SUPREME COURT OF INDIA

Sahabuddin &Anr.

Vs.

State of Assam

C.A.No.629of2010

(Swatanter Kumar and Gyan Sudha Misra,JJ.)

13.12.2012

JUDGEMENT

Swatanter Kumar, J.

1. It is the case of the prosecution that the accused Sahabuddin was married to one Sajna Begum, the deceased on 17th May, 2001, and they were staying together. She was three months pregnant. During her last visit to her parental home, she wailed and was not willing to go back to her husbands house, stating that her husband and her brother-in-law would kill her if their demands of dowry were not met. However, the wish of her parents prevailed and she was sent back to her matrimonial home. After lapse of barely a couple of months i.e. on 9th September, 2001, approximately four months after her marriage, at about 10 p.m., one Sarifuddin, the elder brother-in-law of Sajna Begum, informed her uncle, Taibur Rahman, PW7 that she fell down in the kitchen due to dizziness. Ten minutes later, Sarifuddin came back and informed them that Sajana Begum fell down and froth was coming out of her mouth and thereafter she died. PW7 informed the mother of the deceased, Abejan Bibi, PW3, about the death of her daughter, Sajna Begum. When they reached the place of occurrence, they saw that their daughter was lying dead. Suspecting that it was not a natural death and that there had been some foul play on the part of the accused persons i.e. the husband and the brother-in-law of the deceased, PW3, lodged an FIR.

2. The FIR, Ext. 3, was registered under Section 304(B) of the Indian Penal Code, 1860 (for short IPC). However, the Court of competent jurisdiction on the basis of the police report and upon hearing both the parties found that a prima facie case under Section 302/34 IPC was made out against the accused Sahabuddin and Sarifuddin. They were charged with the same offence and the case was put to trial. The Investigating Officer, Someshwar Boro, PW11, took over the investigation, examined a number of witnesses and seized the dead body from the place in question. The body of the deceased was subjected to post mortem. On 10th September, 2001, Dr. Swapan Kumar Sen, PW1 in the post mortem report, Ext. 1 stated that

injuries on the body of the deceased were ante-mortem and that there were multiple bruises on the lower abdomen. Also, the neck was swollen and face was
 congested and swollen. Although, the cause of death could not be ascertained, the visceras were preserved to be sent to the Forensic Science Laboratory, Guwahati, for forensic and chemical analysis. PW2, an Executive Magistrate, who had conducted inquest on the body of the deceased noticed that the hands of the deceased were close fisted and saliva was coming out of her mouth along with a little quantity of foam. Black spots were found on her belly and some spots were also noticed on her back. Ext. 2 is the inquest report.

3.The mother of the deceased, Abejan Bibi, PW3 was another material witness and according to her, assault marks could be seen all over the body of the deceased and that her neck was swollen. PW3 also stated that she saw black marks on the left side of the abdomen of her deceased daughter. Thus, on being suspicious that her daughter had been killed, PW3 lodged the FIR. PW4 who had accompanied PW3, stated PW3 to be her aunt and the statement of PW 4 was quite similar to that of PW3. PW7, Taibur Rahman was the uncle of the deceased, Sajna Begum who had first been informed of her demise by her brother in law, Sarifuddin.

4. However, PW8 and PW9 were the prosecution witnesses who did not fully support the case of the prosecution and were thus declared hostile by the prosecution. Both these witnesses were the neighbours of the accused persons. Accused in their statements under Section 313 of the Code of Criminal Procedure (for short the CrPC) denied all the allegations and opted to lead defence. The accused persons had examined as many as three witnesses, who were primarily produced to establish the plea of alibi, affirming that the accused were not present in the house, when the incident took place.

5. Disbelieving the defence put forth by the accused, the Trial Court held both the accused guilty of the offence punishable under Section 302 read with Section 34 IPC and having found them guilty, awarded them life imprisonment and a fine of Rs. 5000/- and in default to undergo simple imprisonment for six months.

6. At this stage, we may also notice that the Trial Court had observed that PW1, Dr. Swapan Kumar Sen, the medical officer needs to be censured as his report was found to be perfunctory in nature.

7. Challenging the legality and correctness of the judgment of the Trial Court, the accused persons preferred an appeal before the High Court. The High Court vide its judgment dated 27th November, 2008 dismissed the appeal, confirming the finding of guilt and order of sentence passed by the Trial Court, giving rise to the filing of the present appeal.

8. The learned counsel appearing for the appellants has raised the following contentions while impugning the judgment under appeal:-

> "1. The story of the prosecution is improbable and prosecution has not been able to establish its case beyond reasonable doubt.
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> 2. PW3 to PW7 are all interested witnesses. By virtue of them being the relatives of the deceased, these witnesses wanted to falsely implicate the accused persons. Hence, Sahabuddin & Anr vs State Of Assam on 13 December, 2012their statements cannot be relied upon and in any case, there are contradictions in the statements of these witnesses. Thus, the accused is entitled to the benefit of doubt.
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> 3.PW8 and PW9 did not support the case of the prosecution. The Court should have returned a finding in favour of the accused by appreciating the statements of DW1, DW2 and DW3, in its correct perspective and examining them in light of the statements of the PW8 and PW9."

9. We are unable to find any merit in the contentions raised on behalf of the appellants, which we propose to discuss together as the Court has to refer to the same evidence for appreciation of the contentions raised on behalf of both the appellants. Thus, it will be appropriate to discuss the pleas together.

10. This is a case of circumstantial evidence as there is no eye witness to the occurrence which has been produced by the prosecution.

11.Let us examine the various circumstances by which the prosecution has attempted to establish the guilt of the accused beyond reasonable doubt. PW3 is the mother of the deceased who had been informed by PW7, the uncle of the deceased about her death. PW5 and PW7 are the uncles of the deceased. PW4 is the cousin sister and PW6 is the sister of the deceased. These persons had accompanied PW3 to the house of the accused, when they got the news of death of the deceased.

12. It has been specifically stated by these witnesses that there were marks on the body of the deceased, her neck was congested and swollen and so was the face. The statement of these witnesses and particularly of PW3, finds due corroboration with the post mortem report prepared by PW1 and, therefore, it will be useful to refer to the entire statement of this witness.On 10/9/2001 I was at Karimganj Civil hospital as Senior M & H.O. On that day at 3-30 p.m. I held post mortem examination on the dead body of Sajna Begum aged 18 years, a female Muslim, from Durlabpur under Patharkandi P.S. on police requisition, being identified by Head Constable Rabindra Deb and Md. Khairuddin, a relation of the deceased and found as :-

> "External Appearance An average built female aged about 18 years whose rigor mortis was absent, eyes closed, mouth half open, froth in nostrils present which was whitish. Multiple bruises on the lower abdomen. Neck was swollen. Face was congested & swollen. Cranium & Spinal Canal All organs pale Thorax Heart was pale & chambers contained blood. Vessels contained blood. All other organs were pale.

Abdomen Stomach & its contents congested and contained ricy food materials. Large intestine etc pale & empty. Other organs were pale. Organs of generation etc pale. Uterus was 3 months pregnancy. Sahabuddin & Anr vs State Of Assam on 13 December, 2012 More details Injuries were ante mortem. Visaras also preserved for forensic and clinical analysis through FSL, Guwahati.

1) Stomach and its contents.

2) Part of heart, lung, liver, spleen, kidney and rib. Opinion As the actual cause of death could not be ascertained the visceras preserved for forensic & chemical analysis to FSL, Guwahati. Ext. 1 is the Report, Ext. 1(1) is my signature. Bruises and swollen face being congested may be due to some physical assault. Black spots detected by the Executive Magistrate at the time of preparing his inquest report corresponds to bruises on the lower abdomen as described by my in my p.m. report. XXXXXXXXXXXXXXX I was not present at the time of holding inquest by the Magistrate. Bruise resembles to black spot. Normally after death, no black spot is noticed on a dead person. Black spots may be caused due to poisoning or suffocation. Bruise may be caused due to dashing against piece of bamboo, bamboo fencing etc. Pale I mean bloodless and it may happen in normal death also. Definite cause of death could not be detected. Symptoms as described above may happen due to epilepsy."

13. As is evident from the statement of PW1, the deceased was three months pregnant. He specifically made a note of the fact that her neck was swollen, her face was congested and swollen and there were multiple bruises on her lower abdomen. According to this witness, the actual cause of death could not be ascertained, but he stated that the presence of bruises on the body of the deceased and her face being swollen and congested may be due to some physical assault. In his cross-examination, he stated that the black spots may be caused due to poisoning or suffocation and also that symptoms described above may also occur due to epilepsy.

14. Certainly, the doctor did not give a concrete opinion as to the cause of death. The report of the chemical analyst and the report of the Forensic Science Laboratory were not placed on record so that the Court could at least come to a definite conclusion on the basis of scientific analysis. FSL Report was not sent, no report was obtained and, in fact according to PW11, the viscera could not be examined by the laboratory as it was not sent in time. It is evident that the investigation conducted by the Investigating Officer, PW11 and the post mortem examination by the doctor was improper in its very nature. Thus, the remarks made by the Trial Court in this behalf are fully justified.

15. Reverting to the evidence, the post mortem report, Ext. 1 clearly corroborates the statement of five witnesses, PW3, PW4, PW5, PW6 and PW7 and there is no reason for the Court to cast a doubt upon their statement. All these witnesses are related to the deceased. Merely because they are all relatives of the deceased will not by itself cause any prejudice to the case of the prosecution. In such events, it is not the outsiders who would come to the

rescue and would stand by the victim/deceased and their family, but it is the members of their family who would go to witness such an unfortunate incident.

16. An interested witness is the one who is desirous of falsely implicating the accused with an intention of ensuring their conviction. Merely being a relative would not make the statement of such witness equivalent to that of an interested witness. The statement of a related witness can safely be relied upon by the Court, as long as it is trustworthy, truthful and duly corroborated by other prosecution evidence. At this stage, we may refer to the judgment of this Court in the case of Gajoo v. State of Uttarakhand [JT 2012 (9) SC 10], where the Court while referring to various previous judgments of this Court, held as under:-

> "We are not impressed with this argument. The appreciation of evidence of such related witnesses has been discussed by this Court in its various judgments. In the case of Dalip Singh v. State of Punjab [(1954 SCR 145], while rejecting the argument that witnesses who are close-relatives of the victim should not be relied upon, the Court held as under:-
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> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts. Similar view was taken by this Court in the case of State of A.P. v. S. Rayappa and Others [(2006) 4 SCC 512]. The court observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years. The Court also stated the principle that, by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons. This Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; in the decree in a civil case, or in seeing an accused person punished. {Ref. State of Uttar Pradesh v. Kishanpal

and Others [(2008) 16 SCC 73]} In the case of Darya Singh & Ors. v. State of Punjab [AIR 1965 SC 328], the Court held as under:-

> "On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. Once, the presence of PW2 and PW3 is shown to be natural, then to doubt their statement would not be a correct approach in law. It has unequivocally come on record through various witnesses including PW4 that there was a Satyanarayan Katha at the house of Chetu Ram which was attended by various villagers. It was on their way back at midnight when PW2 and PW3 had seen the occurrence in dark with the help of the torches that they were carrying. The mere fact that PW2 happens to be related to PW1 and to the deceased, would not result in doubting the statement of these witnesses which otherwise have credence, are reliable and are duly corroborated by other evidence. In such cases, it is only the members of the family who come forward to depose. Once it is established that their depositions do not suffer from material contradictions, are trustworthy and in consonance with the above-stated principles, the Court would not be justified in overlooking such valuable piece of evidence."

17. In light of the above principles and the evidence noticed supra, we have no doubt in our mind that the statements of PWs were reliable and trustworthy, as they were fully corroborated by other prosecution, documentary and ocular evidence. The learned counsel appearing for the appellants contended that there are material variations and contradictions in the statement of PW3 and PW6 respectively with regard to the time of incident as well as death of the deceased. Therefore, neither these witnesses can be relied upon nor can prosecution be said to have proved its case beyond reasonable doubt. Such a submission can only be noticed to be rejected.

18. PW3 had mentioned that she came to know about the death of her daughter at about 9.30 p.m., however, according to PW6, it was about 8 or 9 oclock when she was informed of the death of her sister. This would hardly be a contradiction. It is a plausible fact that there could be some variations in the statements of witnesses with respect to a particular incident. Thus, in the facts and circumstances of the present case, a mere variation in time is not a material contradiction. It was the uncle of the deceased, PW7, who had been informed by the co-accused, the brother-in- law of the deceased, firstly about the sickness of the deceased and then about her death.

19. Every variation or immaterial contradiction cannot provide advantage to the accused. In the facts and circumstances of the present case, variation of 45 minutes or an hour in giving the time of incident will not be considered fatal. It is a settled principle of law that while appreciating the evidence, the Court must examine the evidence in its entirety upon reading the statement of a witness as a whole, and if the Court finds the statement to be truthful and worthy of credence, then every variation or discrepancy particularly which is immaterial and

does not affect the root of the case of the prosecution case would be of no consequences. Reference in this regard can be made to State represented by Inspector of Police v. Saravanan and Anr. [(2008) 17 SCC 587].

20.Next, it was contended that PW8 and PW9 had not supported the case of the prosecution and, therefore, the accused should be entitled to benefit of doubt. PW8 had stated that just before the sunset, the deceased fell down while she was fetching water from the river. She got up and ran like a mad man. According to him, the deceased was caught by evil spirits and was an epileptic. PW9, narrated that he heard cries while he was working in the paddy field and when he went to the house of the accused, he saw the deceased struggling for life. He met the mother-in-law of the deceased and stated that none else was present there. According to him, the deceased died of epilepsy.

21. We may notice that both these witnesses are neighbours of the accused and the same has also been confirmed by them. They affirmed the death of the deceased but gave different versions as to the place and the manner in which she died. The statements of such witnesses would hardly carry any weight in face of statements of PW3 to PW7. The possibility of their turning hostile by virtue of them being neighbours of the accused cannot be ruled out.

22. The prosecution has been able to establish various circumstances which complete the chain of events and such chain of events undoubtedly point towards the guilt of the accused persons. These circumstances are; the victim coming to her parental home and declining to go back to her matrimonial home, she being persuaded to go to her matrimonial home by her parents and within a few days thereafter, she dies at her in laws place. Further that she had various injuries on her lower abdomen and that her neck and face were congested and swollen. The post mortem report completely corroborates the statements of PWs. Ext. 2, the inquest report, also fully substantiates the case of the prosecution. Besides this, PW3 had categorically stated that her daughter was not suffering from epilepsy or any other disease and that she died as a result of torture inflicted on her by the accused persons. In the cross-examination, two suggestions were put forth to her, one that the deceased died of epilepsy and secondly, that supernatural powers had seized her and that she could not be cured by Imam and thus, died, both of which were denied by her. In any case, this contradiction in the stand taken by the defence itself point towards the untruthfulness and falsity of the defence.

23. If she was sick, as affirmed by her in laws, then why was she not taken to any doctor or a hospital by the accused persons. She admittedly did not die of any heart attack or haemorrhage. She died in the house of the appellants and therefore, it was expected of the appellants to furnish some explanation in their statement under Section 313 CrPC as to the exact cause of her death. Unfortunately, except barely taking the plea of alibi, accused persons chose not to bring the truth before the Court i.e. the circumstances leading to the death of the deceased.

24. The plea of alibi was taken by the appellants and was sought to be proved by the statement of defence witnesses, DW1, DW2 and DW3 respectively. These witnesses have rightly been disbelieved by the Trial Court as well as by the High Court. We also find no merit in the plea of alibi as it is just an excuse which has been put forward by the accused persons to escape the liability in law. There is a complete contradiction in the material facts of the statement of DW1, DW2 and DW3. According to the statements of DWs that none of the family members were present on the spot is strange in light of the fact that the deceased was so ill that she died after a short while due to her illness. If none of the accused, whom these witnesses knew were present, then it is not only doubtful but even surprising as to how they came in contact with the deceased at the relevant time. The falsity of the evidence of the defence is writ large in the present case. For these reasons, we find the conduct of the accused unnatural and the statement of these witnesses untrustworthy. The plea of alibi is nothing but a falsehood.

25. Once, the Court disbelieves the plea of alibi and the accused does not give any explanation in his statement under Section 313 CrPC, the Court is entitled to draw adverse inference against the accused. At this stage, we may refer to the judgment of this Court in the case of Jitender Kumar v. State of Haryana [(2012) 6 SCC 204], where the Court while disbelieving the plea of alibi had drawn an adverse inference and said that this fact would support the case of the prosecution. The accused in the present appeal had also taken the plea of alibi in addition to the defence that they were living in a village far away from the place of occurrence. This plea of alibi was found to be without any substance by the Trial Court and was further concurrently found to be without any merit by the High Court also. In order to establish the plea of alibi these accused had examined various witnesses. Some documents had also been adduced to show that the accused Pawan Kumar and Sunil Kumar had gone to New Subzi Mandi near the booth of DW-1 and they had taken mushroom for sale and had paid the charges to the market committee, etc. Referring to all these documents, the trial court held that none of these documents reflected the presence of either of these accused at that place. On the contrary the entire plea of alibi falls to the ground in view of the statements of PW-10 and PW-11. The statements of these witnesses have been accepted by the Courts below and also the fact that they have no reason to falsely implicate the accused persons. Once, PW-10 and PW-11 are believed and their statements are found to be trustworthy, as rightly dealt with by the Courts below, then the plea of abili raised by the accused loses its significance. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives. {Ref. Shaikh Sattar v. State of Maharashtra [(2010) 8 SCC 430]}.

