

A RAVIKANT BHAGOJI DHUMAL AND ORS. ETC.
v.
STATE OF MAHARASHTRA

NOVEMBER 15, 1990

B [LALIT MOHAN SHARMA AND K. RAMASWAMY, JJ.]

Indian Penal Code: Sections 34, 366 and 376—Prosecution—Duty of—Lead reliable evidence—Establish without reasonable doubt those guilty of offence.

C A young woman of 29, Km. Chandrakala, was travelling from Goa to Bombay. The bus stopped at about 9.15 p.m. at Bharana Naka near the hotel belonging to accused no. 5, for meals. Chandrakala along with the other passengers got down, and she proceeded towards certain structure near a tree for attending call of nature. It is alleged that while she was in the posture of urinating near the structure, accused no. 1 D (appellant no. 1), who was a waiter in the hotel, came from behind, lifted her and carried her away forcibly. It is said that accused no. 8 (appellant no. 2) and accused no. 9 (appellant no. 3) also joined. This part of the story has been supported by three eye witnesses of tender age.

E Accused no. 8 is the son of accused no. 5, and accused no. 9 is a friend of accused no. 8.

F The dead body of Chandrakala was discovered the next afternoon. From the evidence it appeared that the victim was deprived of her clothes which were available but not at the appropriate place. Several gold ornaments were still on her person. Her purse was also found which contained some money, and a chit of paper, described as suicide note.

The medical evidence fully established that she was murdered by throttling and was also victim of rape.

G Initially, the members of the crew of the bus were suspected of being involved in the crime, and the Sub-Inspector, Khed Police Station—Mr. Ghosalkar, arrested all the five members of its crew.

H Controversy arose as to whether the police investigation was proceeding on the right lines or not. Thereupon, the Deputy Inspector

General of Police passed an order for further investigation to be continued by another officer—Mr. M.V. Kulkarni—belonging to the Criminal Investigation Department, Pune. In the course of investigation, it became clear to Detective Inspector Kulkarni that the members of the crew of the bus were innocent. He accordingly sent a report under section 169 of the Code of Criminal Procedure, 1973 for their discharge.

After further investigations, nine persons including the present appellants were put on trial for offences against various sections of the Indian Penal Code. Eight of the accused persons were acquitted by the trial court while accused no. 1 was convicted for offences punishable under section 366 and section 376 read with section 34, I.P.C. He was however acquitted of the murder charge.

Two separate appeals were filed, one by the State against the order of acquittal and the other by the convicted accused no. 1.

The High Court maintained the conviction and sentence of accused no. 1, and further convicted him under section 302 read with section 34, I.P.C. The High Court also convicted accused nos. 8 and 9 under section 366 and section 376, read with section 34 I.P.C. They were further convicted under section 302 read with section 34 I.P.C. and sentenced to imprisonment for life.

Before this Court it was *inter alia* contended that the (i) the detective Inspector Kulkarni was interested both for his personal satisfaction and for the advancement of his career to obtain a conviction in the case, and the possibility of his procuring false evidence therefore could not be ruled out; and (ii) in view of the order in favour of the members of the crew, this case could not have been re-opened later, as the order was judicial in nature and closed the case once for all.

Dismissing the appeal of appellant No. 1 and allowing the appeal of appellants Nos. 2 and 3, this Court,

HELD: (1) The High Court has rightly pointed out the evidence and the telling circumstances for coming to the conclusion that the investigation in the case, while it was in the hands of Khed Police Station, was under the influence of outside agency and the policy officers were directly associated in attempting to procure false evidence against innocent persons. [79E-F]

A (2) Having considered the evidence and the circumstances in the case, it is not permissible to presume that the CID Inspector Kulkarni could have fabricated false evidence to implicate innocent persons as murderers in order to satisfy his ego or to advance his future prospects in his career in absence of cogent material or acceptable circumstances, to support such presumption. The manner in which he proceeded in the case does not leave any room for doubt against his *bona fides*. [75H-76B]

B (3) It was manifest that the suicide note was a forged document and was planted with a view to mislead the investigating machinery. It can safely be presumed that it must have been done either by the real culprit or somebody deeply interested in shielding him from the process of law. [75E; 78G]

C (4) So far as the accused no. 1 is concerned, there does not appear to be any doubt that he caught hold of Chandrakala from behind and walked away in the dark. The motive appears to be apparent that she was forcibly carried away for the purpose of rape. The Chemical D Analyser's report proves that the deceased was subjected to sexual intercourse and the facts that she was killed in the process and the accused no. 1 got scratches on his face caused by human nails, along with the evidence of the eye witnesses, fully establish that the accused no. 1 had committed rape on her. Even if it be assumed in his favour that the actual acts of rape and murder were performed by his accomplices, he cannot escape the criminal liability. [81A-D]

E (5) The order approving the report under section 169 Cr. P.C. was not an order of acquittal so as to bar a second trial. It was not even an order of discharge. [78D]

F *Pradyum Narain Pandey v. State and Another*, [1968] ALJ 768 referred to.

G (6) Theft could not have been the cause of her death is amply demonstrated by the fact that the ornaments on her person were left behind by the criminals. [78H]

H (7) The case of the other two appellants is clearly distinguishable from that of the appellant no. 1. P.W. 14 in her evidence did not claim to have identified either of them. She stated that after she saw the appellant no. 1 catching hold of Chandrakala from behind, she observed two persons moving in that direction, but she did not claim that they were appellants nos. 2 and 3. Even those two unidentified persons were seen

by the witness merely proceeding in the direction where appellant no. 1 had forcibly caught hold of Chandrakala. They therefore, are entitled to benefit of doubt. Their appeal is allowed and their conviction and sentence set aside. [81E-G]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals
No. 371-372 of 1978.

From the Judgment and Order dated 10/11.8.1978 of the Bombay High Court in Criminal Appeal No. 151/77 with Crl. A. No. 226 of 1977.

U.R. Lalit, S.B. Bhasme, V.N. Ganpule, Ms. Punam Kumari and Ms. Suman Rastogi for the Appellants.

V.N. Patil, A.S. Bhasme, V.B. Joshi and Subhash Keluskar for the Respondent.

The Judgment of the Court was delivered by

SHARMA, J. A young woman of 29, Km. Chandrakala Achyut Lotalikar, travelling from Goa to Bombay by a bus was found to have been murdered following a sex assault. After the completion of the police investigation, the present appellants along with six others were put on trial for offences against various sections of the Indian Penal Code. Eight of the accused persons were acquitted by the trial court and the appellant no. 1 was convicted for offences punishable under s. 366 and s. 376 read with s. 34 I.P.C. and sentenced to suffer rigorous imprisonment for 7 years and 10 years respectively. He was acquitted of the murder charge. Two appeals were filed—one by the State Government against the orders of acquittal and another by the convicted accused no. 1, who is appellant no. 1 in Criminal Appeal No. 371 of 1978 and the sole appellant in Criminal Appeal No. 372 of 1978 before this Court. The two appeals were heard together and disposed by the impugned judgment. The High Court has maintained the conviction and sentence of the accused no. 1 (hereinafter referred to as the appellant no. 1) and further convicted him under s. 302 read with s. 34 I.P.C. and sentenced him to imprisonment for life, and convicted accused nos. 8 and 9, appellants no. 2 and 3 in Criminal Appeal No. 371 of 1978 before this Court, under s. 366 read with s. 34, and s. 376 read with s. 34 I.P.C. and sentenced each of them to rigorous imprisonment for seven years and ten years respectively under the two counts. They have further been convicted under s. 302 read with s. 34 I.P.C. and

A sentenced to imprisonment for life. In other words, all the three accused have been awarded similar convictions and sentences. All the sentences have been directed to run concurrently. It is this judgment of the High Court which has been impugned before this Court. Criminal Appeal No. 371 of 1978 has been filed by the three accused persons, while Criminal Appeal No. 372 of 1978 has been preferred by accused
B no. 1.

