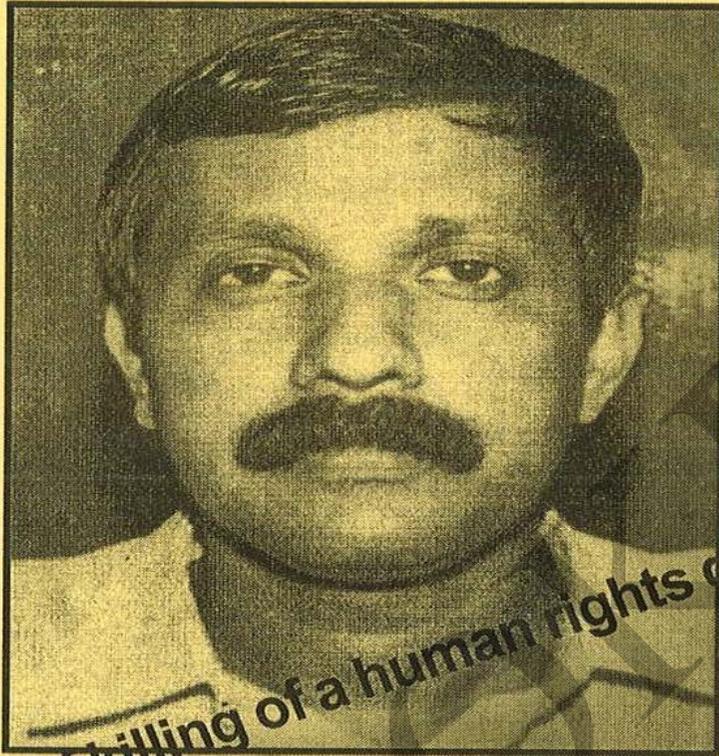


Justice denied in the Parag Kumar Das murder trial



A case of killing of a human rights defender



MANAB ADHIKAR SANGRAM SAMITI (MASS)

Justice denied in the Parag Kumar Das murder trial

Thirteen years have elapsed since the brutal assassination of Parag Kumar Das – economist, journalist and human rights defender. A professional in the financial sector, he left his successful career as the manager of the Guwahati Stock Exchange to pioneer the human rights movement in Assam, and was pivotal in weaving together a network of human rights defenders across the Northeast. With a strong conviction in creating an informed society, he also started and edited two of the most prominent newspapers in Assam. His articulate vision and analytical writing came to be considered a threat to the corrupt establishment and the various stakeholders perpetuating a rapid slide of societal norms and values in Assam. This prominent public intellectual was gunned down in broad daylight on May 17, 1996 at Rajgarh Road in Guwahati. His assassins picked the time when he routinely collected his son Rohan from school. When he was shot, Rohan was holding his hands on their way to the bus stop.

A respected figure all across the region, his killing evoked massive protests all over Assam. Declared a martyr by the masses, people in Assam demanded a speedy delivery of justice and an immediate halt to attack on journalists and human rights activists. These pleas for justice, however, have consistently fallen to deaf ears - that of the then AGP government and to the present Congress (I) led one. Thirteen years have passed. Till date the government, the administration or the judiciary have been unable to uncover the chilling facts that led to the cruel murder of this champion of social justice.

Following the protests of May 1996, the AGP government responded by categorically promising immediate arrest of the killers, although the time varied from 24 hours to a month from the Chief Minister to other members of the ruling party. All promises, however, turned out to be eyewash and delaying tactics to subdue the anger and emotional response of the public. Meanwhile, the people of Assam were kept at a confused state about the identity and capture of the assassins.

The government stated after a month of the killing that Profulla Bora @ Dhekial Phukan, a surrendered member of the United Liberation Front of Assam (ULFA), was the prime culprit. When the government handed over the investigation to the Central Bureau of Investigation (CBI), the agency submitted a charge sheet where any association of Profulla Bora with the heinous crime was denied. Such incidents only added to the confusion and of an already misinformed public.

It is now public knowledge that Parag Das was a victim of the specially organised "secret killing" enterprise in accordance with decisions and planning of the organs of the State. While the protests managed to temporarily bring the 'secret killings' and attempts to eliminate human rights activists to a halt, it picked up again within a year and none of the culprits were ever booked or punished. Many lives were hence lost including that of 7 human rights activists.

Moreover, despite its promise exclude the surrendered ULFA members in any of its anti-rebel operations, many of them have lead such offensives various districts and continued their harassment, intimidation and threats against innocent citizens and human rights activists throughout the state. These activities could not continue unabated without active government sponsorship.

On July 28, 2009, the court conducting the trial of Das's assassination

gave its verdict. While the masses of Assam waited with bated breath in anticipation of justice, Mridul Phukan, the prime accused in the case walked out a free man. None involved in the case including the State, the investigating agency and the prosecution made any effort to even touch the larger conspiracy behind the assassination of Parag Das. That question too remained unanswered. It was a moment when the people of Assam began to rethink the organs of the State responsible for bringing criminals to justice. Few chronological details and pointers would help in understanding the case better.

Chronology of events:

May 17, 1996 – Parag Kumar Das is brutally shot dead in broad daylight at 2.45 p.m. in front of the Asom Jatiya Vidyalyaya while picking up his son from school. Felled by a hail of bullets, Das dies on the spot while his son receives a bullet in his hand. 3 days of spontaneous general strike in Assam follows the incident with protests at every street corner and numerous memorial services.

May 18, 1996 – Then Chief Minister Prafulla Kumar Mahanta orders police to produce the assailants within 24 hours. He also publicly promises to catch the culprits in 48 hours.

May 19, 1996 – Manab Adhikar Sangram Samiti (MASS), the human rights organisation founded by Das, calls for a general strike on May 21. Thirty other organisations supports the strike.

The Assam Police announces a reward of Rs. 1,00,000.00 (One lakh) for information on the killers.

May 22, 1996 – Over 50 organisation holds a protest meeting in Guwahati demanding justice.

May 28th 1996 – The *Ardhya Shraddha* (ritual for the deceased) of Parag Das is observed at Rajgarh Road near the site of his assassination. Activists begins a tour throughout Assam carrying Parag's ashes. They are greeted by memorial services and protest meets all across the state.

June 17, 1996 – Over 10,000 people converge at the Janata Bhavan in Dispur in protest against the inability of the government in apprehending the assassins. Police tries to break the protest by using tear gas, *lathi charge* and firing gunshots. Over a thousand people are injured in the melee and one is injured in the firing. As a stopgap measure, the police announce Prafulla Bora @ Sarbajit Dhekiyal Phukan as the prime accused in the killing of Parag Das. It added that Bora/Phukan was absconding and again announced a reward of Rs. 1,00,000.00 (One lakh) for any information leading to his arrest.

June 24, 1996 – Amnesty International demands a thorough investigation into the Parag Das killing of the Assam government. MASS brings out a special publication on the killing.

July 1, 1996 – Prafulla Bora @ Sarbajit Dhekiyal Phukan declares from hiding that he is not involved in the killing of Parag Das.

November 22, 1996 – MASS intimates the National Human Rights Commission (NHRC) on the case. The NHRC questions the Government of India, which responds by promising a CBI inquiry. Subsequently, the Government of Assam handed over the case to the CBI.

June 21, 2000 – Due to the inordinate and unexplained delay in the investigation of the killing, four prominent personalities of Assam – namely Dr. Hiren Gohain, Jahnu Barua, Mahendra Barthakur and Dilip Chandan – file a Public Interest Litigation (PIL) in the Gauhati High Court seeking an explanation on the delay of the investigation. The High Court gives the CBI till July 26 to submit the case diary and charge

sheet.