26. For the reasons afore-stated, we find no merit in the contentions raised on behalf of the appellants. Before we part with this file, we cannot help but to observe that the competent authority ought to have taken some action on the basis of the observations made by the Trial Court in its judgment under appeal.

27. The Investigating Officer has conducted investigation in a suspicious manner and did not even care to send the viscera to the laboratory for its appropriate examination. As already noticed, in his statement, PW11 has stated that viscera could not be examined by the laboratory as it was not sent in time. There is a deliberate attempt on the part of the Investigating Officer to misdirect the evidence and to withhold the material evidence from the Court.

28. Similarly, PW1, the doctor who conducted the post mortem of the corpse of the deceased was expected to categorically state the cause of death in which he miserably failed. He is a doctor who is expected to perform a specialized job. His evidence is of great concern and is normally relied upon by the Courts. For reasons best known to him, he made his evidence totally vague, uncertain and indefinite. Given the expertise and knowledge possessed by a doctor PW1, was expected to state the cause of death with certainty or the most probable cause of death in the least. According to PW1, the black spots noticed on the deceased may be because of poisoning or it could be because of suffocation, although he also mentioned in his report that the symptoms described above may occur due to epilepsy. It is not possible to imagine that there would be no distinction whatsoever, if such injuries were inflicted by assault or suffocation or be the result of an epileptic attack.

29.In our considered view, the doctor has also failed to discharge his professional obligations in terms of the professional standards expected of him. He has attempted to misdirect the evidence before the Court and has intentionally made it so vague that in place of aiding the ends of justice, he has attempted to help the accused.

30. In our considered view, action should be taken against both these witnesses. Before we pass any direction in this regard, we may refer to the judgment of this Court in Gajoo (supra), where the Court had directed an action against such kind of evidence and witnesses;
In regard to the defective investigation, this Court in the case of Dayal Singh and Others. v. State of Uttaranchal [Criminal Appeal 529 of 2010, decided on 3rd August, 2012] while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases held as under:-

> "Now, we may advert to the duty of the Court in such cases. In the case of Sathi Prasad v. The State of U.P. [(1972) 3 SCC 613], this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in the case of Dhanaj Singh @ Shera & Ors. v. State of Punjab [(2004) 3 SCC 654], held, in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (Emphasis supplied)"

31. Dealing with the cases of omission and commission, the Court in the case of Paras Yadav v. State of Bihar [AIR 1999 SC 644], enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. In the case of Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors. [(2006) 3 SCC 374], the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The courts have a vital role to play. (Emphasis supplied)

32. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

33.In Ram Bali v. State of Uttar Pradesh [(2004) 10 SCC 598], the judgment in Karnel Singh v. State of M.P. [(1995) 5 SCC 518] was reiterated and this Court had observed that in case of defective investigation the court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there

the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a fair trial, the Court should leave no stone unturned to do justice and protect the interest of the society as well.

35. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In Kamaljit Singh v. State of Punjab [2004 Cri.LJ 28], the Court, while dealing with discrepancies between ocular and medical evidence, held, It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.

36. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the experts opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. {Plz. See Madan Gopal Kakad v. Naval Dubey & Anr. [(1992) 2 SCR 921: (1992) 3 SCC 204]}. The present case, when examined in light of the above principles, makes it clear that the defect in the investigation or omission on the part of the investigation officer cannot prove to be of any advantage to the accused. No doubt the investigating officer ought to have obtained serologists report both in respect of Ext. 2 and Ext. 5 and matched it with the blood group of the deceased. This is a definite lapse on the part of the investigating officer which cannot be overlooked by the Court, despite the fact that it finds no merit in the contention of the accused. For the reasons afore-recorded, we dismiss this appeal being without any merit. However, we direct the Director General of Police, Uttarakhand to take disciplinary action against Sub-Inspector, Brahma Singh, PW6, whether he is in service or has since retired, for such serious lapse in conducting investigation. The Director General of Police shall take a disciplinary action against the said officer and if he has since retired, the action shall be taken with regard to deduction/stoppage of his pension in accordance with the service rules. The ground of limitation, if stated in the relevant rules, will not operate as the inquiry is being conducted under the direction of this Court.

37. In view of the above settled position of law, we hereby direct the Director General of Police, State of Assam and Director General of Health Services, State of Assam to take disciplinary action against PW1 and PW11, whether they are in service or have since retired. If not in service, action shall be taken against them for deduction/stoppage of pension in accordance with the service rules. However, the plea of limitation, if any under the relevant rules would not operate, as the departmental inquiry shall be conducted in furtherance to the order of this Court.

38. The appeal is dismissed, however with the above directions.