

PETITIONER:
RAVIKANT BHAGOJI DHUMAL AND ORS. ETC.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT 15/11/1990

BENCH:
SHARMA, L.M. (J)
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SHARMA, L.M. (J)
RAMASWAMY, K.

CITATION:
1990 SCR Supl. (3) 68 1991 SCC Supl. (1) 385
JT 1990 (4) 409 1990 SCALE (2) 994

ACT:

Indian Penal Code: Sections 34, 360 and 376---Prosecution-Duty of--Lead reliable evidence--Establish without reasonable doubt those guilty of offence.

HEADNOTE:

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 (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.

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

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.

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.

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

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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 police officers were directly associated in attempting to procure false evidence against innocent persons. [70E-F]

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(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]

(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]

(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 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. [81 A-D]

(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]

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

(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]

(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

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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]

JUDGMENT: