

A re-analysis of the case of the murder of Hetal Parekh

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Dhananjay Chatterjee was hanged on 14th August 2004 for the murder of Hetal Parekh (18) on 5th March 1990. His conviction by a lower court on the basis of circumstantial evidence, along with the death sentence, had been upheld by the Hon'ble High Court at Calcutta and the Hon'ble Supreme Court of India. He had steadfastly maintained his innocence. He was exceptionally calm at the time of his execution. He asked a police officer to make sure that investigations are done more thoroughly in future. He bid farewell to everyone present and asked them to stay well.

We have prepared a report on the case after re-examining court documents (see the website www.indiahanged-innocent.org for copies of the documents), press briefs by the police and other media reports of 1990, visiting the area of the crime, and speaking to neighbours, acquaintances and police officers. This write-up is an excerpt of that report.

The judgments of all the courts laid down the stringent conditions for conviction in any case based on circumstantial evidence. The Hon'ble Supreme Court had said, the circumstances "should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused." The information we put together show that a *perfectly logical alternative hypothesis, consistent with all the facts and with Dhananjay's innocence*, and much more likely than the prosecution's story, had been overlooked by all the courts. The indications favouring this hypothesis are strong enough to warrant a fresh investigation, which might lead to a retrial.

Fallacy of the case against Dhananjay

Dhananjay was convicted on the basis of three main witness accounts and three pieces of material evidence. The victim was allegedly raped and murdered when she was alone at her third floor flat between 5:20 pm and 5:50 pm, while her mother had gone out to visit a temple. Within this short span of time, there were 21 injuries, including strangulation that caused her death, and even theft of a wrist watch. A security guard working for a private agency and his supervisor claimed that they saw Dhananjay (off-duty security guard of that agency) entering the building, and that he had answered their call by leaning out of the balcony of that particular flat - with all these events happening within the same half hour. We found that it is impossible for anyone to lean out of the balcony with grilled enclosure, nor is the balcony visible from the stated position of the witnesses. The prosecution had the third witness – a liftman – declared hostile midway through his testimony. He contradicted the prosecution's claim that he had taken Dhananjay by lift to the third floor and saw him proceeding towards the said flat. He said that he had seen Dhananjay right after the alleged time of the bloody murder. Media reports based on police briefings of that night confirm the liftman's story, and that there was no stain on his clothes. (No witness in court mentioned seeing any stain on his clothes.) The reports do not mention the balcony conversation. No one was reported to have heard a girl's cry via the balcony door, through which the security guard's call had supposedly reached Dhananjay.

One of the three material evidences was a neck-chain found in the crime scene, which a servant of the opposite flat had claimed as his own. He changed his story in Court and said that he had gifted the chain to Dhananjay. Another evidence was a 'stolen' watch 'recovered' from Dhananjay. Media reports based on police briefing had said nothing had been stolen from the flat. The serial number of the watch was never matched with the purchase record, though the police was in touch with the shop that had sold it. The third piece of material evidence was a button found from the crime scene, and forensically linked with a shirt 'recovered' from Dhananjay under doubtful circumstances. There was no independent witness of these 'recoveries'. One of the witnesses could not be produced in

court, while the other one worked in a sweetmeat shop next to the police station and was known to have served tea to the police. 'Recoveries' from the crime scene were also dubious. The police was called more than three hours after the door of Hetal's flat was broken and her dead body was publicly discovered. The body had been moved repeatedly and the crime scene had been trampled upon before the police arrived.

The motive ascribed to Dhananjoy was vengeance. It was alleged that he had teased the victim on her way to school, that she had reported this offense to her parents, who got Dhananjoy transferred by complaining to the security agency. This transfer angered Dhananjoy. This story was supported by a complaint letter received formally by the security agency, and a written transfer order that witnesses said was delivered to Dhananjoy. The documents, seized about four months after the murder, are dubious. Such agencies, which pay their workers' wages through vouchers, do not have a system of written transfer orders. While the news of Dhananjoy's disappearance was published in the print media on the day after the murder, there was no mentioning of the story of 'teasing' or 'transfer'. The story of 'teasing' appeared in the newspapers on the following day, though the complaint was attributed to Hetal's brother (not to Hetal herself). The story of an intended 'transfer' of *all* the guards of the building was published two days after the murder. Even that account did not match the prosecution's eventual story that the transfer involved *only* Dhananjoy and it should have taken effect from the day of the murder. The appearance of the story in instalments, late emergence of the most vital element of transfer, and differing accounts of the transfer indicates that the entire story may have been fabricated. Further, if Hetal had indeed complained about Dhananjoy, it is impossible that she would let him in while she was alone, by opening a front door that was equipped with a peephole with fish-eye lens.