July 30, 2000 – CBI requests the Gauhati High Court 3 months time to submit the case diary and charge sheet in the Parag Das case.

November 24, 2000 – CBI submits an interim report naming 4 accused, all surrendered ULFA members, as the prime accused in the killing of Parag Das. The accused are Tapan Dutta (deceased), Diganta Barua (deceased), Mridul Phukan of Sivasagar and Nayan Das of Dibrugarh. The CBI claims that the two accused who are alive are in hiding.

December 1, 2000 – Appeals are filed at the Gauhati High Court questioning the CBI's statement that mentions the accused to be hiding when they are moving about freely in public with police officials, going to meetings and conducting business as usual.

December 5, 2000 – The Gauhati High Court seeks an explanation from the CBI investigating officer and also the CBI head on their statement that the accused are absconding.

December 19, 2000 – Defying all aspects of the rule of law, two surviving accused in the case are granted anticipatory bail. This was done irrespective of the fact that the charge sheet in a murder case was filed a month ago and that the matter was still sub-judice.

January 8, 2001 – The CBI submits charge sheet to the Honourable Gauhati High Court. The High Court forwards it for trial at the District and Sessions Judge's Court in Guwahati.

September 1, 2006 – Given the slow pace of the case and the gaping holes in the prosecution process, Parag Das's family petitioned the CBI to change the prosecution lawyer questioning the role of the

public prosecutor and the investigating team. But the agency did not entertain the plea.

July 28, 2009 – More than eight years after the charge sheet was filed, the District and Sessions Judge's Court acquits Mridul Phukan, the only surviving accused in the case, citing lack of adequate evidence. While doing so, the Court criticises the CBI for a shoddy investigation. It also points out many procedural flaws on the part of CBI in the investigation.

From the perspective of the people of Assam, it was an open and shut case. There was the assassination of one of the best public intellectuals that Assam had produced. Witnesses present at the location of the murder had identified the accused and the investigating agency had charged the same person/s with the crime and took the case to trial. Defying all sensibilities, the accused was let off. As an august institution, the judiciary cannot pass verdicts on human emotions and pleas of the masses. The justice that it delivers is contingent upon evidence and legal procedures that ideally should be sorted and ironed out before being placed for examination at the court. In the judgement, the District and Sessions Judge observes:

“...graver the crime greater should be the standard of proof. Where the murder is cruel and revolting, it is necessary to examine the evidence with more than ordinary care, least the shocking nature of crime induce a reaction against a dispassionate judicial scrutiny of the facts and law.”

The onus for meticulous scrutiny and submission of credible evidence are on the investigating agency and the prosecution. Clearly, this did not happen in this case.

A few pointers would reveal how these legalities, procedures and basic necessities in the case were not fulfilled. That the State was implicit in the assault against journalists and human rights defenders was something well evident in the way the murder of Parag Das was handled. Attempts

of the government in delaying justice in this case were indicators that it did not want to let the cat out of the bag. The declaration of the Assam Police that Sarbajit Dhekial Phukan was the killer was an attempt in misleading the masses.

While the CBI took up the case in July 28, 1997, nothing moved for over a year. There was some stir in the investigation only after the case was taken to the United Nations where the Government of India had to answer queries on the delay. As the investigation was underway, two surviving accused in the case were not arrested and could even manage anticipatory bail after the charge sheet against them had been filed. To add to the inordinate delay, the trial itself moved very slowly, prompting the Gauhati High Court to intervene. It instruct the concerned court to speed up the trial, and if necessary, to carry it out on a day-to-day basis. The pace however remained largely the same. In between, there were no judges in that particular court for almost two years.

Finally, twelve years after the CBI took up the case, the court fixed July 16, 2009, as the day for judgement. For reasons unknown, the judgement was delayed to a later date of July 28, 2009, when the prime accused in the case was acquitted due to lack of adequate evidence.

That the investigation was flawed from the very beginning was something evident even if someone takes a cursory look at it.

