

Rahim Beg & Another

Vs

State of U.P.

Criminal Appeal Nos. 88 and 89 of 1971

(J. M. Shelat, H. R. Khanna, JJ )

20.04.1972

JUDGMENT

KHANNA, J. -

1. Rahim Beg (22) and Mahadeo (30) were convicted by Additional Sessions Judge Rae Bareli under Sections 302, 376 and 404, Indian Penal Code and each of them was sentenced to death on the first count, rigorous imprisonment for a period of 10 years on the second count and rigorous imprisonment for a period of one year on the third count. The conviction and sentence of the two accused were affirmed by the Allahabad High Court. The two accused have now come up to this Court in appeal by special leave.

2. Rahim Beg accused is a bachelor. At the relevant time he was a village chowkidar and had a cycle repair shop. Mahadeo accused has got wife and children and at the relevant time ran a betel shop. The two accused resided at the time of the present occurrence in Muraika Purwa, a small hamlet at a distance 2 1/2 furlongs from village Amawan in district Rae Bareli. There are about 27 houses in that hamlet. Kesh Kali deceased, who was aged about 12 or 13 years at the time of the present occurrence, also resided in that hamlet with her father Ramjas (P.W. 1). Kesh Kali was married about six years before the present occurrence but her Gauna ceremony had not so far been performed. She used to put on a silver Sutya Ex. 1, a pair of silver Tarya Ex. 2 and a pair of silver bangles Ex. 3. Sometime before the present occurrence Ramjas agreed to supply milk to Ramesh Chand of Amawan Hospital. Kesh Kali in this connection used to take one seer of milk every morning in a Handia (earthen pot) Ex. 4 to the quarter of Ramesh Chand. On the morning of August 3, 1969, as usual, Kesh Kali took milk in Handia Ex. 4 to the quarter of Ramesh Chand and delivered and milk to Smt. Om Sri (P.W. 17) wife of Ramesh Chand, at 7 a.m. Kesh Kali thereafter left the quarter of Ramesh Chand with the Handia to go back to her house. At about 8 or 9 a.m. on that day Parmeshwar Dayal (P.W. 6), liquor shop contractor, saw Kesh Kali pass in front of the cycle repair shop of Rahim Beg accused. Rahim Beg was at that time talking to Mahadeo accused. Rahim Beg then told Kesh Kali to stop. He also purchased 100 grams of Andarsa (a kind of sweet) from the shop of Parmeshwar Dayal and offered it to Kesh Kali, but she declined to take the Andarsa. Kesh Kali thereafter proceeded to her house. About two or four minutes thereafter, Rahim Beg and Mahadeo went in that direction in which Kesh Kali had gone. Ghazi (P.W. 2), whose field is at a distance of about 1 1/2 furlongs from the village abadi, saw Kesh Kali with Handia Ex. 4 at about 9 a.m. on that day going at a short distance from his field towards the village abadi. Ghazi also saw the two accused following Kesh Kali.

3. As Kesh Kali did not arrive at her house, her mother went at about 11 a.m. to Ramjas who was working in the field and told him that Kesh Kali had not returned after giving milk. Ramjas then

stopped ploughing the field and went to Amawan Hospital. Ramjas was told that Kesh Kali had gone away after giving milk. Ramjas then started making search for Kesh Kali. Ghazi P.W. then told Ramjas that he had seen Kesh Kali going towards the village abadi and that the two accused were following her. Ramajas thereupon informed the other villagers and both he and other villagers searched for Kesh Kali in the bushes. At about 4 p.m. during the course of search, Birpal came and informed Ramjas that the dead body of Kesh Kali was lying under a bush in a Bhinta. The said Bhinta is at a distance of about one furlong from the village abadi. On arrival at the Bhinta, Ramjas and his companions saw the dead body of Kesh Kali lying there. All the three silver ornaments which were on the person of Kesh Kali were found to be missing. There were black spots on her neck and blood was coming out of her vagina. A portion of Kesh Kali's dhoti was stuffed into her mouth. All the buttons of the front side of her blouse were open. Ramjas then went on a cycle to police station Maharajganj, at a distance of seven miles from the place of occurrence, and lodged there report Ka-6 at 6.30 p.m. After the first information report was recorded, Sub-Inspector Sripal Singh went to the place of occurrence. On arrival there, the Sub-Inspector prepared the inquest report and sent the dead body to the mortuary. Ramjas went with the dead body. The Sub-Inspector also took into possession Handia Ex. 4 which was laying near the dead body.

4. Post-mortem examination on the dead body of Kesh Kali was performed by Dr. V. K. Verma at 4 p.m. on August 4, 1969 in the mortuary at Rae Bareli.

5. On August 4, 1969 at about 10.30 a.m., it is stated, the two accused went to the house of Mohd. Nasim Khan (P.W. 4) in village Sakunpur, at a distance of one mile from Amawan. The two accused told Mohd. Nasim Khan that they had killed the daughter of Ramjas and Mohd. Nasim Khan should help them. On the enquiry of Mohd. Nasim Khan the two accused stated that both a of them had committed rape on the girl and had removed her ornaments and stuffed cloth in her mouth. Mohd. Nasim Khan was also told that the two accused had distributed the ornaments amongst themselves. The bangles of the deceased were stated to be with Rahim Beg, while Sutya and Tarya were stated to be with Mahadeo. According to the two accused, they had kept those ornaments in their respective houses. Leaving the two accused at his house, Mohd. Nasim Khan went to the village of Ramjas and told Sub-Inspector Sripal Singh about what he had been told by the two accused. The Sub-Inspector accompanied by three constables as well as Mohd. Nasim Khan, Chhedi and Gur Sewak went to the house of Mohd. Nasim Khan. When the two accused saw the police party, they tried to run away, but they were secured and put under arrest. Both the accused received injuries at the time of the arrest.

6. Rahim Beg on interrogation by the Sub-Inspector stated that he had concealed the bangles in his house and could get the same recovered. Likewise, Mahadeo accused stated that he had concealed Sutya and Tarya in his house and could get the same recovered. The Sub-Inspector, accompanied by Gur Sewak and others, then went to the house of Mahadeo. Mahadeo took Sutya Ex. 1 and Tarya Ex. 2 from out of earthen cornbin. The above ornaments were taken into possession and were put into a sealed parcel. Rahim Beg accused then took Sub-Inspector Sripal Singh and others to his house and from there got recovered bangles Ex. 3 by digging out the floor. The pair of bangles too were made into a sealed parcel.

7. On August 5, 1969 at about 5.00 p.m. Mahadeo and Rahim Beg accused were examined in district jail hospital, Rae Bareli by Dr. R. N. Katiyar. Mahadeo accused was found to have six contusions on his person. Two of these injuries were found on X-ray to be grievous as they had resulted in the fracture of radius bone. Rahim Beg had one abrasion on the front side of his left knee. All injuries of Mahadeo accused were 1 1/2 day old, while that of Rahim Beg was 2 1/2 days

old. The doctor also examined the male organs of the two accused but did not find any injury or other appearance of rape on the male organs. The dhoti and bush shirt which Mahadeo accused was wearing were taken by the doctor into possession. The Langot of Rahim Beg accused too was taken into possession. These clothes were made into sealed parcels and were sent to the police.

8. The sealed parcels containing the Langot of Rahim Beg, the dhoti and bush shirt of Mahadeo as well as the dhoti of Kesh Kali deceased were sent to the Chemical Examiner as well as to the Serologist. Their reports showed that the Langot of Rahim Beg as well as the dhoti of Kesh Kali deceased were stained with human semen. Human blood was found on the bush shirt of Mahadeo and the clothes of Kesh Kali deceased.

9. At the trial the plea of Rahim Beg accused was denial simpliciter. He, however, admitted that his Langot had been taken into possession, but he did not know that the same was stained with semen. According to Rahim Beg, he was falsely involved in this case because the prosecution witnesses as well as the Sub-Inspector were inimical to him. He also gave details to show that the witnesses were inimical to him. Rahim Beg added that he had gone to the police station at about 10 a.m. on the day of occurrence as the pay of chowkidars was to be disbursed on that day. He was given a beating and detained at the police station.

10. Mahadeo, like Rahim Beg, denied all the prosecution allegations against him. Mahadeo also denied that his dhoti and bush shirt had been taken into possession. No question was put to Mahadeo that his bush shirt was stained with human blood. According to Mahadeo, he had gone to the police station with Ramjas when the Sub-Inspector ordered both of them to sit there. Mahadeo was given a beating by the Sub-Inspector, as a result of which he received various injuries. In defence, the accused examined one witness, Dr. R. N. Katiyar, regarding the injuries on their persons.

11. Learned Additional Sessions Judge held that the two accused had raped Kesh Kali after having thrust a part of her dhoti in her mouth and had strangled her so that she could not narrate the occurrence to any one. It was further held that the two accused had removed the three silver ornaments which were on the person of Kesh Kali.

12. The learned Judges of the High Court in maintaining the conviction of the accused relied upon the evidence of Ghazi P.W. that he had seen the two accused following Kesh Kali deceased on the day of occurrence. Reliance was further placed upon the evidence of Mohd. Nasim Khan P.W. that the two accused had made an extra-judicial confession before the witness. The third circumstance relied upon by the High Court was the recovery of ornaments belonging to the deceased from the houses of the accused in pursuance of the disclosure statements. Lastly, reliance was placed upon the fact that the Langot of Rahim Beg had stain of human semen and the bush shirt of Mahadeo accused was stained with human blood. It was held on the basis of the above evidence that the two accused had committed rape upon Kesh Kali deceased and had thereafter strangled her to death in order to hide their detection. The accused were further found guilty of removing the silver ornaments of the deceased.

13. Mr. Varshanya has argued on behalf of the accused in appeal that they have been falsely involved in this case. As against that, Mr. Rana on behalf of the State has canvassed for the correctness of the view taken by the High Court.

14. It cannot be disputed that Kesh Kali deceased, who was aged 12 or 13 years, was the victim of a most heinous crime inasmuch as she was raped and thereafter strangled to death. Dr. Verma, who

performed post-mortem examination on the body of Kesh Kali, found contusions on both sides of her face, neck, chest and the arms. Abrasions were also found on both her legs as well as on the neck. There was 1/2" long vertical tear which started from the lower portion of the junction of labia majora. Clotted blood was present on the margin while blood was found in the vagina. Hymen and vagina were found to be torn. Subcutaneous tissue of the neck portion was congested. Brain and membranes too were congested. Likewise, there was congestion in the larynx and the lungs. Hyoid bone was fractured. Frothy blood mucus was found in the lungs. Death, in the opinion of the doctor, was due to asphyxia as a result of pressing of the neck and the blockade in the passage of the mouth. The vaginal injuries, the doctor added, were the result of rape.

15. According to the prosecution case, it were the two accused who had committed rape upon Kesh Kali and thereafter strangled her to death and removed her ornaments. We have been taken through the evidence on record, and are of the opinion that there are a number of circumstances which create considerable doubt regarding the guilt of the accused. This Court does not normally reappraise evidence in an appeal under Article 136 of the Constitution. That fact would not, however, prevent interference with an order of conviction resulting in death sentence to two persons if on consideration of the vital prosecution evidence in the case this Court finds it to be afflicted with ex facie infirmities and both the trial court and the High Court are found to have failed to attach due importance to those infirmities.

16. The first piece of evidence relied upon by the prosecution regarding complicity of the two accused is the evidence of Parmeshwar Dayal (P.W. 6), according to whom Rahim Beg offered Andarsa to Kesh Kali at about 8 or 9 a.m. on the morning of the day of occurrence after purchasing that Andarsa from the shop of the witness. Kesh Kali, however, declined to take that Andarsa from Rahim Beg and proceeded towards her house. The witness added that two or four minutes after Kesh Kali had gone towards her house, Rahim Beg and Mahadeo accused, who too was with Rahim Beg, went in the direction to which Kesh Kali had gone. Parmeshwar Dayal admits that when Ramjas was making search for Kesh Kali, he told him (Ramjas) about the above incident regarding the offer of Andarsa to Kesh Kali and about the two accused having followed her. Ramjas made no mention in the first information report about his having been told anything by Parmeshwar Dayal. There is, indeed, no reference at all to Parmeshwar Dayal in the first information report. Had something relating to Kesh Kali transpired in the presence of Parmeshwar Dayal on the morning of the day of occurrence and had Parmeshwar Dayal mentioned about it to Ramjas, the same fact must have found a prominent mention in the first information report. The fact that there was no reference to Parmeshwar Dayal in the first information report shows that not much weight can be attached to the evidence of Parmeshwar Dayal. Parmeshwar Dayal, indeed, is given a lie by Ramjas P.W., whose evidence shows that excepting Ghazi, none else had told him about his having seen Rahim Beg and Mahadeo accused following Kesh Kali. In the face of the aforesaid circumstances, no reliance can be placed on the testimony of Parmeshwar Dayal.

