W.1 and others ran started towards the North. They, however, found Bhajahari being assaulted by Phulchand Sahish, Monorath Mahato, Gopal Mahato, Mahindi Mandi, Rasik Majhi, Kaliram Majhi, Naren Majhi and Nekro Majhi. Being frightened, P.W.1 took shelter in the house of Jaladhar Murmu of village Sonadah. Lambodhar and Bhivu also reached there. They discussed the matter amongst themselves and spent night over there. Three (3) of them their companions namely, Brojahari Mandi, Gahiram Soren and Ramjit Mandi were not traceable. Next morning Jaladhar Murmu was sent to find them out. Ramji Mandi and Gahiram Soren could be located but Bhajahari could not be found out.

7. Thereafter they could find the dead body of Bhojahari lying in the paddy field of Raju Mahato. On being informed by Lambodar Mandi police arrived at the spot. They were taken to hospital for treatment. P.W.1 claimed that he narrated the incident to Lambodhar Mandi who wrote the complaint as per his instruction since he suffered injury on his head. Being identified by him, his signature in the written complaint was marked Exbt.1/1. The said complaint was read over and explained to him. He along with other injured persons like Gahiram, Soren, Ramjit Mandi and Lambodhar Mandi were treated in the hospital. He was under treatment at Barabazzar Primary Health Centre for three (3) days and then, they shifted to Purulia Sadar Hospital where he had been under treatment for a few more days. P.W.1 identified the accused persons in court. P.W.2 in his evidence-in-chief stated that on 24th November, 1989 was the date for Parliamentary Election. He was the Polling Agent for the Congress Party. There were agents of other political parties as well.

8. It appears that in elaborate evidence-in-chief, P.W.1 described the place of occurrence as the spot, which was in front of the C.P.I (M) party office. In cross examination, P.W.1 was asked the questions the answers of which perhaps sought to describe the place of occurrence in further details.

Referring to the three (3) witnesses namely Prallad Mahato, Ruksin Majhi and Baburam Murmu,

he said that they are all residents of village Herbona. He admitted that Resin Majhi was earlier a local M.L.A. He further admitted that there were houses of Sahadeb Mahato, Dibakar Murmu, Laxmiram, Gokul, Baidyanath, Allhad, Dhukhu and many others in between the primary school and the temporary election office. He further admitted that the paddy field of Raju Mahato was situated at a distance of 500/600 yards from the temporary election office of C.P.I. (M) and it was at a distance of 40/50 yards from the relief road. The house of P.W.1 is situated at Majhipara and that of Lambodhar is nearby. P.W.1 admitted that little away from there, another Booth being No.123 was set up in a

primary school. The house of Ramjit Mandi is adjacent to the said Booth No.123. There had been evidence in cross-examination of P.W.1 about the location of the houses of various other persons. P.W.1 declined to have stated in the F.I.R. that seven (7) except accused persons, there were 3 /4 other persons whom he could

not recognize since at that time, it was dark. P.W.1 claimed that he sustained bleeding injuries and handed over the wearing apparels to the I.O. who seized the same and made a seizure list wherein he put his signature. P.W.1 admitted that the deceased victim, Brojahari Mandi was his brother-in-law as also the fact that he is sell illicit liquor during the festivals. He mentioned that it was stated in the F.I.R. that Gobinda Sahish, assaulted Brojahari Mandi and he witnessed the same.

9. P.W.2 in his evidence-in-chief mentioned the names of the assailants. He claimed that he recognized them with the light of the torch as well as by their voice. One Monorath Mahato attacked him with lathi and Kiriti Mandi was assaulted by Gobinda Mahato with an axe on his head resulting in bleeding injury. P.W.2 specifically mentioned that the accused persons took away Brojahari Mandi, Gahiram Soren and Ramjit Mandi. He as well as all his associates somehow fled away. He took shelter in the house of Jaladhar Murmu of Chanditala. Victims Kiriti Mandi and Vivekananda were already there. They could not however, find Ranjit Mandi, Brojahari Mandi and Gahiram Soren. Jaladhar Murmu was sent to find them out. He could find Gahiram Soren and Ramjit Mandi. Gahiram Soren came to their place along

with him. He was again sent for finding Brojahari Mandi out. After sometime he returned and informed that Brojahari Mandi was lying dead on the field of Raju Mahato.