2. The deceased Chandrakala was on a visit to Goa where her married sister was staying. On 8.10.1975 at about 11.30 a.m. she took the tourist bus bearing No. GDT 2335 known by the name 'Mahalasa Narayani' for Bombay where her brother Sadashiv Acchyut Lotalikar (P.W. 9) lived. She was an unmarried girl and was undertaking the overnight journey alone. Her sister's husband Putu Dattaram Raikar (P.W. 6) saw her off at the bus station. On the way to Bombay the tourist buses halt for sometime at convenient places to enable the passengers and the members of the crew to have their lunch, dinner etc. and get some respite. Accordingly the bus Mahalasa Narayani
D stopped for sometime at Sawantvadi for lunch and later at Bharana Naka at about 9.15 p.m. After re-fuelling at a petrol pump, where some passengers got down, the bus finally stopped near a restaurant by the name of 'Visava Hotel' belonging to the accused no. 5, so that the passengers could have their meals. According to the prosecution story, Chandrakala along with the other passengers got down from the vehicle and went into Visava Hotel. Soon thereafter she was seen coming
E out of the hotel and proceeding towards certain structure near a tree for attending call of nature. It is further alleged that while she was in the posture of urinating near the aforesaid structure the accused no. 1 came from behind and lifted her. He protested and started crying, but was carried away forcibly. It is also said that the accused nos. 8 and 9
F also joined. This part of the story has been supported by three eye witnesses of tender age, namely, Suman Nana Ambare, a girl of about 15 years (P.W. 14), Shrirang Vishnu Mohite P.W. 17 and Jagannath Laxman Sigwan (P.W. 18) two lads aged about 12 years. At the time of departure of the bus Mahalasa Narayani the conductor of the bus Suresh Mahadev Dhuri (P.W. 12) discovered that Chandrakala was
G missing. After a futile attempt to find her the bus proceeded on its journey to Bombay. P.W. 12 claims to have approached one of the sons of the hotel owner accused no. 5 with a request that if Chandrakala was found out she might be sent by another bus to Bombay. Her absence was also noticed by the other passengers in the bus.

H 3. The dead body of Chandrakala was discovered the next after-

noon and the Police Patil Purushottam (P.W. 11) who was at Khed about two miles from Bharana Naka, received a telephonic message from accused no. 5 that the dead body of a woman was lying in the paddy fields nearby. Purushottam immediately left for Bharana Naka by his bicycle. The Khed Police Station was kept informed on telephone and investigation followed. The first information report was registered on the statement of the Police Patil (P.W. 11) stating that the dead body of a woman was found in a paddy field belong to the accused no. 5.

4. Having regard to the facts and circumstances of the present case, the manner in which the police investigation was conducted is of great importance and has to be dealt with in some detail. Initially the members of the crew of the bus Mahalasa Narayani were suspected of being involved in the crime. The police Head Constable Nana Kadam, in absence of the Sub-Inspector Mahadeo Arjun Ghosalkar (P.W. 29) who was on a tour took necessary steps for the inquest of the dead body and a Panchnama Ext. 14 was prepared. The Panchas were Smt. Chandrabhaga Bhiva Ghole (P.W. 2), another lady Parwati Bai and Sitaram Patne, accused no. 5. From the evidence it appears that the victim was deprived of her clothes, which were available but not at the appropriate places. Her petticoat was kept under her buttocks and the under-wear, saree and blouse on the body. The Chappals also were found a little away. Several gold ornaments were still on her person. Some photographs were taken of the body and have been marked as exhibits in the case. A purse was also found with some money, few articles of toilet, a bus ticket, and a chit of paper which has been exhibited in the case as Ext. 25 and described as suicide note. The statement on the chit which is in Marathi has been officially translated thus:

“Being tired of life, I am committing suicide. I have no relative. Hence no enquiry should be made about me.”