- While the investigating officers of CBI mentioned that there were 29 bullet wounds on Das, not a single bullet sample was submitted before the court.
- Minutes after his acquittal on July 28, Mridul Phukan stated in the television channel Newslive that the CBI interrogated

him five times. But none of this was related to the Parag Das murder. The only time the investigating officers mentioned Parag Das was when they asked Phukan if Das was the same person as Mithinga Daimari, ULFA's publicity secretary.

- Although the prime accused in the case, Mridul Phukan was not arrested at any point in the last 13 years. In accordance with legal procedures, anyone accused of murder in a charge sheet has to be arrested.
- As the CBI submitted the charge sheet to a bench of the Gauhati High Court, Mridul Phukan almost simultaneously managed to procure an anticipatory bail from another bench. The CBI lawyer did not object to the procurement of bail.
- After interrogating Mridul Phukan for five times, the investigating officers submitted the charge sheet where they mentioned him an absconder.
- Eyewitnesses present at the scene of murder identified photos of Mridul Phukan. However the investigating officers did not take the normal and logical next step or a personal physical identification or Test Identification Parade (TIP). Hence the court did not entertain evidence based on the photo identification.
- In the same charge sheet, the investigating agency provided contradictory statements regarding the vehicle used in the murder. While the charge sheet initially mentioned that the car was not traceable, it is stated in a later submission of the same document that the car was found abandoned near the scene of crime. This prompted the judge to ask the prosecution on the whereabouts of the vehicle.
- Three important witnesses gave crucial evidence before the investi-

gation team and given the sensitive nature of the case, they wanted protection to testify in court. But the investigating team of CBI did not heed to this appeal. Consequently the witnesses retracted some of their statements. The court then naturally declared them hostile. But no action was taken against the hostile witnesses or the reasons thereof investigated.

- The CBI team completed the investigation towards the end of 1999 and announced that it would submit the charge sheet within three months. When this did not happen, four prominent persons from Guwahati filed a PIL at the High Court. The PIL was filed on June 21, 2000. On July 26, the High Court instructed the investigating team to file charge sheet. However, the team sought another three months and finally submitted the charge sheet on November 28, 2000. 2000.

- As the charge sheet mentioned the accused as absconders, an appeal was again filed on December 1, 2000, at the Gauhati High Court to look at the contradictions between the facts and claims by the CBI team. While the CBI team declared the accused as absconders, it was that very team that had carried out the interrogations. Based on the PIL, the High Court issues a show cause notice to the team. In its reply, the prosecution and the investing team mentioned that the accused were in hiding and could not be traced.

- Serious doubts about the credibility of the investigating team and the prosecution lawyer were cast during the course of the investigation. But the petition of Parag Das' family to change the whole investigation and prosecution team fell to

deaf ears.

The chronology of events and the course that the investigation took leaves no room for doubt about the nature of probe into the case – that it was a lackadaisical approach with a pre-determined intent in eyewash. With the involvement of the State, the case was practically the State trying the State. Given these conditions, the investigation leading to the denial of justice does not come as a surprise. What is appalling is the extent to which the State can go to violate the Constitution in committing crimes against citizens and then indulge in acts that profoundly deceive them. It has been an enormous process of waste in time, energy and resources of the government and the people of Assam – a process exactly opposite to the spirit in the quest for justice.

With the State and its organs being the primary parties against the accused, there is legally no room for other parties except for the Parag Das's family and the CBI to file an appeal. The latter filing an appeal at a higher court is a matter of speculation. It will take major political will, commitment to justice and accountability to the citizens on the part of the State and the political class to get the CBI to file an appeal with a complete revision of the investigation and prosecution teams. Without this commitment and revision, no number of appeals would work, be it from Das's family or at the event of the judiciary itself reopening the case.

