

Kodali Purnachandra Rao and Another

Vs

The Public Prosecutor, Andhra Pradesh

Criminal Appeal No. 392 of 1974

(V.V. Chandrachud, P.N. Bhagwati, R.S. Sarkaria, JJ)

02.09.1975

JUDGMENT

SARKARIA, J. –

1. This appeal is directed against judgment of the High Court of Andhra Pradesh, converting - on appeal by the State - the acquittal of the appellants into conviction. Appellant No. 1 (for short, A-1) was an arrack contractor doing liquor business inter alia within the territorial jurisdiction of police station Indukurpet, district Nellore, while appellant No. 2 (for short, A-2) was a Sub-Inspector of Policy in-charge of this police station.

2. The appellants and one other person were tried by the First Additional Sessions Judge, Nellore on charges under Sections 120-b, 366, 376, 302/34, 201, 218, 468/34, 324, Penal Code relating to the abduction, rape and murder etc. of two sisters, named Kalarani and Chandrikarani of Nellore. The Session Judge acquitted the accused of all the charges. Against the acquittal of the appellants only the State preferred an appeal. The High Court party allowed the appeals, set aside the acquittal on charge Nos. 7, 8, 9 and 11 and convicted A-2 and A-1 under sections 201, 201/34, Penal Code and sentenced each of them to five years rigorous imprisonment. A-2 and A-1 were further convicted rigorous imprisonment each. They were also convicted under Section 468 and 468/34, Penal Code and sentenced to two years' rigorous imprisonment each. The sentences on all the counts were directed to run concurrently. Their acquittal on the remaining charges, including those of abduction, rape and murder, was upheld.

3. The facts of the prosecution case, as they emerge from the record, are as follows.

4. Kalarani and Chandrikarani deceased were two of the six daughters of PW 1, a legal practitioner of Nellore. Kalarani was aged 21 and a graduate from the local Women's Collage, Nellore. She used to be the President of the collage union and as such was well-known. Chandrikarani was aged 17 and a B.A. student in that very collage. On June 6, 1971 in the morning the deceased girls along with their parents and other sisters attended a marriage in the house of a family friend (PW 2). In the afternoon they went away from the marriage house saying that they were going out to have coca-cola. At about 4 p.m. they boarded a bus bound for Mypaud which is a seashore resort at a distance of 11 miles from Nellore. At about 5.40 p.m. they were seen alighting from the bus at Mypaud and then proceeding towards Sagarvilla, a travellers' bungalow situated near the seashore. They were last seen at about 6.30 p.m. on the seashore by PWs 11, 12, 13 and 14. Shortly thereafter, PW 18, a rickshawpuller was attracted to the seashore by the outcry of a woman. When he proceeded in that direction, Chandrikarani came running to him for help. PW 18 saw 4 persons, including A-1 and A-2 carrying away Kalarani who was groaning. On seeing PW 18, A-1 and A-2

turned on him. A-1 first slapped and then stabbed PW 18 on his right arm with a penknife, while A-2 gave blows on his back. Out of fright, PW 18 took to his heels while Chandrokarani was dragged away by the appellants.

5. On June 6, 1971 Chamundeshwari Festival was being celebrated in Gangapatnam and neighbouring areas at about 9 p.m. It was a bright moonlit night. On learning that the dead-body of a girl had been seen on the beach of Pallipalem which is a hamlet of Gangapatnam, many persons went there. PW 23, a fisherman of Pallipalem and PW 25, an employee of the Electricity Department and PW 25, an employee of the Electricity Department were also among those persons. It was the body of a girl, aged about 21 or 22 years, of fair complexion and stout build. Blood was oozing from a reddish abrasion on the finger of the body. Next morning, PW 23 went to PW 26, the sarpanch of Gangapatnam and informed the latter about the corpse on the seashore. PW 23 and PW 26 then went to the village Karnam (PW 27) as they found the village munsiff absent. The Karnam scribed a report to the dictation of PW 23. The sarpanch signed it and sent it at about 7.30 a.m. through a bus driver (PW 29) to the police station Indulirpet. The report was handed over in the police station at about 8.30 a.m. to the Head-Constable (PW 34), as A-2, the Sub-Inspector was away. The Head-Constable (PW 34), read the report and return it to PW 29 with the objection that the bearer should fetch a report drawn up on the printed form and signed by the village munsiff. Within a few minutes of the return of the report, between 8.30 and 8.45 a.m. A-2 returned of the police station. June at this juncture PW 49, a Personal Assistant to PW 38, a cine actor of Madras, and A-1 arrived there in car No. MSV 1539, driven by a motor driver. The car had met with an accident on June 4 within the jurisdiction of this police station. The car was therefore - at least theoretically - in the custody of the police.