The dead body was sent for postmortem the same night which was performed by Dr. Savak (P.W. 13) the next morning. The report as also the evidence of the doctor indicate that the death was caused by throttling. By that time the identity of the deceased woman was not known there, and the Head Constable stated in his statement (Ext. 85) that an unknown woman who got down from the Goa-Bombay bus GDT 2335 at Bharana Naka at about 9.30 p.m. on 8.10.1975 leaving her baggage in the bus was found murdered by throttling. Along with his statement he also sent the report of the Police Patil Ext. 38, the

A inquest Panchnama Ext. 14, the Panchnama of the discovery of the dead body Ext. 20 and other relevant documents. All the witnesses connected with the Panchnamas have been examined in the case.

B 5. After reaching Bombay, the conductor of the bus, Suresh Mahadev Dhuri (P.W. 12), took charge of Chandrakala's baggage and carried the same with himself on his return trip to Goa with the intention of delivering it at Goa bus station, but on his way at about 10.30 p.m. the next day, when the bus reached Bharana Naka, he along with the bag was taken to Khed Police Station where another Panchnama of the contents of the bag (Ext. 18) was prepared. The bus conductor identified the dead body as that of the passenger travelling with him on the Bombay bound bus.

C 6. The Sub-Inspector attached to the Khed Police Station Mahadev Arjun Ghosalkar (P.W. 29) returned from tour at 8.40 p.m. on 10.10.1975 and took charge of the investigation of the case. On that very day after verifying the statements recorded by the Head Constable Kadam and recording further statements of many witnesses he interrogated accused no. 1 Ravikant Bhagoji Dhumal and found scratch marks on his face. Ravikant was sent for medical examination the next day to Dr. Savak (P.W. 13) The medical certificate of Dr. Savak indicates that Ravikant had abrasions on his cheek and neck, the detailed description whereof are mentioned in Ext. 48. According to the doctor, the injuries could have been caused by human finger nails and the age of the injuries could have been 3-4 days. In the meantime the identity of the victim girl was confirmed by her brother Sadasiv (P.W. 9) and brother-in-law P.W. 6, whose statements were recorded on reaching Khed. They denied the suicide note Ext. 25 as being in the handwriting of the deceased Chandrakala. In the course of further investigation Sub-Inspector Ghosalkar arrested all the five members of the crew of the bus Mahalasa Narayani including the bus conductor Dhuri who was examined at the trial as the 12th witness for the prosecution.

G 7. It appears that serious controversy arose as to whether the police investigation was proceeding on the right lines or not and the Deputy Inspector General (CID) Police of the area concerned passed an order on 14.11.1975 for further investigation to be continued by another officer belonging to the Criminal Investigation Department, Pune. Accordingly Police Inspector (CID) Crime, Pune, Madhusudan Vishnu Kulkarni (P.W. 30) proceeded to Khed and took charge of the investigation from Sub-Inspector Ghosalkar (P.W. 29). He was

H

briefed by Ghosalkar before studying the relevant papers. Inspector Kulkarni further examined a large number of witnesses including the eye witnesses P.Ws 14, 17 and 18. In answer to a letter of Inspector Kulkarni, Dr. Savak who had performed the post mortem examination, *inter alia* said in his reply dated 21.11.1975 (Ext. 43) that he had examined the private parts of the dead body also, although it was not mentioned in the report and that from his notebook and his recollection he could say that the deceased had been raped. This was corroborated by the reports of the Chemical Examiner. When, in the course of investigation, it became clear to the detective Inspector Kulkarni that the members of the crew of the bus were innocent, he sent a report under s. 169 of the Code of Criminal Procedure, 1973 for their discharge. After examination of some more witnesses all the nine accused were arrested on different dates and were ultimately charge-sheeted on 5.6.1976.