10. Being requested by Kiriti Mandi, P.W.2 wrote down an F.I.R. and it was read over and explained before Kiriti Mandi who put his signature. P.W.2 identified the F.I.R., which was marked as Exbt.1.

11. Inquest was held in his presence and he identified his signature in the inquest report being marked Exbt.2/1. He as well as other injured persons were treated at Barabazar Primary Health Centre. Kiriti Mandi thereafter referred to Purulia Sadar Hospital. The accused persons were identified were identified by P.W.2 who again stated that two (2) of the accused persons namely, Gobinda Sahish and Daru Maji @ Naren had expired.

12. In cross-examination P.W.2 mentioned that he stated before the I.O. that while they reached near the Election Office of C.P.I. (M), 14 (fourteen) persons stopped them. He identified the accused persons with the light of the torch which was handed over to the I.O. P.W.2 could not say as to whether the said torch was seized or not. P.W.2 in cross-examination stated that they could not send any one to the police station during the night. Police came to the house of Jaladhar Murmu next morning at about 9 a.m. and from there, they were taken to the place where the dead body of Brojahari Mandi was lying. They were then taken to the police station and from there to the Primary Health Centre. The only interaction that he had with the I.O. was on 25th and not any time thereafter.

13. P.W.3 is the father of one Vivekananda Mahato who on the date of the election acted as Polling Agent of J.M.M., a political party.

14. In his evidence-in-chief, he submitted that the incident took place on 8th of Agrahayan, 1396 B.S. that was a Friday. It was the date for Parliamentary Election. His son did not return home that night and on the following morning, P.W.3 went to the house of Jaladhar Murmu at about 8 a.m. He could meet his son and others there. Lambodhar Mandi, who deposed as P.W.2, reported about the incident to him. Kiriti Mandi (P.W.1) also joined him. Police arrived there.

Kiriti Mandi (P.W.1) told him that Brojahari Mandi was not traceable, P.W.3 found them in injured condition. They were all taken by the police to

the place where the dead body of the deceased victim was lying. It was in the paddy field of Raju Mahato. Inquest was held in his presence and he identified his signature being marked Ext.2/2 in the inquest report. The wearing apparels of the deceased victim were seized under seizure list. P.W.3 identified his signature in it, being Ext.3/1. He further identified the wearing apparels, which were Mat.

Ext.I collectively. Other articles including arrow, slippers etc. were also seized under seizure list being marked Mat.Exts.II & III respectively.

Bloodstained earth was collected from the spot under seizure list and P.W.3 identified his signature therein, being marked Ext.4/1.

15. P.W.4 deposed that one Brojahari Mandi died about 12/13 years prior to his giving evidence and it was 8th Agrahayan, Friday. His evidence-in-chief, did not lend any support to the prosecution case. He was then declared hostile but there is nothing worth mentioning in the statements made by him in cross examination by the prosecution.

16. P.W.5 in his evidence-in-chief, stated that the incident took place on 8<sup>th</sup> Agrahayan at about 6/6-30 p.m. on the date of parliamentary election. While at home, he could hear an alarm raised by Anil Hansda a about 7-30/8 p.m. He along with view others rushed to the house of Jaldhar Murmu. Reaching there, he found Kiriti Mandi (P.W.1), Lambodhor Mandi (P.W.2) and Bibek Mahato, all were in injured condition. Lambodhar Mandi narrated the incident to him, it is

evidence that some persons stopped them in front of the house of one Laxmiram Mahato where the election office of C.P.I.(M) was opened for the purpose of election. Since the accused persons were even saying that they would kill him, Lambodhor mandi fled away. He could only identify the accused persons with the light of torch. P.W.2 further reported that he was assaulted by Monorath Mahato with a lathi. Kiriti Mandi (P.W.1) told him that while he was running away, he could hear the voice of Brojahari Mandi saying "*MARLO, MARLO*". P.W.5 identified the accused persons on dock. There is nothing significant in his evidence in cross-examination.