This trial has been a grand betrayal of not only the Das's immediate family, but to the people of Assam and the larger region. It is a dark event in the quest for and delivery of justice. If at all the State and its organs are interested in reviving the faith of people in justice, they must reopen the case and punish those guilty in the barbaric murder of Parag Das. A failure to do this would bring about an era where the criminal would rule the roost and the Constitution, the august institutions of justice and a vocal citizenry would become irrelevant.

To,

The Director, CBI
Block-III, C.G.O. Complex
Lodhi Road, New Delhi
Pin – 110003

Copy of the petition submitted by the family members of Parag Kumar Das to CBI authority on September 1, 2006, seeking a replacement of the CBI prosecutor.

Sub: - Prayer for Appointment of Special Prosecutor for Parag Kumar Das murder case (No – 136 (K) / 2003) presently being tried by the session judge, Kumrup, Guwahati – 1.

Respected Sir,

Most humbly we beg to state that, it is a matter of great concern for the family members of late Parag Kumar Das that – after a prolong period of ten years the culprit of the murder case could not be booked under law till to-day.

That Sir, Parag Kumar Das was shot dead on day broad light in Guwahati on 17th may, 1996 – while he went to bring his 7 years old son from school. His son Rohan was also injured in his hand during the shoot out and late Das was succumbed to his injuries in the site itself. This brutal killing had made a great sensation through out Assam, since late Parag Kumar Das was a most sincere and nationalist journalist and human right activities of Assam. During that time late Das was the Executive Editor of mostly circulated Assamese daily "Asomiya Pratidin" and he was also holding the post of Secretary General of Manab Adhikaar sangram Somitee (MASS) – an active human right organization of Assam. After this sensational murder case the common people of Assam made a strong protest against it and throughout the state people came out to the street to condemn this senseless killing. In response to the common peoples demand the Govt. of Assam lastly handed over the Parag Kumar Das murder case to C.B.I. on 22nd, November, 1996.

C.B.I. took up the case and investigated and interrogated various persons throughout Assam. But due to delay in submission of charge sheet from C.B.I. –

a P.I.L. has been submitted in the Guwahati High Court on 21st June, 2000 by four reknown intellectuals of Assam. In response to that P.I.L. the C.B.I. has submitted the charge sheet of the case to the Guwahati High Court on 24th November, 2000. On that charge sheet four numbers of accused namely Tapan Dutta, Diganta Barua, Nayan Das alias Guli and Mridul Phookan alias Samar Kakati were accused as involved in the Parag Kr. Das murder case. Out of these four accused persons Tapan Dutta and Diganta Barua had already been expired during the time of submitting charge sheet. And hence case has been registered against the other two accused persons Nayan Das and Mridul Phookan only.

But Sir, surprisingly the remaining survived accused could obtained bail in the Guwahati High Court even before their arrest on 19th December, 2000 (copies of order enclosed). Pertinently on the same day responsible officers of the C.B.I. appeared before the Division Bench in connection with the P.I.L. referred to above (copies of order enclosed). To our knowledge the counsel for C.B.I did not oppose the bail petition and did not even drew the attention of the court about the fact that on the same date and in the morning hours there were developments in the P.I.L. before the Division Bench. And in this matter the role of the Public Prosecutor engaged by the C.B.I. is very doubtful.

On 4th January, 2001 the honourable High Court has given order to trail the accused persons in session court. But, before the trail could be started in the court another accused person Nayan Das alias Guli was also killed in a mob violence in Dibrugarh town. Hence, finally the trail has been started against Mr. Mridul Phookan alias Samar Kakati—who is the only survivor among the four accused persons.

But Sir, it is a matter of greater concern for our family as well as the law abiding citizens of Assam that till to-day no visible progress is achieved in the court due to the gross negligence of the Public Prosecutor namely Sri Dilip Das, Advocate engaged from your end. The way he is handling the case has not only demoralized us, but his very integrity becomes questionable to all of us. Till to-day 27 numbers of

witnesses has turned up to the court for giving their statement. But unfortunately most of them denied their previous statement given to the Investigating Officer of C.B.I of this case and given some opposite version in the court. And the P.P. of C.B.I. has absolutely done nothing to get the truth out of these witnesses – whose proper statement could have been very fruitful for resolving the murder case.