8. At the trial, besides examining the eye witnesses, the prosecution led full and complete evidence with respect to the other parts of the prosecution case, namely, the identity of the victim girl, her journey to Bharana Naka, the discovery of her dead body in the paddy field of the accused no. 5, the inquest, the post mortem and other reports and other relevant formal matters. The brother and brother-in-law of the deceased have proved that the suicide note Ext. 25 was not in the handwriting of the girl and it was, therefore, manifest that it was a forged document and was planted with a view to mislead the investigation machinery. It can safely be presumed that it must have been done either by the real culprit or somebody deeply interested in shielding him from the process of law. However, in absence of evidence to show as to who did it, this factor has been rendered unhelpful except for indicating that forces were working at Bharana Naka of which the accused are residents. It cannot be and has not been suggested that the deceased's relatives, not belonging to the place, could have played any role whatsoever in influencing the policy at Khed or helped to win over any witness. No motive has been or can be suggested for falsely implicating the appellants. The learned counsel for the appellants has, however, contended that the evidence available to the police in the first instance cannot be brushed aside and has to be taken into account while considering the evidence and the circumstances collected by the CID detective coming from Pune and presented in Court. It is argued that he was interested both for his personal satisfaction and for the advancement of his career to obtain a conviction in the case, and the possibility of his procuring false evidence, therefore cannot be ruled out. Having considered the evidence and the circumstances in the

A case, we are of the view that it is not permissible to presume that the CID Inspector Kulkarni could have fabricated false evidence to implicate innocent persons as murderers in order to satisfy his ego or to advance his future prospects in his career in absence of cogent material or acceptable circumstance to support such presumption. If he was interested merely to secure the conviction of any person, he could have very well proceeded on the line followed by Sub-Inspector Ghosalkar. The manner in which he proceeded in the case does not leave any room for doubt against his *bona fides*. On taking over the charge of the case on 15.11.1975, he visited the scene of occurrence, and acquainted himself with all the facts and circumstances with the help of the Sub-Inspector Ghosalkar. On 17.11.1975 he proceeded to Goa where he interrogated a large number of persons including those who had travelled by the bus Mahalasa Narayani on the fateful day. On returning back to Khed, he examined many more persons with a view to unearth further relevant material. In the course of the proceeding, he was, of course, alert to pick up a new clue to the solution of the crime, but was at the same time collecting all available materials with reference to the members of the crew of the bus, and had interrogated them at considerable length by securing their police custody remand for two days. By the first week of December 1975 he received the Chemical Analyser's reports Exts. 45, 47, 48 and 49 negating a possible case of poisoning and indicating detection of spermatozoa in the vaginal smear collected from the dead body. This was consistent with the statement of Dr. Savak in Ext. 43. He did not stop there. The detailed information available from the records of the case as to how he went on a relentless pursuit to get at the truth by interrogating scores of persons, examining innumerable materials and analysing all possible circumstances summarised in the judgment of the High Court which need not be repeated here, unmistakably point to a sincere and serious attempt on his part to unravel the mystery.

9. On the other hand, the conduct of the Khed police has been dubious to say the least and in any event far from satisfactory. The accused no. 5 owned a hotel in Bharna Naka and was otherwise also a well to do person with a lot of local influence. Accused no. 8 is his son and accused no. 9 his son's friend. Both were young persons at the time of the occurrence and so was the accused no. 1, waiter in the Hotel. On the basis of the evidence and circumstances available on the records of the case and the analysis thereof as mentioned in paragraph 128 of the judgment the High Court was fully justified in expressing its displeasure on the course of investigation undertaken by the Khed Police Station. The evidence later collected by the Inspector Kulkarni