17. P.W.6 identified his signature in the inquest report being marked Ext.2/3. P.W.7 apart from identifying his signature in the inquest report being marked Ext.2/4. He also stated certain wearing apparels of the deceased victim were seized by police in his presence under seizure list. He identified his signature in the seizure list, being marked Exbt.3/2. Being

identified by him, a wristwatch marked Mat. Ext. IV. P.W.7 further identified other seized articles being Mat.Exts. I, II and III collectively. The seized arrows were also identified by the said witness. P.W.8 did not claim to be an eyewitness. Being told him Anil Hansda, he accompanied him and went to the house of Jaladhar Murmu where they found Lambodhar Mandi, Kiriti Mandi and Vivekananda Mahato, they were in injured condition. P.W.8 thereafter referred to what was told by them.

18. P.W.9 seems to be a material witness since three (3) of the injured persons including P.W.1 and P.W.2 claimed that they all took shelter in his house in injured condition. P.W.9 categorically deposed that he could not remember as to how such injuries were caused to them.

19. P.W.10 is the Doctor who held post mortem examination over the dead body of the deceased victim Brojahari Mandi. The cause of death in his opinion was due to shock and haemorrhage associated with head injury. In his evidence-in-chief, he stated in details about the nature of the injuries found by him. Being proved by him, the carbon copy of post mortem report had been marked Ext.5.

20. P.W.11 identified himself as the Polling Agent for J.M.M., a political party. He stated that the incident took place on 24th November, 1989 on the date of parliamentary election. While corroborating the evidence of other victims like P.W.1 and P.W.2 of some of the material points, he stated that he was suddenly assaulted on his right leg with a lathi. He claimed that meeting Kiriti Mandi and others in the house of Jaladhar Murmu, he was told that Kiriti Mandi could hear the voice of Brojahari Mandi that he was being killed by Mahindi Mandi and Jugal Majhi.

21. P.W.12 is the police officer who was on election duty on 25th November, 1989. Like P.W.2, evidence of P.W.13, who is again a police personnel, is of formal nature. In his evidence-in-chief, he stated that on 26th November, 1989, he took the dead body of one Brojahari Mandi to Purulia Sadar Hospital and identified the same to the doctor. The wearing apparels of the deceased victim were handed over to him and he deposited the same in the police station. P.W.14 is another retired police officer who received the written complaint made by Kiriti



Mandi. He identified the endorsement given by him, marked Ext.1/2. On the basis of the said complaint, he filled in the formal F.I.R. The same had been marked Ext.7. P.W.15 is another police officer who took up investigation of the case from Mr. K. Majhi after his transfer. He just went through the case diary and after consultation with his superior authority, he submitted charge sheet. He also proved the F.S.L. report marked Ext. 8 & 9. After completion of investigation, he submitted charge sheet.

22. P.W. 16 just stated that he could find the dead body of Brojahari Mandi was lying at village Amrabera of Barabazar Police Station. P.W.17 is a doctor who on 26th November, 1989 attached to Sadar Hospital, Purulia as medical Officer (Surgeon), examined Kiriti Mandi. He found stitched wound measured 2" in length at the vault and another such wound 1" length on the nose. The said wounds were stitched at Barabazar Primary Health Centre. Subsequently, X-ray of the skull was done but no abnormality was detected. Being proved by him, the injury report had been marked Ext.10. He admitted that in the requisition slip there was mentioned that stitches were made on the said patient.