17. The next piece of evidence relied upon by the prosecution is the evidence of Ghazi (P.W. 2), who has deposed that when he was working in the field on the day of occurrence at about 9 a.m. he saw Kesh Kali going on the chak road being followed by the two accused. Ghazi, P.W. admits that one Hub Lal was present with him at that time. Hub Lal, however, has not been examined as a witness to corroborate Ghazi. Apart from that we find that the previous statement of Ghazi, with which he was confronted, shows that when he was the two accused, they were going on the regular path towards the village abadi. The two accused are residents of the village and if after Kesh Kali had gone towards the village abadi the two accused also went towards the village abadi by the regular path, no sinister significance can be attached to that fact.

18. We may now deal with the evidence regarding the extra-judicial confession of the two accused to Mohammad Nasim Khan (P.W. 4) and the recovery of ornaments belonging to the deceased from the two accused. It is primarily upon these two pieces of prosecution evidence that the conviction of the accused has been based. So far as the confession to Mohd. Nasim Khan is concerned, we find that, according to the said witness, the two accused came to him at his house in Sakunpur on August 4, 1969 and told him about their having raped and killed the daughter of Ramjas by strangulating her as well as regarding the removal of her ornaments. Mohammad Nasim Khan belongs to another village. There was no history of previous association between the witness and the two accused as may justify the inference that the accused could repose confidence in him. In the circumstances, it seems highly improbable that the two accused would go to Mohammad Nasim Khan and blurt out a confession. It is also not clear as to why the two accused should try to run away on seeing the police party coming with Mohammad Nasim Khan if Mohammad Nasim Khan had gone to the police at the request of the accused. According to Mohammad Nasim Khan, Gur Sewak P.W. was with the police Sub-Inspector when the Sub-Inspector came with Mohammad Nasim Khan to his house and apprehended the accused. The evidence of Ramjas P.W., however, shows that Gur Sewak P.W. went with Ramjas to the mortuary on the night between 3 and 4 August, 1969 and that on August 4, 1969 Gur Sewak remained with Ramjas throughout the day at Rae Bareli. It was on August 5, 1969 that, according to Ramjas, he and Gur Sewak returned to their village after throwing the dead body of Kesh Kali in Sain river. It would thus appear that Ramjas P.W. who, being the father of the deceased, had no particular reason to damage the prosecution case and to support the accused has contradicted Mohammad Nasim Khan on the point that Gur Sewak P.W. was with the police Sub-Inspector on August 4, 1969. The fact that Mohammad Nasim Khan has deposed regarding the presence of Gur Sewak with the police Sub-Inspector with a view to support the prosecution case even though, according to Ramjas P.W., Gur Sewak was not with the police Sub-Inspector shows that Mohammad Nasim Khan has scant regard for truth. The evidence of extra-judicial confession is a weak piece of evidence. The evidence in this respect adduced by the prosecution in the present case is not only of a frail nature, it is lacking in probability and does not inspire confidence.

19. The alleged recovery of ornaments belonging to the deceased from the two accused in pursuance of their disclosure statements consists of the testimony of Gur Sewak (P.W. 13) and Sub-Inspector Shripal Singh (P.W. 15). According to these two witnesses, the two accused on August 4, 1969 disclosed after being apprehended at the house of Mohammad Nasim Khan that they had kept ornaments at their houses and that they could get the same recovered. Mahadeo accused thereafter got recovered Suty Ex. 1 and Tarya Ex. 2, while Rahim Beg accused got recovered pair of bangles Ex. 3 from their respective houses. As already stated above, the evidence of Ramjas P.W. shows that Gur Sewak P.W. went with Ramjas on the night between August 3 and 4, 1969 when the latter took the dead body to the mortuary at Rae Bareli. It is further in the testimony of Ramjas that on August 4, 1969 Gur Sewak remained throughout the day with Ramjas at Rae Bareli and that he and Gur Sewak returned to their village only on August 5, 1969. If Gur Sewak remained throughout the day on August 4, 1969 with Ramjas at Rae Bareli, the prosecution evidence regarding the recovery of ornaments from the two accused in pursuance of their statements in the presence of Gur Sewak can obviously be not accepted. Learned Additional Sessions Judge while dealing with the above testimony of Ramjas observed that no clear cut statement had been obtained from Ramjas that Gur Sewak also started from village Amawan along with the dead body and that the statement in question of Ramjas was obtained in a somewhat deceptive manner. In this connection we find that the statement of Ramjas on this point reads as under :