6. A-1 was a mutual friend of A-2 and of the owner of the car. PW 49 therefore, had brought A-1 to the police station to help the former in getting the car released. A-1 introduced PW 49 to A-2. A-1 then asked A-2 if he knew that the dead-body of a girl was found floating on the seashore. A-2 then asked the Head-Constable (PW 34) if any report regarding the dead-body was received. The Head-Constable replied that a report from the sarpanch about the dead-body seen on the seashore at Pallipalem had been received but had been returned, as it was not from the village munsiff. A-2 side some person might have drowned as it usually happened on the seashore. The Head-Constable and A-1 told A-2 that the body found on the shore was said to have been wearing drawers and might be of a person of high-class family. A-2 said that he himself would go and enquire about it. A-2 asked PW 4 to take him in his car to the spot. Thereupon, A-1, A-2, PW 49, two constables and two others addition to the driver, proceeded in the car. After going some distance, the two "others" got down. A-1 and A-2 had a talk with them. The car was then taken to Ramudupalem. There at about 11.30 a.m., A-1 and A-2 met the sarpanch (PW 26) and asked him to follow them to Pallipalem. The car was then taken to Ramudupalem. There the constables were dropped. They left a message for the Karnam of the village to reach Pallipalem. Thereafter, they proceeded to the seashore of Pallipalem. The car was left at the canal before the sea.

7. A-2, A-1, PW 49 and PW 26 then at about noon, went to the beach the dead-body lay. PW 23 and PW 25 were guarding the dead-body. It was the body of a fair, stout girl aged about 20 years, who was wearing brassiers, blouse, striped drawers and a white petticoat, PW 23 handed over the ring MO 9 to A-2 after removing the same from the body. On being directed by A-2, PW 23 washed the face of the corpse. There was a mark on the forehead from which blood was oozing out. There was reddish abrasion on the thigh, and blood marks on the drawer of the dead-body. On seeing the blood marks on the drawer, A-2 said that she might be in menses. A-2 further remarked that the body appeared to be of a girl from a high-class family who had been out of doors. A-2 did not hold any

inquest there on the dead-body. He did not prepare any record there. He directed the village vettis (menials) to bury the dead-body forthwith while he himself proceeded along with his companions towards the village. In the distance they saw the constables coming towards them. A-2 signalled them not to come near the dead-body but to proceed to the travellers' bungalow at Mypaud, while A-2 and party went to Mahalaxamma Temple in village Pallipalem. There A-2 secured the signature of PW 25, PW 26, PW 28 and A-1 on a blank-sheet of paper. A-2 and his companions then went to the car. The Karnam (PW 27) was there. A-2 reproached the Karnam for coming late and added that he had finished all the work for which he (Karnam) had been sent for. He further told the Karnam that he had got the body buried. The Karnam asked as to why A-2 did not send the body for post-mortem examination. A-2 replied that the body was of a prostitute who had committed suicide and that he did not suspect any foul play and so he ordered burial. The karnam then enquired if any relation of the deceased had come. A-1 replied : "yes", while A-2 pointed towards PW 49 and said that he was the person connected with the deceased. A-1, A-2, PW 26, PW 27 and PW 49 then got into the car and proceeded. PWs 26 and 27 were dropped near their houses. On the way PW 49 asked A-2 as to why he had represented him (PW 49) as a relation of the deceased. A-2 assured PW PW that there was nothing to worry.

8. According to the prosecution, this deadbody found shore near Pallipalem - which is about 2 miles from Mypaud - was of Kalarani deceased who was well-known to A-2. In spite of it, in the inquest report (Ex. P-11) which was not prepared on the spot but some time later, A-2 wrote that the body was of a prostitute, named Koppulu Vijaya, daughter of Chandrayya, Baliya by caste of Ongole town who had on June 6, 1971, comes to Mypaud along with her prostitute friend Nirmala by bus APN 1400 at 5.45 p.m. A-2 ended the report with an emphatic note : "It is conclusive that the deceased (Koppulu Vijaya) died due to drowning". Despite the presence of injuries noticed on the dead-body" In order to support his version as to the cause of death A-2, according to the prosecution, falsely noted that the "stomach is bloated due to drinking of water".