clearly indicates that the accused no. 1, 8 and 9 were under heavy suspicion from the very beginning and the appellant no. 5 being father of the appellant no. 8 must have been very worried about his son and his associates. The scratch marks on the face of accused no. 1 had already been taken note of. In this background we find that, instead of pursuing the investigation on the right lines as indicated by the evidence so far collected, attempt was made to falsely implicate the members of the crew of the bus so as to divert the attention from the right direction. The evidence of Ramdas Yashvant Tambe (P.W. 20), Atmaram Babuji Chaudhary (P.W. 21) and Prabhakar Anant Mahajan (P.W. 22) is material in this regard. The presence of accused no. 5 taking interest in the matter from the very beginning is apparant from the diary of Sub-Inspector Ghosalkar. Soon thereafter the association of certain other persons including the father of the accused no. 9 comes to notice. P.W. 20 has stated that he had made the correct statement to the Khed Police as to what he had actually seen on the fateful day but several police officers (named by him) and the accused no. 5, who was also present in the Police Station, attempted to persuade him to make false statement to suit their objective. Similar is the statement of the other two witnesses P.Ws. 21 and 22. The materials available to the police did not leave any room for doubt that the members of the crew of the bus had no hand whatsoever in the commission of the gruesome crime and would undoubtedly be acquitted by Court, if put on trial and still there was a concreted plan to rope them in. It is not a case of anybody harbouring an ill-feeling against these persons which led to this conspiracy. The entire circumstances point to the only conclusion that this was being done with the object of misdirecting the investigation away from the real culprits. The materials have been discussed at some length by the High Court and without repeating them we confirm its opinion on this aspect. In this background the Deputy Inspector General of the Crime Branch (CID), having been satisfied that the investigation was not proceeding on the right lines, sent a reliable person to take over the matter and accordingly Inspector Kulkarni came on the scene. The delay to trace the criminals was, therefore, natural and we accept the finding of the High Court that it has been satisfactorily explained and the defence cannot be allowed to make out an excuse on that ground.

10. This, however, does not conclude the case. The prosecution has a duty to lead reliable evidence on the basis of which it can be held that each of the accused was, without reasonable doubt, guilty of the offence charged with. The explanation offered by the prosecution for the delay in bringing the evidence on the records of the investigation

A and taking steps against the accused although satisfactory cannot take the place of substantive evidence on which the accused can be convicted.

B 11. Before proceeding to consider the evidence led at the trial, we may deal with a legal plea raised by the learned counsel for the appellants on the basis of s. 169 Criminal Procedure Code. As has been mentioned earlier, the police submitted a report under s. 169 Cr. P.C. in favour of the members of the crew of the bus 'Mahalasa Narayani' which was accepted by the Magistrate. It is contended that in view of this order this case could not have been re-opened later, as the order was judicial in nature and closed the case once for all. There are more than one reason for rejecting this ground. The report which was accepted by the Magistrate exonerated only the other suspects and not the accused persons who were ultimately put on trial. Further as it was correctly pointed out by the Allahabad High Court in *Pradyum Narain Pandey v. State and Another*, [1968] ALJ 768, the order approving the report under s. 169 Cr. P.C. was not an order of acquittal so as to bar a second trial. It was not even an order of discharge. The point urged, therefore, has no substance and is rejected.

E 12. The facts that Chandrakala was travelling in the bus Mahalasa Narayani on the journey from Goa to Bombay, she got down from the vehicle at Bharana Naka near Visava Hotel, and did not board it when it started on its onward journey to Bombay with her luggage have been proved by the evidence of many witnesses including the bus conductor (P.W. 21) and has not been challenged before us by the learned counsel for the appellants. It has further been conclusively established that her dead body was discovered in a paddy field belonging to the accused no. 5 at a short distance from the Visava Hotel, and that she had died of an unnatural death. The medical evidence fully establishes that she was murdered and was also victim of rape. She was a young woman travelling without a companion, and was thus vulnerable to the evil designs of men of low morals and high sexual urge. From the evidence of her brother and brother-in-law it becomes clear that she did not have any enemy who could have been interested in killing her. Theory of suicide introduced during the investigation has been fully exploded and it has been firmly established that somebody placed a suicide note near her dead body with a view to misdirect the investigation, which was successful to a degree at the initial stage. Theft could not have been the cause of her death is amply demonstrated by the fact that the ornaments on her person were left behind by the criminal.