23. P.W.18 is the police officer, who while attached to Barabazar Police Station, as Sub Inspector started P.S. Case No.70/89 dated 25.11.1989 at about 8 a.m. he got an information that a dead body of Bhojahari Mandi was lying at Amrabera village. This information was recorded in the G.D. which being identified, had been marked Ext.11. He being accompanied by another Sub Inspector, Subodh Chaki rushed to the place where the village Chowkidar identified the place where the dead body was lying. He also thereafter went to the place where the other injured persons took shelter namely, Kiriti Mandi, Lambodhar Mandi, Ramjit Mandi and Vevakananda Mahato. Kiriti Mandi handed over a written complaint and P.W.18 sent the same to the concerned police station for starting a case. He made arrangement for medical treatment for the injured persons. On the basis of such written complaint, Barabazar P.S. Case No.70/89 dated 25.11.1989 was started. P.W.18 held inquest in respect of the dead body of Vhojahari Mandi, being proved by him, the same had been marked Ext.3. P.W.18 visited the place of occurrence and prepared a sketch map with index, the same had been marked Ext.14. He thereafter recorded the statements of some witnesses and victims under Section 161 of the Code of Criminal Procedure.

24. He seized certain articles under seizure list, which included bloodstained wearing apparels of Kiriti Mandi and Lumbodhar Mandi. The wearing apparels of the deceased victim were also seized under seizure list and the same had been marked Ext.3. He thereafter seized bloodstained earth, hawai chappal, one pair leather slipper, five arrows etc. under the seizure list, which being proved by him, had been marked Ext.4. He subsequently prayed for adding Section 307 of I.P.C. He arrested three (3) accused persons who were forwarded to Court. In his evidence, he referred to the injury report, which was collected by him and referred to the various steps taken by him during investigation. In view of his transfer, the case was handed over to Mr. B. D. Mahato who submitted charge sheet.

25. P.W.19 is another doctor who on 25.11.1989 while attached to Barabazar Primary Health Centre examined one Kiriti Mandi at about 10 a.m. He found bleeding lacerated injury on the left parietal occipital region of scalp measuring 4" x 2" x 1" as well as bleeding cut injury over the filtrum and external nose of right nostril measuring about 1" x ½" with bleeding from nose. The patient was found suffering from pain and had also swelling over various parts of the body. The said doctor also examined Lumbodhar Mandi and Ramjit Mandi. In his evidence, he referred to the nature of the injuries suffered by them as well. It was his further evidence that one Vevekananda Mahato was also treated in the hospital by him on that date.

26. Referring to injury No.1 suffered by the victim Kiriti Mandi, P.W.19 opined that such an injury could be caused by being struck with the other blunt side of the axe. He further deposed that as far as the injuries sustained by Lumbodhar Mandi, Ramjit Mndi and Vivekananda Mahato are concerned, those could be caused by lathi and other hard substance.

27. These, in brief, all about the prosecution evidence on record in this case.

28. The accused persons thereafter examined and their statements were duly recorded under Section 313 of the Code of Criminal Procedure.

29. The learned Trial Court by the impugned judgment found the present appellants guilty of the offence under Section 302/149 as well as under Section 148 of I.P.C. Appellants No.1 & 3 were further held guilty of the offence under Section 323 of I.P.C. The learned Trial Court further held that

charges under Sections 325/149 and 326/149 of Indian Penal Code could be not be established.

30. While assailing the judgment and order of conviction and sentence, it was submitted by Learned Counsel that the learned Trial Court failed to appreciate the glaring inconsistency in the evidence on record. It was urged that having regard to the fact that the alleged occurrence took place in November 1989 when the son virtually states, question of any identification of the assailants could not arise. Prosecution case refers to identification by respective voice and in the light of the torch. Such identification is a very weak piece of evidence and learned Trial Court should not have placed reliance on the same. The fact that the accused persons and the defacto-complainant as well as the alleged victims belonged to rival political parties ought to have been borne in mind by the learned Trial Court. According to the learned Counsel, the witnesses who could lend some support to the prosecution case were all interested. There is no evidence of any neutral or disinterested witnesses. Though claimed by the complainant that while running away, he could hear Vhojahari Mandi clamouring by saying “*MARLO*”, he did not make such statement before Investigating Officer.