9. The prosecution case further is that A-2 fabricated sometime after the burial of the dead-body, a false report (Ex. P-25) purporting to have been made to him on June 7, 1971 by one Nuthalapati Subbarao who despite the best efforts of the investigators has remained untraced and is believed to be a fictitious person. As this report has an important bearing on the points for determination, we will reproduce it in extenso :

Statement of Nuthalapati Subbarao, son of Venkateshwarlu, aged about 30 years, Vysya of Patha-Guntur:

Being an orphan for about 10 years, I have been doing brokerage in supplying extras in the cine field. Day before yesterday, i.e. on Friday at Chirala near lodges two girls Koppulu Vijaya, d/o Sundarayya of Ongole and Paranjapi Nirmal, d/o Raghavayya of Chilakuluripeta were met by me. I came to know that they live by prostitution. When i told them that I would join them in cinema they believed me and came with me. On Sunday, i.e. on 6.6.1971, in the morning we came to Nellore and stayed in Venkateswzra Lodge till 3.30 p.m. Their deamand came for the girls. I booked two males for these two girls. Afterwards dispute arose between me and the girls in respect of my brokeraeg, sharing of the money got by such prostitution out of the money collected. They scolded me in an angry tone and went away crying and weeping and saying that I took them away from their places promising to join them in cinema cheated them and committed rowdyism without giving them money due to them. They had only wearing apparel with them. Vijaya is short, stout and fair.

Nirmala is lean, tall and fair. They did not come back. I waited for a long time. I searched for them at the railway station, bus stand and lodges. When I was inquiring at Atmakur bus stand I came to know that the girls went by Mypaud bus at 4.30 p.m. I went to Mypaud and enquired. It was learnt that the two girls went towards north of Pattapalaem and entered the sea at 6 p.m. Having learnt that the body of Vijaya was washed ashore I went and saw the deadbody. She had died and appears to have committed suicide. It was also learnt that the second girl also committed suicide but her deadbody was not washed ashore. Other facts about them are not known.

sd/- N. Subbarao Taken down by me. read over to the person and admitted by him to be correct. On this 7th day of June, 1971, at 11-30. Sd/- B. Manoharan S.I., E-3 dt. 7.6.1971.H.C. 1212 Issue F.I.R. u/s 174 Cr. P.C. and send copy to me for investigation. Sd/- B. Manoharan, S.I., E-3 Camp Mypaud, dt. 7.6.71.##

10. The deadbody of the other Girl, Chandrikarani was not washed ashore. But in the morning of June 7, 1971, PW 36, a fisherman saw the deadbody of a girl aged 16 or 17 years floating in the sea at a distance of about 2 1/2 or 3 miles from Pallipalem. PW 36 saw a piercing wound on the left arm and black marks, indicating throttling, on the neck of the dead-body. PW 36 removed a wrist watch, a ring and an earring from the dead-body and allowed it to drift away. These articles were later handed over by PW 36 to the Investigating Officer and were identified to be of Chandrikarani.

11. The disappearance of the deceased girls caused a sensation. The local newspapers took up the matter. Representations were made to the Home Minister to get the matter investigated by the C.I.D. The Superintendent of Police directed PW 59, a probationer D.S.P., to investigate the matter. On June 18, 1971, at the request of PW 59, the Tehsildar (PW 40) proceeded to exhume the dead-body of Kalarani. The place was pointed out by PW 33. A-2 was also present there. On digging the pit only some clothes were found in it. But close to it, was found a skeleton. No marks of violence were detected on the skeleton by the Medical Officer, PW 45, who examined it at the spot. The skeleton was sent to PW 44, Professor of Forensic Medicine, who opined that it was of a female aged between 18 to 25 years. Further investigation of the case was taken over by PW 60, the C.I.D. Inspector who, after completing it laid the chargesheet against A-1, A-2 and one other person in the court of the Magistrate.

12. A-1 pleaded that he had been falsely implicated. He stated that he knew nothing about the deceased girls. He added that on June 7, 1971, he was in the travellers' bungalow at Mypaud and went away from that place in the afternoon. He admitted that he had accompanied PW 49 to the police station on June 7, 1971 to assist the latter in getting the car released, and from the police station both of them (A-1 and PW 49) on being asked by A-2, went with the latter in the car to the spot. He further admitted that he had slapping on a sheet of paper like others but he expressed ignorance if any inquest was held by A-2.

13. The plea of A-2 was that he had duly made an inquiry as to the cause of the death and prepared the inquest report Ex. P-11. He denied that there were injuries on the deadbody. Pleading alibi for June 5 and 6, 1971, he said that on these dates he was away on casual leave to attend the marriage of a cousin at Chiraja which is at a distance of about 100 miles from Indukurpet. He said that he had proceeded to Chiraja in a car on the 5th morning, and after attending the marriage returned to Nellore on the 6th by 5.30 p.m. and then on the morning of June 7, resumed duty at Indukurpet police station. On receiving information about the corpse of a female washed ashore, he went to Mypaud and enquired about a person named Nathalapati Subbarao. The latter gave the information.

Ex. P 25, which he (A-2) reduced into writing and then held inquest in the presence of this Subbarao and other panchaitdars at the spot. He did not know if Vijaya and Nirmala mentioned in Ex. P 25 and Ex. P 11 were fictitious persons. He further admitted that he was unable to produce this Subbarao in response to the memo dated June 15, 1971, issued by the D.S.P. (PW 59) during the stipulated time of 48 hours.