13. The buses used to stop at Bharana Naka for about 45 minutes to enable the passengers and the members of the crew to have their evening meals. So far the members of the view were concerned, they had to spend about 15 minutes in refuelling the bus. The passengers got their dinner at the hotels and on the fateful day those who were travelling by Mahalasa Narayani bus went to Visava Hotel. The evidence also indicates that when Chandrakala did not return to the bus, which had to leave for Bombay without her, her absence was noticed but the crew could not have detained the bus indefinitely as the other passengers had to proceed to Bombay. There were 2-3 other similarly looking buses halting at Bharana Naka before proceeding to their respective destinations and the possibility that she might have boarded a wrong bus was considered. In any view, the conduct of the members of the crew could not be treated with suspicion for having proceeded on their journey without waiting further. The High Court has taken all these in consideration and has further analysed the other evidence indicating that there was no room for entertaining any suspicion against the members of the crew and it should have been apparent to any person, more so to the local police, that they were entirely innocent. In this background the police investigation was pursued in a completely wrong direction and without taking care to either (i) fix the place of occurrence, or (ii) to use the dog squad, or (iii) to proceed further with the investigation against the accused no. 1 found with scratches on his face, or (iv) to disassociate the accused no. 5, father of the accused no. 8 and the owner of the hotel where the accused no. 1 was working as a bearer from the investigative process. The High Court has rightly pointed out the evidence and the telling circumstances for coming to the conclusion that the investigation in the case, while it was in the hands of Khed Police Station, was under the influence of outside agency and the police officers were directly associated in attempting to procure false evidence against innocent persons. In this background the evidence of the three eye witnesses has to be scrutinised.

14. Let us first take up the testimony of Suman (P.W. 14). At the time of the crime she was about 15 years old. She was a resident of village Kudavashiv about 2 miles from Bharana Naka and was a domestic servant working for another hotel called Satkar next to Visava Hotel. Her elder sister Vasanti (P.W. 16) was serving in another local hotel and the two sisters were coming from the village together. They had an old acquaintance with a Panchal family of Bharana Naka who had their house behind Poonam Hotel in the neighbourhood. The Panchals were celebrating Navratra by arrang-

A ing a dance programme and Suman (P.W. 14) and Vasanti (P.W. 16) were staying with them during the night of 8.10.1975. This was not the first occasion for them to stay with the Panchal family at Bharana Naka, they were welcome on earlier occasions also. This time, however, the younger brother aged about 5 named Eknath was also in the company of the two sisters. Suman has explained her relationship with

B the Panchal family and specially the lady of the family Malati Panchal and has given the details when she stayed out with them in the past. On the 8th October she had gone to Visava Hotel at about 9 in the evening and had the occasion to observe Chandrakala, wearing a black blouse, from a close distance. Her movements, if examined with her entire deposition, must be held to be natural and not at all strange. After

C leaving Visava Hotel the witness went to the betel shop of Ram Bhu Patne (P.W. 10) to purchase Pan Supari for her sister. This shop is adjacent to the Hotel. From there she saw the woman with black blouse she had earlier observed in the Visava Hotel, that is Chandrakala, proceeding towards the left side of the road. Accused no. 1, Ravikant followed her and then she heard a sound of protest with the words "Aai-ga". She saw the lady in urinating posture when the accused no. 1 caught hold of her from the back. She also saw two

D other persons going in that direction. She claims to have reported this to her sister Vasanti (P.W. 16) and Malati Panchal (P.W. 25). She was questioned at considerable length and has stood the cross-examination very satisfactorily. Since her evidence has been discussed

E at considerable length in the impugned judgment, we do not consider it necessary to repeat the same. We agree with the High Court for accepting her as a truthful person. Her evidence has been corroborated by the other prosecution witnesses.