The alternative theory

The police investigation was largely influenced by the inputs received from the victim's family. Considering the difficulty of outsiders in (i) gaining access to a third floor flat in an apartment building manned with a security guard, (ii) committing an unplanned murder (evidenced by numerous injuries but no mark of weapon) and (iii) freshening up and changing clothes after the messy act (as there had been profuse bleeding), the family should attract suspicion. Further, according to the family, it was only the victim's mother who had been in the flat for most of the afternoon. If the murder did not happen during her brief absence, it had to happen in her presence. The possibility of her being involved in the killing need to be considered seriously. The lady, then aged 52, has been reported to have been stoutly built. Dhananjoy, then aged 25, was rather thin. Dhananjoy had very little time to commit the crime, steal a watch, respond to someone's call from the balcony and change clothes. The lady did not have any of these difficulties.

If Hetal's mother was involved in the murder, how can one explain the rape? The answer to this question is that there is no convincing evidence that the rape happened at all. The post mortem report indicated fresh tear in the hymen and matted pubic hair, but absolutely no injury on the breasts, the genitalia or surrounding area. The bulk of the 22 injuries suffered by the victim were in the face and the neck area. The report mentions general signs of the victim's resistance to the assault, but no specific sign of resistance to the intercourse. No experienced doctor would conclude rape on the basis of such a post mortem report. There is a good chance that the intercourse had been a consensual act that happened well before the murder. The word 'rape' is not mentioned anywhere in the post mortem report. In reply to the question from the police, "was the victim raped", the autopsy doctor only stated that the victim was subjected to sexual intercourse before she had died. This observation was passed off in the court as a case of 'rape' based on a very convoluted logic, which originated from the prior suspicion of the police about rape. Though semen was not detected in the vaginal swab in the forensic examination, it was detected in the victim's pubic hair and her

panty. This finding is consistent with the possibility that the panty was worn again after consensual sex. The revelation of this consensual sex could have been the background of a later altercation with the victim's mother

About 100 gm of undigested food (with no smell) had been found in the victim's stomach. A small amount of food with no partial digestion is consistent with death shortly after a meal. The victim was expected to return from her ICSE examination at about 1 pm. She might have returned a bit later, as the liftman did not see her till 2 pm. Under normal circumstances, she is expected to have her lunch within an hour of her arrival. Thus, the murder could have been committed well before the victim's mother reportedly left for the temple. This finding had not been used to specify the time of death (unlike in the case of the murders of Arushi Talwar and Hemraj).

The behaviour of the victim's mother during the discovery of the body was strange. She had closed the front door of her flat with spring-latch at the time of leaving for the temple, and did not carry her bunch of keys. After returning, she shouted and banged on the door a few times, but quickly asked the local servants to break the door open. She did not try to ascertain if the victim had been asleep, gone to the toilet or temporarily gone out of the flat, or to contact her through intercom or telephone. After the door was broken and the dead body was found, and perhaps after someone mentioned seeing Dhananjoy in the vicinity some time ago, the lady raised a loud alarm on the issue. (Dhananjoy was not around at that time; the news of this event might have scared him upon his return and prompted him to flee the locality). She then hauled the body and started off towards a hospital, but remained inside the lift after reaching the ground floor, body in lap, for one whole hour until her son arrived. Two doctors examined Hetal inside the lift, pronounced her dead and advised the family to call the police. The police was called three hours later, after the brother and the father of the victim arrived.

After the police arrived, the victim's father showed them the spot where the body had been found. He apparently gave a timeline of the events to the police, and also drew their attention to the button and the chain that were later used as material evidence against Dhananjoy. DC-DD Prasun Mukherjee and his team from Lalbazar took over the investigation and gave a press briefing that night itself. Dhananjoy's name was mentioned as the main suspect in newspapers the next day, and the police started looking for him in different places. It became impossible for Dhananjoy to come out of hiding. The police based their investigation on inputs from the victim's family. The family probably hinted that there had been a romantic relation between the victim and Dhananjoy (though there is no evidence of this story), which made their story all the more believable to the police. It appears that they did not bother the victim's mother, who was allowed to leave for Mumbai within a week of the incident. There was pressure on the police to solve this high profile case. The only lead they followed was Dhananjoy, the absconding security guard, who was arrested from his native village two months later. After that, the police promptly built a case with Dhananjoy as the only accused.

The victim's father, then aged 62, had an established business of ornaments/jewellery and a new three-bedroom flat at Bhawanipore. His son was due to appear for his class XII examination the following year. Yet the family relocated to Mumbai within six months of the incident. This move is best explained by the fear of getting caught.

After the 'stolen' watch was 'recovered', the family requested the Court to return it, but the police objected. This request smacks of fear of getting caught by a mismatch of serial numbers.

The victim's mother repeatedly avoided appearance in court. Fed up with her evasion, the court had once forced her to appear within a couple of hours, before granting a later date. Eventually when she appeared, there were many differences between her deposition in the court and her statement to the police. These differences concerned the place and circumstances of discovery of the dead

body and her time of her departure to visit the temple. There was no ambiguity about the time of her return from the temple, but there was no gap between the time of her return and the time of discovery of the dead body.