14. The Additional Sessions Judge held that the deadbodies found floating near the seashore were of Kalarani and Chandrikarani. He further found that PW 18, who claimed to be an eyewitness of the occurrence, was not worthy of credit, and consequently, the charges of abduction, rape and murder had not been proved against the accused. Regarding the charge under Section 201, Penal Code, the trial Judge held that prosecution had failed to prove that an offence had been committed in respect of the deceased. While holding that the identity of the deceased was wrongly mentioned in Ex. P 25 and Ex. P 11 as Vijaya and Nirmala, prostitutes, he did not rule out the possibility of suicide. In the result, he acquitted the accused of all the charges.

15. In appeal by the State, the learned Judge of the High Court, after an exhaustive survey of the evidence, upheld the acquittal of the accused in respect of the charges of abduction, rape and murder, but reversed the findings, of the trial Judge in regard to the charges under Sections 201, 318 and 468 Penal Code against A-1 and A-2.

16. In order to bring home an offence under Section 201, Penal Code the prosecution has to prove :

- (1) that an offence has been committed;
- (2) that the accused knew or had reason to believe the commission of such offence;
- (3) that with such knowledge or belief he
 - (a) caused any evidence of the commission of that offence to disappear, or
 - (b) gave any information respecting that offence which he then knew or believed to be false.
- (4) that he did so as aforesaid, with the intention of screening the offender from legal punishment;
- (5) If the charge be of an aggravated form, as in the present case, it must be proved further that the offence in respect of which the accused did as in (3) and (4), was punishable with death, or with imprisonment for life or imprisonment extending to ten years.

17. The High Court has found that all these ingredients of Section 201 were established in the present case.

18. Mr. Basi Reddy, learned Counsel for the appellant assails the finding of the High Court with particular reference to the first and the last ingredients enumerated above. Counsel contends that the conviction under Section 201 cannot be sustained as there is no credible evidence on record to show that an offence had been committed. It is maintained that the prosecution has been unable to prove that the two girls met a homicidal death. In all probability, proceeds the argument, the deceased girls committed suicide by jumping into the sea and were drowned.

19. For reasons that follow we are unable to accept these contentions.

20. The concurrent finding of the courts below that the dead-body washed ashore near Pallipalem was of Kalarani deceased and that seen floating in these, two miles away was of Chandrikarani deceased, has not been disputed before us. It is also not controverted that these two girls died an unnatural death on the night between June 6 and June 7, 1971, sometime after 6.30 p.m., at Mypaud. Only the cause of their death is in issue. In regard to such cause, there could be only three possibilities, the choice of any of which would lead to the exclusion of the other two.

21. After a careful consideration of these alternatives in the light of evidence on record, the learned Judges of the High Court firmly ruled out the first and the second possibilities, and concluded in favour of the third.

22. In our opinion, the credible circumstantial evidence on record reinforced by the inferences available from the incriminating conduct of the appellants, particularly of A-2 in deliberately preparing false records to suppress the identity and cause of the deaths of the deceased girls, fully justifies the conclusion reached by the learned Judges. We, therefore, do not feel the necessity of embarking upon a reappraisal of the entire evidence. It would be sufficient to survey and consider the salient circumstances bearing on the alternatives posed above.

23. First, we take up the possibility of suicide. Mr. Reddy submits with reference to the statement of PW 1, the father of the deceased girls, that on a previous occasion both these girls had without the permission of their parents, run away from home and were ultimately traced to the Rescue Home in Madras; that Kalarani deceased had about 4 or 5 years before the occurrence taken an overdose of tranquillizers presumable to end her life; that they did not feel happy in their parental home and once attempted to join the Ashram. This background, according to the learned Counsel shows that the deceased had a pre-disposition to commit suicide. In the alternative, suggests Mr. Reddy, something might have happened at Mypaud on June 6, 1971, which impelled them to commit suicide. Might be the girls got themselves into such a situation that they thought suicide was the only course left to them to get out of the same.

24. We are not impressed by these arguments. It is wrong to assume that these girls were very unhappy in their paternal house, or their relations with their parents were estranged. Kalarani, particularly, was mature graduate girl of 22 years. She used to be the leader of the college union. On the day of occurrence, the deceased girls along with their parents and sisters had participated in the festivities of a marriage in the house of a family friend. They took their meals in the marriage house. From Nellore, these girls brought change of clothes for two or three days' stay. Thereafter, they came happily to Mypaud. They first went to the travellers' bungalow and were then last seen together at about 6.30 p.m. on the seashore. It is in evidence that the evening of June 6, was an occasion of Chandamma Festival. Procession of the deity accompanied by festivities was being taken out by the devotees of the neighbouring villages. These circumstances unmistakable show that the deceased girls had come to enjoy and stay at the seaside resort of Mypaud for 2 or 3 days. They were not suffering from any mental depression or schizophrenia with suicidal tendencies.