"I started with the dead body at 4 a.m. I had started with the dead body in the night. I have no exact idea about the time of that departure. I cannot tell exactly if on that day I started

with the dead body at 10 or 10.30 p.m. or in the morning. Gur Sewak, Sant Prasad of my village and my brother Ramphali had also gone with the dead body. Cart driver Ram Asrey who is also of my village was with me. I have not idea if Chhedi and Ram Sewak of my village had also gone with the dead body. We people reached Sadar Hospital, Rae Bareli next day at 7 - 8 a.m. I got the dead body after the post mortem at 6 p.m. All of us who had gone with the dead body after throwing the dead body in the Sain river came to Krishnapur at about 8 - 9 p.m. There we stayed for the whole night and therefrom we started next day in the morning for our village. We reached our village at about 10 a.m. Krishnapur is at distance 2 miles towards west from Rae Bareli. All persons had come by bullock cart and also returned by the same. Gur Sewak is a Murai and he is the son of Gajodhar. Gur Sewak is my brother by village relationship. Gur Sewak remained present throughout since his coming with the dead body and up to the return. In my village there is no other Gur Sewak s/o Gajodhar Murai."

There is no equivocation in the above statement of Ramjas. It is clear therefrom that Gur Sewak P.W. was one of those who accompanied Ramjas when the latter took the dead body to the mortuary. No note regarding any deception practiced upon Ramjas during the recording of his testimony was made by the trial judge, and it is not clear as to how Ramjas could make the above statement as a result of deception.

20. The learned Judges of the High Court while dealing with the above statement of Ramjas observed that he had a lapse of memory. As mentioned earlier, the statement of Ramjas regarding Gur Sewak being present with him throughout on August 4, 1969 in Rae Bareli is unequivocal and free from ambiguity, and we find it difficult to believe that Ramjas suffered from a lapse of memory in making that statement. Gur Sewak admits that he went to the mortuary on August 4, 1969, but, according to him, he went there on cycle at 3 p.m. and arrived at the mortuary at 4.30 p.m. This part of the statement of Gur Sewak appears to have been made with a view to explain his presence at the mortuary. The surrounding circumstances of the case, however, make it most unlikely that Gur Sewak would go to the mortuary at 3 p.m. The dead body of the deceased arrived at the Rae Bareli mortuary at about 6 or 7 a.m. on August 4, 1969. Post mortem examination, which generally takes place soon after the arrival of the dead body at the mortuary, should normally have been performed on the morning of August 4, 1969 and, as such, there could be no purpose for Gur Sewak to arrive at the mortuary at about 4.30 p.m. Gur Sewak while being present in the village could not anticipate that post mortem examination of the dead body of the deceased would not be performed till 4 p.m. on August 4, 1969.

21. It has been argued by Mr. Rana on behalf of the State that the evidence of recovery of ornaments from the accused is supported not only by the evidence of Gur Sewak but also by that of Sub-Inspector Sripal Singh. In this connection, we find that there is inherent material on the record to show that the Sub-Inspector is not a very truthful witness. According to the Sub-Inspector, he went with Ramjas after the registration of the case from the police station on cycle. The Sub-Inspector, has denied that he had gone to the spot by car. As against that, Ramjas P.W. has deposed that after he lodged report at the police station, the Sub-Inspector went to the spot by car, while Ramjas returned to the spot by cycle. Ramjas has added that when he reached the spot, the Sub-Inspector was already present there as the Sub-Inspector had arrived there one or two hours earlier. It is difficult to believe that Ramjas had a lapse of memory on this point also. In the face of the above statement of Ramjas, the evidence of Sub-Inspector Sripal Singh that both he and Ramjas went together on cycles from the police station to the spot and that they arrived there together cannot be accepted. The fact that the Sub-Inspector has deviated from truth even on a minor point would show

that implicit reliance cannot be placed upon his testimony. Apart from the above, we are of the opinion that if the Sub-Inspector could show Gur Sewak as a witness of recovery of the ornaments of August 4, 1969 even though Gur Sewak could not actually witness the recovery of the said ornaments on that day, this fact would vitiate the entire prosecution evidence regarding the recovery of ornaments.