15. The other two eye witnesses Shirang (P.W. 17) and Jagannath (P.W. 18), were about 12 years of age at the time of the occurrence. The trial judge was mindful of the fact that the witnesses were of tender age and accordingly took all necessary precautions which were expected to be taken before recording their statements in the form of questions and answers. Both of them were engaged in selling sodawater on commission basis and by their answers to the searching

F questions put to them in their gruelling cross-examination they demonstrated that although young in age and not enjoying any special status they are dependable witnesses with respect for truth. The pressure which was exerted on them during the course of the investigation to win them over in the interest of the accused persons and their reaction have been discussed by the High Court in great length and we agree

G that the two boys cannot be rejected as liars.

H

16. In view of the very exhaustive discussion by the High Court of the evidence of all the three eye witnesses, we do not consider it necessary to detail them again. So far as the accused no. 1 is concerned, there does not appear to be any doubt that he caught hold of Chandrakala from behind and walked away in the dark. The scratch marks on his face noted by the Sub-Inspector Ghosalkar at the very initial stage of the investigation were, in view of the medical evidence, likely to have been caused by the deceased in an attempt to resist his advances and furnish circumstantial support to the case against him. The motive appears to be apparent that she was forcibly carried away for the purpose of rape. The Chemical Analyser's report proves that the deceased was subject to sexual intercourse and the facts that she was killed in the process and the accused no. 1 got scratches on his face caused by human nails, along with the evidence of the eye witnesses, fully establish that the accused no. 1 had committed rape on her. The accused having caught hold of the victim from behind was not likely to get his face scratched at that stage. He must have got the injury when he was facing the lady. Even if it be assumed in his favour that the actual acts of rape and murder were performed by his accomplices, he cannot escape the criminal liability. Accordingly, we agree with the findings of the High Court recorded against him (the appellant no. 1).

17. So far the other two appellants are concerned, the position is a little different. The evidence in the case creates serious suspicion against them but falls short of establishing beyond reasonable doubt the offences with which they have been charged. Suman (P.W. 14) in her evidence did not claim to have identified either of them. She stated that after she saw the appellant no. 1 Ravikant catching hold of Chandrakala from behind, she observed two persons moving in that direction but did not claim that they were appellants no. 2 and 3. Even those two unidentified persons were seen by the witness merely proceeding in the direction where the appellant no. 1 had forcibly caught hold of Chandrakala. Jagannath (P.W. 18) identified them as appellant no. 2 and 3 but said that they did not help the appellant no. 1 in lifting and carrying away Chandrakala. Their case is, therefore, clearly distinguishable from that of the appellant no. 1 against whom the consistent evidence of all the three witnesses proved that he had forcibly carried off the victim girl. His face also had received scratches as discovered by the Sub-Inspector at the very earliest. That is not the position with respect to the other two appellants who are entitled to benefit of doubt. We, therefore, set aside their conviction and sentence and allow Criminal Appeal No. 371 of 1978 so far they are concerned. This, however, does not mean that the appellant no. 1 was

A acting single handed in the commission of the crime.

18. In the result, the appeals of the appellant no. 1 are dismissed and his conviction under s. 366 read with s. 34, s. 376 read with s. 34 and s. 302 read with s. 34 I.P.C. and sentence as directed by the High Court are confirmed. The appellants no. 2 and 3 are given benefit of doubt and are acquitted and the Criminal Appeal No. 371 of 1978, so far as they are concerned, is allowed.

B

R.S.S.

CA 372/78-dismissed
CA 311/78 allowed in respect of
appellant 2 and 3 only