25. Another circumstance in the case of Kalarani which is contraindicative of suicide is that her dead-body though seen within an hour or two of the occurrence on the beach, was in a semi-nude condition. The sari was not on her dead-body, which she was wearing when last seen at about 6.30 p.m. It can be argued that the sari was washed off her body by the seawaves. But considering that her dead-body was detected only within a couple of hours of the occurrence and the fact that it is

customary for women living in our near the coastal towns to tie their saris tightly, the possibility of the sari having been swept off by the seawaves was remote. The inference is that in all probability, she was not wearing this sari when her body was immersed in water. Ordinarily, no Indian woman would commit suicide by jumping into the sea by getting into such a near-nude condition and thereby expose her body to the risk of post-mortem indignity.

26. Another important circumstance which militates against the suggestion of the death of Kalarani from drowning is that when the dead-body was first seen at 9 p.m. Its stomach was not in a bloated condition; nor was any froth seen coming out of the mouth of the corpse. The face vouched by PW 23, a fisherman, who was rightly found worthy of credence by the High Court. It may be added that contrary to what PW 23 has testified A-2 in the inquest report said that the stomach was bloated with water and froth was coming out of the mouth. But as shall be presently discussed, these notes regarding the condition of the dead-body were invented by A-2 to support his false report that the deceased had committed suicide and her death was from drowning. Medical jurisprudence tells us that in a case of death from drowning, the stomach is ordinarily found bloated with air and water which is instinctively swallowed by the drowning person during the struggle for the (see Taylor's Medical Jurisprudence, 12th Ed., Vol. I, pp. 374-375).

27. The facts that the stomach was not filled with water and bloated and no froth was coming out of the mouth of the deceased are important symptoms which go a long way to exclude the possibility of death being as a result of suicide by drowning.

28. Then there injuries and blood marks on the dead-body. PWs 23, 25, 26 and 27 all testified with one voice that they had seen one injury from which blood was oozing out on the forehead, another on the thigh and blood marks on the drawer (undergarment) of the deceased. In examination-in-chief, even PW 49, who in cross-examination tried to dilute his version in a possible attempt to favour A-2, stated that he had seen a reddish stain (stain ?) on the forehead and blood marks on the drawer of the deceased. Out of PW 23, 25 and 26 were present near the dead-body when A-2, accompanied by A-1 and PW 49, went there to hold the pretence of an inquest. PW 23 was a fisherman of Pallipalem, PW 25 was also a resident of the same hamlet. He was an employee of the Electricity Department. PW 27 was the karnam of Gangapatnam. PWs 23 and 25 were among those villagers who had seen the dead-body washed ashore at about 9 p.m. on June 6, 1971. The High Court found that the version of these witnesses in regard to the injuries and blood marks on the dead-body was entirely reliable. No reason has been shown why we should take a different view of their evidence.

29. It is further in the evidence of PWs. 23, 25, 26 and 49 that when the blood marks on the drawer were pointed out to A-2, the latter ignored it saying that the girl had been out of doors and was in menstruation. Contrary to what he and the PWs had observed at the spot, A-2 wrote in the inquest report, P-11, Col. VII : "There are no injuries on the deadbody".

30. Having excluded the possibility of suicide, we may now consider whether the deaths of these girls were accidental. It is nobody's case that on June 6, 1971, any seacraft, vessel or boat met with an accident off or nearabout Mypaud resulting in loss of human life. No suggestion of accidental death of any person, much less a woman, off/or on the seashore near or far from Pallipalem was put forward by the prosecution their statements recorded under Section 342, Cr. P.C. Indeed, the learned Counsel for the appellants has not pursued any such line of argument. We have, therefore, no hesitation in negating the possibility of accidental death.

31. This process of elimination inevitably leads us to the conclusion that in all probability death of these girls, at any rate of Kalarani was due to culpable homicide.

32. Now we come to the last but the most telling circumstance which not only confirms this conclusion and puts it beyond doubt, but also unerringly establishes, by inference the other ingredients of the offence, including that the accused knew or had reason to believe that culpable homicide of Kalarani had been committed. This circumstance is the conduct of A-2, in intentionally preparing false records and its abetment by A-1.