22. It is in the testimony of Dr. R.N. Katiyar that when Mahadeo accused was examined by the witness on August 5, 1969 the said accused was found to have six injuries, out of which two were grievous. It is in the prosecution evidence itself that the above injuries were caused to Mahadeo by the police. According, however, to the prosecution the above injuries were inflicted when Mahadeo accused tried to run away. As mentioned earlier, it does not appear to be likely that the accused would try to run away on seeing the police party if the police party had arrived at the house of Mohammad Nasim Khan P.W. after that witness had been sent to the police by the accused themselves as alleged by the prosecution. In any case, even if the accused had tried to run away, it is not clear as to how it was necessary to cause as many as six injuries, out of which two were grievous with a view to apprehend Mahadeo. The injuries inflicted on the persons of the accused, in our opinion, lend support to the contention advanced on behalf of the accused-appellants that there was resort to third degree methods by the police during the investigation of the case.

23. Ghazi P.W. has deposed that he did not take notice of the ornaments of Kesh Kali when he saw her going towards the village abadi on the morning of the day of occurrence. Kesh Kali, according to the prosecution case, was returning to her house from the quarter of Smt. Om Sri (P.W. 17) when the present occurrence took place. No question was put to Om Sri as to whether Kesh Kali was on the morning of the day of occurrence wearing the ornaments in question. The mother of Kesh Kali has also not been examined as a witness. Birpal, who was the first to see the dead body of Kesh Kali and who would have been in the best position to state as to whether there were ornaments on her body or not at the time the body was first detected, has not been examined as a witness. The statement of Birpal was not even recorded during the investigation. According to Sub-Inspector Sripal Singh, the statement of Birpal could not be recorded by mistake. If it was the prosecution case that Kesh Kali was wearing silver ornaments when she left the quarter of Smt. Om Sri on the morning of the day of occurrence and that those ornaments were found to be missing when her dead body was detected by Birpal, it was, in our opinion, necessary to have statement of Smt. Om. Sri in this respect as well as to examine Birpal P.W. The failure of the prosecution to do so introduces an infirmity in the prosecution case.

24. Mr. Rana has pointed out that an entry was made in the station diary of police station Maharajganj in accordance with Regulation 295 of U.P. Police Regulations regarding the receipt on August 4, 1969 during the investigation of this case of the sealed parcels containing ornaments at the police station. This circumstance, in our opinion, does not in any way connect the accused with the commission of the crime, nor does it show that those ornaments were recovered from the houses of the accused in pursuance of their disclosure statements.

25. We may now advert to the stains of human blood on the bush shirt of Mahadeo and the stain of semen on the Langot of Rahim Beg. So far as the blood stains on the bush shirt of Mahadeo are concerned, it may be stated that no question was put to Mahadeo during the course of his statement under Section 342 of the Code of Criminal Procedure that his bush shirt was stained with blood. Mahadeo not having been asked to furnish an explanation regarding the stain of human blood on his bush shirt, no inference can be drawn against Mahadeo on that account. As regards the stain of semen on the Langot of Rahim Beg, we find that Rahim Beg is a young man of 22. The Langot in

question was dirty at the time it was taken into possession. It cannot be said as to how old was the semen stain on the Langot. The semen stain on the Langot of a young man can exist because of a variety of reasons and would not necessarily connect him with the offence of rape.

26. According to Dr. Katiyar, Medical Officer of District Jail, Rae Bareilly, if a girl of 10 or 12 years who is virgin and whose hymen is intact is subjected to rape by a fully developed man, there are likely to be injuries on the male organ of the man. No injury was, however, detected by the doctor on the male organ of any of the two accused. The absence of such injuries on the male organs of the accused would thus point to their innocence. The examination of the two accused by Dr. Katiyar, was on August 5, 1969. The two accused, however, had been arrested, according to the prosecution, on the morning of August 4, 1969. No cogent explanation has been furnished as to why they were not soon thereafter got medically examined by the police.

27. Rahim Beg accused is a bachelor, while Mahadeo accused, as mentioned earlier, is a married man with wife and children. It does not seem very likely that the two accused would join together at a morning hour to commit a crime of most depraved nature by committing rape on the minor daughter of one of their co-villagers and thereafter strangulating her to death. It also does not appear likely that they would take the ornaments of the deceased which would have furnished proof of their guilt to their houses. The greater likelihood appears to be that this depraved crime was the act of one individual.

28. Looking to all the circumstances, we are of the opinion that there are a number of circumstances which create considerable doubt regarding the complicity of the accused. The two accused must necessarily have the benefit thereof. We accordingly accept the appeal, set aside their conviction and acquit them.

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