Hence Sir, in this crucial juncture of the case we the following family members of the victim late Parag Kumar Das request you to appoint one very experienced and competent Public Prosecutor replacing Sri Dilip Das – who can repose confidence and who is a person of uninfluenced credibility.

This is for favour of your kind personal and honorable request for necessary action.

Thanking you,

Yours faithfully

Anupama Das.
(1) Ms. Anupama Das
(Mother of late Parag Kr. Das)
Pallab Kumar Das.
(2) Mr. Pallab Kr. Das
(Brother of late Parag Kr. Das)

dttd. 01/09/2006.

Copy to: -

1. The Secretary to the Govt. of India
Ministry of Home Affairs, New Delhi Pin-110001, for favour of information.

Ms. Anupama Das

Mr. Pallab Kr. Das

Copy of the memorandum submitted to
the Chief Minister of Assam on July 28, 2009

To
The Chief Minister of Assam
Dispur, Guwahati
Assam

Dated: August 28, 2009

Subject: Request for a fresh investigation and trial of the Parag Kumar Das murder case

Honourable Mr. Chief Minister, sir,

We, the undersigned, wish to bring to your attention the following matter for your kind consideration.

On May 17, 1996, Assam lost one of its finest public intellectuals and human rights defender – journalist Parag Kumar Das. He was gunned down in broad daylight in Guwahati while picking up his child from school. The incident came as a shock to the people of Assam and all sections of the society including the civil society organisations took to the streets demanding justice and investigation from a credible agency like the Central Bureau of Investigation (CBI). However, people had to wait for a year before the CBI took up the case.

The CBI subsequently filed the charge sheet at the court of the District and Sessions Judge, Guwahati, in 2001. It would be noteworthy that this charge sheet was submitted only after some prominent citizens of Assam filed a Public Interest Litigation (PIL) at the Gauhati High Court, that too with many flaws and loopholes. The role and integrity of the investigating team and the prosecution have also been issues of concern during the trial.

Based on this, the court passed a judgement on July 28, 2009, acquitting the only surviving accused in the case. The acquittal was based on lack of adequate evidence. One must mention that CBI had named four accused in its charge sheet presented to the court. However, three of them met with untimely deaths. While ruling for the acquittal, the court also criticised the

CBI team for shoddy investigation, failure to provide adequate evidence and not following procedural norms in preparing the charge sheet.

As you might have been aware, the acquittal triggered off widespread protests in Assam. Now the civil society at large is voicing demands for a fresh trial of the case. Keeping in view the aspirations of the people of Assam, we urge that:

a) Your esteemed self seek an appeal from the CBI before the Honourable High Court of Assam for a fresh investigation with the appointment of a new lawyer and investigating officers. The lawyer and investigating officers involved in the case so far should be questioned for an incomplete investigation. It must be mentioned here that Das's family had made a request to change the CBI lawyer involved in the prosecution. The request, however, was not entertained.

If the CBI fails or declines to appeal, we would urge the Government of Assam to submit an appeal to the Honourable High Court for a fresh investigation and trial.

b) Keeping in view the larger implications on the justice delivery system and to restore the faith of people on our investigating agencies, an independent inquiry should be conducted on the role of investigating team of CBI in this case.

Sincerely,

Lachit Bordoloi
Chief Advisor, MASS

Bubumoni Goswami
Chairman, MASS

Aditya Lahkar
Secretary General, MASS

Dilip Patgiri
Advisor, Assam Jatiyatabadi
Yuba Chatra Parishad

Bhaskar Dahal
Advisor, All Assam Gorkha
Students' Union.

Bijon Mohajon
Advocate, Gauhati High Court.