33. From its very start the investigation conducted by A-2 was dishonest and fraudulent. He intentionally indulged in suppressio veri and suggestio falsi at every step. He had been informed by the Head Constable (PW 34) at about 8 or 8.45 p.m. in the police station that a report from the sarpanch had been received about the dead-body of a girl bearing injuries, found washed ashore near Pallipalem. This information which was passed on to A-2 and on receiving which he proceeded from the police station for investigation, was the area F.I.R. It was the duty of A-2 to enter faithfully and truly the substance of this information in the Station Diary and to record further that he was proceeding for investigation on the basis thereof. Instead of doing so, he intentionally suppressed the factum and substance of this first information and the real purpose of his subordinates in his immediate presence or under his supervision. Instead of retrieving the written report that had been first received at 8 a.m. in the police station and was returned by the Head-Constable to the sarpanch, he fabricated the document Ex. P-25, purporting to be the first information report given to him at Mypaud by one N. Subbarao. The false story contained in this document has been substantially repeated in the inquest report, Ex. P-25.

34. PWs 23, 25, 27 and 49 discount the presence of any such person, named N. Subbarao either at the inspection of the dead-body on the seashore by A-2 or at the temple, where according to A-2, he prepared the inquest report. None of these PWs has sworn that a statement of any N. Subbarao was recorded in their presence by A-2. No specific question was put by the defence to PW 49 in cross-examination to establish that the report Ex. P-25 was scribed by A-2 at Mypaud at about 11.30, to the dictation of N. Subbarao or any other person, although the witness was generally questioned as to the number of person carried in the car. PW 27, the Karnam, has definitely excluded the presence of any informant named Subbarao. PW 27 testified that after the inquest, A-1, A-2, PW 26 and "a new person" implying PW 49, met him and thereafter all the five (including PW 27) got into the car and proceeded to the village. PW 27 did not vouch the presence of a sixth man in the car. Only PW 26 has stated that A-2 has recorded the statements of witnesses, including that of a person named N. Subbarao. PW 26 had reason to tell a lie on this point. PW 26 has admitted that at the time of the inquest, he was an accused in a criminal case of Indukurpet police station. A-2 was at the material time in-charge of the police station and was presumably concerned with the investigation of that case against PW 26. PW 26 therefore, appears to have deviated from truth in regard to the presence of N. Subbarao, under the influence of the accused. In any case, the evidence of PW 26 on this point stands contradicted by the reliable testimony of PWs 23, 25, 27 and 49.

35. In the inquest report, as also in Ex. P-25, the address of this mysterious person is recorded as "Nuthalapati Subbarao, son of Venkateswarlu, aged about 37 years, Vysya of Patha Guntur". Despite efforts, the Investigating Officers, PWs. 59 and 60, could not trace on the basis of this address, any person bearing the said particulars at Patha Guntur or anywhere else in the district. In response to the memo issued by the D.S.P. (PW 59) A-2 could neither produce this N. Subbarao, nor give any indication about his existence, though A-2 claimed to have known him. For these reasons, the High Court was right in holding that this Nuthalapati Subbarao was a fictitious person of A-2's

imagination. Similarly, during investigation all efforts made by PWs 59 and 60 to trace and find if Vijaya and Nirmala prostitutes, represented in Ex. P-25 and Ex. P-11 as the deceased persons ever existed in flesh and blood, remained futile. In these premises, the High Court was right in concluding that Vijaya and Nirmala prostitutes were also the coinage of the brain of A-2.

36. It is necessary to say something more about Ex. P-25 because the entire story was spun around it by A-2. It did not see the light of the day till June 11. A-2 did not send it to the police station for registration before that date. It is in the evidence of PW 55, who at the material time was a Head-Constable posted in this police station. That after his departure on the morning of the 7th, A-2 returned to the police station on the 10th evening and it was then that he handed over this document to the witness with the direction that the latter should enter that report in the relevant register, dating it as June 7, 1971. The Head-Constable after slight hesitation agreed and inserted this report in the blank space meant for the entries of June 7, and thereafter as required by A-2, handed over to the latter, a copy of that report. A-2 also made an entry (Ex. P-34), in the General Diary of the police station, dated June 10, 1971 on June 11, 1971 at 2 a.m. It reads :

Returned to P.S. after leaving it on 7.6.71 at 9-30 a.m. visited Mypaud enroute to Gangapatnam at 11-00 a.m. recorded statement of N. Subbarao, sent to police station for issuing first information report u/sec. 174, Cr. P.C. then visited Pallipalem at 12.30 p.m. investigated, held inquest over dead-body of K. Vijaya. At 20.30 p.m. left village reached Mypaud at 21.30 hours, made enquiries in Cr. 48/71 and halted. On 8.6.71 visited Gangapatnam detailed duties for bandobust and visited Ravur, investigated, into Cr. 47/71, visited Nellore at 12.30 hours, did bandobust for festival and halted for the night. On 10.6.71 visited Gangapatnam, supervised and did bandobust for car festival at 00-30 hours, received first information reports in Cr. 49 to 51/71 at 00-45 hours, left the village with men and reached police station.