31. Much emphasis was laid on the fact that there had been no seizure of any torch. It was further submitted that there had been some delay in sending the FIR, which creates suspicion. Significantly enough, the F.I.R does not specifically mention the names of the witnesses, which according to the learned Counsel should have raised doubt in the mind of the learned Trial Court. The evidence of P.W.4 that while returning for home, it was totally dark, as submitted by learned Counsel, should have been considered in its proper perspective.

32. Learned Senior Counsel Mr. Dipak Sengupta inviting attention of the court to the evidence of P.W.1 that he along with Lumbodhar Mandi and Vivekananda Mahato took shelter in the house of Jaladhar Murmu and discussed the incident amongst themselves suggests that there had been prior discussion in the evening before filing of F.I.R. He submitted that the allegations were thus tailored and cooked up. Inviting attention of the court to the evidence that there are many houses between the Primary School and the Temporary Election Office, Mr. Sengupta expressed wonder as to why none of the persons of the said houses

was taken into confidence. Mr. Sengupta categorically asserted that there had been failure on the part of the learned Trial Court in appreciation of evidence. Referring to the evidence of P.W.9, he submitted that such evidence does not show as to how the injuries were caused.

33. Significantly enough, Mr. Ranjit Kr. Ghoshal appearing as learned Counsel for the State frankly submitted that the evidence on record suffers from inherent hollowness and latent weakness. According to him, the names of the assailants were disclosed by the victim. Kalipada, though admittedly minor, does not appear to have been properly dealt with. He referred to the evidence of P.W.8 and 11. He further submitted that the learned Trial Court did not examine the accused persons properly while recording their statements under Section 313 of Cr.P.C. He in fact, echoed the voice of Mr. Sengupta while submitting that some material evidence is hit by Section 162 of Cr.P.C.

34. It cannot be disputed that recognition of the assailants by voice is a matter to deal with extreme caution. Inviting attention of the court to the decision of the Apex Court in the case between Musakhan & Ors. vs. State of Maharashtra, as reported in AIR 1976 SC 2563, Mr. Himangshu De joined with learned Counsel Mr. Sengupta submitted that it is not enough that an accused is a member of an unlawful assembly at some stage but it is required to be established that he was there at the crucial stage and he shared of the common object of the said assembly at all these stages. Reference was made to the decision in the case between Ram Kumar Pande vs. The State of Madhya Pradesh, as reported in AIR 1975 Supreme Court 1026, while submitting that an F.I.R which is a previous statement can be used to corroborate or contradict the maker of it. But omissions of impossible facts, affecting the probabilities of the case are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

35. True, it is the quality of the evidence, which is important in order to arrive at a conclusion. The number of witnesses examined does not in effect change the complexion of the said quality. In the present case, as mentioned earlier, the number of witnesses did not lend any effective support to the prosecution case.

36. In order to establish the guilt of the accused persons, the prosecution is required to establish that the incident happen on the date and at the time and place and in the manner as claimed by it.

37. It is well settled that credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny. Marginal mistakes and minor discrepancies do not necessarily demolish the prosecution case. No doubt, proof beyond reasonable doubt is a guideline and not a fetish. It cannot be disputed that truth some time suffers from infirmity when projected through human process. But keeping all these factors in mind, it is necessary for the court to satisfy itself as to whether the charges could be established beyond the shadow of reasonable doubt.

38. It follows from the discussion as made hereinbefore that the prosecution in this case failed to discharge the said burden.

39. In the considered opinion of this court, the learned Trial Court in this case was not justified in holding the present appellants/accused persons guilty. Accordingly the judgment dated 3rd March, 2005 and the order dated 4th March, 2005 passed by learned Additional Sessions Judge, Fast Track Court No.3, Purulia is set aside.

40. The appellants/convicts be accordingly set free and if on bail, they be released from their respective bail bonds at once.

Send a copy of this judgment along with L.C.R. back to the learned Trial Court for information and necessary action.

Criminal Department is directed to supply certified copy of this judgment, if applied for, as expeditiously as possible.

(S.P.Talukdar, J.)

I agree,

(Prabhat Kumar Dey, J.)