Leaving aside evidences that were apparently manufactured, the only points that the police had against Dhananjoy (in the beginning) are that he had been seen in the building at the relevant time, and that he had absconded soon after. While these can be grounds for suspicion, there had been stronger grounds for investigating the possibility of murder by the victim's family. This lead was neither followed by the police nor presented by anyone before the courts.

How three courts convicted Dhananjoy

The assumption of rape had never been challenged in any of the courts. Dhananjoy's lawyer in the lower court did not cross-examine witnesses adequately, and did not question late seizure of documents. The Hon'ble High Court noted that he had undermined Dhananjoy's defence by contradicting him on the issue of transfer order. He did not receive expected payments, as his letters to Dhananjoy's father show. In fact, his interest in the case declined noticeably after the first few witnesses had deposed. His strategy of using an unsubstantiated alibi for Dhananjoy was a suicidal move (if not a sabotage), as several witnesses had already testified that they had seen Dhananjoy in the vicinity at that time. Dhananjoy also gave an unconvincing explanation of his act of absconding. It is clear that he received poor legal assistance. Quality legal assistance does not come cheap. Dhananjoy had said before his execution that he was being hanged because he was poor.

Some actions of the courts were as perplexing as the blunders of the defence. The mother's account of the victim's alleged words was regarded by the Hon'ble High Court as the dying declaration of the deceased. Crucial parts of the liftman's testimony (which tallied with what the police had told reporters on the night of the murder) were discarded because of discrepancy with what the police had recorded as this illiterate man's statement. Such discrepancies were ignored in the cases of four other witnesses. The Hon'ble High Court offered explanations to fill gaps in the prosecution's story. The fact of no blood mark on Dhananjoy's clothes was explained by the surmise that he must have disrobed before committing the crime. The burden of proof often fell on the defence. Irregularity in search and seizure at Dhananjoy's home was condoned in the judgment by saying "The effect of irregularities in conducting search is only to necessitate a careful scrutiny of the evidence." Yet there was no "careful scrutiny" by matching of serial numbers of the 'seized' watch and the 'stolen' watch. It was observed, "It is true that the Investigating Officer ought to have seized the cash memo or at least the carbon copy of the cash memo but this lapse on the part of the Investigating Officer does not necessarily lead to the conclusion that the guarantee card was subsequently manufactured." This statement sounds like presumption of innocence of someone other than the accused.

The courts had overlooked the possibility that the victim's family, the security agency, the police and the prosecution could have had their own reasons for seeking Dhananjoy's conviction, or that *these agencies might have collaborated without consciously engaging in a conspiracy with the family*. The security agency had failed to prevent a murder, and the main accused had been their employee. Sacrificing Dhananjoy and cooperating with the police was convenient for them. For the police and the prosecution, securing a conviction is considered an achievement. In this case, there was also external pressure to produce fast results. The victim's family was completely above suspicion, and the absconding security guard was an ideal suspect to go after. The police have the capacity to plant evidences and influence witnesses, if they want to do so. The witnesses to the 'seizures' were either connected to the victim's family or under the direct influence of the police. The 'eyewitnesses' were employees of the security agency, barring the one that turned 'hostile'. The case presented by the prosecution to the lower court was a version of the family's story, embellished with 'evidences'.

The judgment of the Hon'ble Supreme Court explicitly mentioned reports of "rising" rates of crime against women, as one of the considerations for its decision. As the Court proceeded to award the death penalty to Dhananjay after stressing the need for courts to "respond to the society's cry for justice against the criminals", it apparently overlooked an important criterion, as pointed out nineteen years later by another bench of the Court.¹ The judgment may have been influenced by media reports, as there is no direct channel through which societal sentiments can reach the courts.

The second murder

It appears that in this case, the police, the security agency, the prosecution and the judiciary only did what they normally do under normal compulsions. Accidental alignment of their interests produced a powerful force that Dhananjay could not overcome with mere innocence. These agencies are parts of a society that is steeped in prejudice. Perhaps there was universal sympathy for the *family* – the institution that often unleashes lethal violence on women. This prejudice possibly came in the way of objective analysis of the totality of facts. In the absence of any coherent alternative theory, each inconsistency was viewed separately and ignored. It was as if everyone *knew* Dhananjay had committed the crime, and they did their bit to set right the inconsistencies for the sake of justice.

And Dhananjay *knew* why he was being hanged fourteen years after the murder he did not commit.

¹ Supreme Court Judgment on Criminal Appeal nos. 362-363 of 2010, Shankar Kisanrao Khade vs State Of Maharashtra, 25 April, 2013, p.8 (indiankanoon.org/doc/79577238/). The Court observed that prima facie, the "criminal test" had not been satisfied in the sentencing of Dhananjay Chatterjee. This test involves considerations such as age of the convict, whether there is a past record of conviction, or any possibility of reform. All these factors would have gone in favour of Dhananjay.