37. A mere glance at this report betrays its falsity. This shows how in his anxiety to suppress the truth he tried to reinforce and cover up one falsehood with another. In this connection, it may be noted that the D.S.P. persistently pressed A-2 was unable to supply any copy of the F.I.R and the inquest report. A-2 was unable to supply any copy of the F.I.R. before June 12, when the D.S.P. himself came to the police station and collected it. The D.S.P. (PW 59) testified that on June 11, 1971, he had questioned A-2 about the first information report and the inquest report. As a result he received a copy of the F.I.R. on the 12th but did not receive any copy of the inquest report. Consequently on June 14, 1971, he telephoned to A-2 to send the case diaries and inquest report without further delay. Despite these efforts, the D.S.P. did not receive those records on that day. On June 15, 1971, he issued a memo to A-2 directing the latter to produce immediately the complaint of N. Subbarao, the inquest report and the case diaries. It was only then that A-2 produced the persistently requisitioned records.

38. These inordinate delays in sending the records prepared by A-2 confirm the testimony of PWs 23, 25 and 49 that no inquest on the dead-body was held at the spot, nor was the inquest report or any other record prepared there and then, and that their signatures were contained by A-2 on a blank-sheet of paper. Of course PW 26 stated that A-2 had recorded statements of witnesses and had prepared the inquest report at the temple. As already noticed, it is not prudent to accept this version of PW 26. He had a motive to favour A-2. Moreover his version stands inferentially falsified by the circumstances, including the unusual delay in registering the report Ex. P-25 in the police station and in sending the copies of the records to the D.S.P.

39. Section 174, Cr. P.C. peremptorily requires that the officer holding an inquest on a deadbody should do so at the spot. This mandate is conveyed by the word "there" occurring in Section 174(1). Sub-section (3) of the section further requires the officer holding the inquest to forward the body with a view to its being examined. By the medical man appointed by the State Government in this behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless. The sub-section gives a discretion to the police officer not to send the body for post-mortem examination by the medical officer only in one case, namely, where there can be no doubt as to the cause of the death. This discretion however is to be exercised prudently and honestly. Could it be said in the circumstances of the case. That there was no doubt as to the death of Kalarani being from drowning ?

40. In this connection it is important to note that Kalarani was not a total stranger to A-2. It is in evidence that A-2. It is in evidence that A-2 used to go to Nellore for bandobust and there he had sufficient opportunity to come across Kalarani who was a prominent student-leader. The testimony of PW 47 is to the effect that when on July 17, 1971, A-2 came to him and requested the witness to dissuade the father of the deceased from getting the deadbody exhumed, he (A-2) admitted that Kalarani deceased was well-known to him.

41. The body was not in an unidentifiable condition. A-2 therefore could be under no mistake that it was the body of Kalarani deceased, particularly when he inspected it after its face had been washed by PW 23 under the orders of A-2. Despite such knowledge, he laid a false trail and prepared false record mentioning that the dead-body was of a prostitute named Vijaya.

42. Medical jurists have warned that in the case of a deadbody found floating in water, the medical man from a mere observance of the external condition of the body, should not jump to the conclusion that the death was from drowning. Only internal examination of the body can reveal symptoms which may indicate with certainty as to whether the death was from drowning or from unlawful violence before the body was immersed in water. This is what Taylor, the renowned medical jurist, has said on the point :

When a deadbody is thrown into the water, and has remained there some time, water, fine particles of sand, mud, weeds, etc. may pass through the windpipe into the large air-tubes. In these circumstances, however, water rarely penetrates into the smaller bronchi and alveoli as it may by aspiration, and even the water is found only in the larger air-tubes and is unaccompanied by mucous froth. Water with suspended matters can penetrate even to the distant air-tubes in the very smallest quantity, even when not actively inhaled by respiratory efforts during life. The quality, or nature of the suspended matter may be of critical importance.

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When decomposition is advanced the lungs may be so putrified as to preclude any opinion as to drowning but the demonstration of diatoms in distant parts of the body inaccessible except to circulatory blood, provides strong evidence of immersion in life - if not of death from drowning.

43. A-2 was a police officer of standing and experience. He knew the deceased. He saw injuries on her dead-body. He must have known - if he were honest - that in the circumstances of the case autopsy of the deadbody by a medical officer was a must to ascertain the cause of her death. Instead

of sending the dead-body for post-mortem examination, he in indecent haste, purposely got it buried without holding any inquest at the spot. He did not send for the relations of the deceased. Even a layman like the karnam (PW 27) felt something strangely amiss in this conduct of A-2. In response to the queries made by the karnam, A-2 made false excuses. He intentionally misrepresented (in concert with A-1) that PW 49 was a relation of the deceased. He flouted all the salutary requirements of Section 174, Cr. P.C. A-2's conduct in distorting and suppressing material evidence and in preparing false records (Exs. P-11 and P-25) as to the identity of the deadbody, the cause of the death and the falsification of the data bearing on that cause, could not be explained on any reasonable hypothesis save that of his guilt. The circumstances established in this case unmistakably and irresistibly point to the conclusion that within all human probability, accused No. 1 knew or had reasons to believe that Kalarani had been done to death by some person or persons. All the elements of the charge under Section 201 had thus been proved to the hilt against him.

44. Before considering the case of A-1, we may notice here the decision of this Court in *Palvinder Kaur v. State of Punjab* (1953 SCR 94 : AIR 1952 SC 354 : 1953 Cri LJ 154). This decision was cited by the learned Counsel. For the appellants in support of his argument that the circumstances : that the deceased died, that the appellant prepared false record regarding the cause of her death or caused post-haste disposal of the dead-body without any autopsy or its identification by the relations of the deceased, do not establish the cause of Kalarani's death or the manner and the circumstances in which it came about. Counsel laid particular stress on the observation of this Court in that case that in cases depending on circumstantial evidence courts should safeguard themselves against the danger of basing thier conclusions on suspicions howsoever strong.

45. The decision in *Palvinder Kaur's* case (super) is a precedent on its own facts. The observations of this Court to the effect, that

Jaspal died, that his body was found in a trunk and was discovered from a well and that the appellant took part in the disposal of the body do not establish the cause of his death or the manner and circumstances in which it came about.

cannot be construed as an enunciation of a rule of law of general application. Whether the circumstantial evidence in a particular case is sufficient and safe enough to warrant a finding that an offence has been committed, is a question which belongs to the realm of fact and not of law. So is the question whether the accused knew or had reasons to believe that such an offence has been committed. It is true that this question further depends on an assessment of the accused's mind. Nevertheless, it is a question of fact. "The state of a man's mind", quoth Lord Bowen, "is as much a fact as the state of his digestion".

46. In *Palvinder Kaur's* case (supra) there was, in the first place, no material, direct or indirect, justifying a finding that the death of Jaspal was caused by the administration of potassium cyanide and if the defence version was believed his death would be the result of an accident. If that version was disbelieved, then there was absolutely no proof of the cause of his death. In the method and the manner in which the deadbody of Jaspal was dealt with and disposed of by the accused did raise some suspicion but from these facts, the Court found it unsafe to draw a positive conclusion that he necessarily died an unnatural death. Nor could the possibility of the commission of suicide by Jaspal be totally ruled out.

47. The position of A-2 in the present case was very different. He was a police officer and as such was expected to discharge the duties entrusted to him by law with fidelity and accuracy. He was

required to ascertain the cause of the death and to investigate the circumstances and the manner in which it was brought about. His duty it was to make honest efforts to reach at the truth. But he flagrantly abused the trust reposed in him by law. He intentionally fabricated false clues, laid false trails, drew many a red herring across the net, smothered the truth, burked the inquest, falsified official records and shortcircuited the procedural safeguards. In short, he did everything which is penalised by Section 201, Penal Code. The other circumstantial evidence apart, the series of these designed acts of omission and commission on the part of A-2 were eloquent enough to indicate in no uncertain terms that A-2 knew or had reasons to believe that Kalarani's death was homicidal.

48. It is not disputed that A-1 was a friend of A-2. It was A-1 who had supported A-2's idea that the latter should himself go to the spot to investigate as the deceased girl appeared to be from a high-class family. Standing alone, this circumstance is not of a conclusive tendency. But in the context of his subsequent it assumes significance. He wilfully conducted himself in such a manner that there could be no doubt that he was a guilty associate of A-2. When in the context of the burial of the dead-body order by A-2 without sending the body for post-mortem, the karnam (PW 27) asked whether any relation of the deceased had come, A-2 pointed towards PW 49 saying that he was related to the deceased. Simultaneously, A-1 said : "Yes". This concerted conduct of A-1 in fraudulently representing PW 49 to be a relation of the deceased, when he knew that PW 49 was not such a relation, clearly marks him out as an intentional abettor and a guilty partner in the commission of the offence under Section 201, Penal Code.

49. There can be no doubt that on the basis of the facts found, the charges under Sections 218, 468, Penal Code had been fully established against the appellant. A-2 being a public servant charged with the preparation of official record relating to the investigation of the cause of the death of Kalarani, framed that record in a manner which he knew to be incorrect with intent to save or knowing to be likely that he will thereby save the true offender from legal punishment. Obviously, he prepared this false and forged record with the fraudulent and dishonest intention of misleading his superior officers and inducing them to do or omit to do anything which they would not do or omit if they were not so deceived or induced. A-1, as discussed already, facilitated and intentionally aided A-2 in the preparation of the false and forged records.

50. For the foregoing reasons we uphold the convictions and sentences of the appellants, on all the counts, as recorded by the High Court, and dismiss the appeal.

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