

Kodali Puranchandra Rao & Anr vs The Public Prosecutor, Andhra Pradesh on 2 September, 1975

Equivalent citations: 1975 AIR 1925, 1976 SCR (1) 602, AIR 1975 SUPREME COURT 1925, (1975) 2 SCC 570, 1976 (1) SCJ 602, 1976 (1) SCJ 311, 1976 MADLJ(CRI) 247, 1975 SCC(CRI) 678

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, Y.V. Chandrachud, P.N. Bhagwati

PETITIONER:

KODALI PURANCHANDRA RAO & ANR.

Vs.

RESPONDENT:

THE PUBLIC PROSECUTOR, ANDHRA PRADESH

DATE OF JUDGMENT 02/09/1975

BENCH:

SARKARIA, RANJIT SINGH

BENCH:

SARKARIA, RANJIT SINGH

CHANDRACHUD, Y.V.

BHAGWATI, P.N.

CITATION:

1975 AIR 1925

1976 SCR (1) 602

1975 SCC (2) 570

ACT:

Indian Penal Code (Act 45 of 1860) ss. 210, 218 and 468;
Code of Criminal Procedure (Act 5 of 1898) s. 174-scope of.

HEADNOTE:

On a report given by the father, regarding the disappearance of his two daughters, investigation was taken up by the D.S.P. because of certain special circumstances. After completing the investigation, A-2, a sub-inspector of police, A-1, his friend, and another were charged with offenses under ss. 120B, 366, 376. 302/34, 201, 218, 468/34, and 324 I.P.C. for conspiracy, abduction, rape, murder, calling evidence of crime to disappear, fabricating reports, forgery and causing hurt.

The trial court acquitted all the accused. On appeal by the State, the High Court convicted A.1 and A.2 for offences under ss. 201, 218 and 468 I.P.C.

Dismissing the appeal to this Court,

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HELD: (1) In order- to bring home an offence under s. 201, I.P.C., the prosecution has to prove; (a) that an offence has been committed; (b) that the accused knew or had reason to believe that the offence has been committed; (c) that with such knowledge or belief he, (1) caused any evidence of the commission of that offence to disappear, or, (ii) gave any information respecting that offence which he then knew or believed to be false; (d) that he did so with the intention of screening the offender from legal punishment; and (e) if the charge be of an aggravated form, as in the present case, that the offence in respect of which the accused caused evidence to disappear- was punishable with death or with imprisonment for life or with imprisonment extending to 10 years. [610A-E]

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 facts and not of law. So is the question whether the accused knew or had reason to believe that such an offence has been committed. [617H-618B] F

Palvinder Kaur v. State of Punjab [1953] S.C.R. 94, explained.

(2) In the present case the two girls died an unnatural death. The corpse of one was found on a beach having been washed ashore and the Corpse of the other was seen floating in the sea. A fisherman who noticed the second body saw marks indicating throttling. He removed a wrist watch and ornament, from it and allowed the body to drift away. The wrist watch and ornaments were identified as belonging to the younger sister of the first victim. The 3 possibilities are, that they committed suicide by drowning, or that their deaths were accidental, or that they were done to death by some person or persons. The choice of any of these possibilities would lead to the exclusion of the other two. [610G-H]

3(a) The elder sister was a graduate and a nature girl of 22 who used to be the leader of the College Union. On the day of the occurrence the deceased girls along with their parents had participated in certain festivities. They were cheerful and there was no evidence to show that they were suffering from any mental depression with suicidal tendencies. [611E-H]

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(b) The body on the sea-shore was in a semi-nude condition. It had on only blouse, brassiere, petticoat and drawers but no sari. From the fact that it is customary for women of the locality to tie their series, tightly the possibility of the sari having been swept off be waves was

remote. This shows that she was not wearing her sari when her body was immersed in water, but no Indian woman would commit suicide by jumping into sea in such a near nude condition because. ii would expose her body to post mortem indignity. [611 H-162 C]

(c) When the body was first seen there were, an injury on the forehead from which blood was oozing, a reddish abrasion on the thigh and blood marks on the drawers. the stomach, however, was not in a bloated condition. These circumstances show that death was not due to drowning. [612 G; E-F]

(4) It was nobody's case that any boat met with an accident off or near the sea-shore resulting in loss of human life. No suggestion of accidental death of any person or woman was put to and prosecution witness. Such a plea had not ever been put forward by the accused in their statements recorded under s, 342, Cr. P.C. Therefore, the possibility of accidental death must also be excluded. [613 B-D]

(5) This process of elimination of suicide and accidental death inevitably leads to the conclusion that the death of these two girls, or at any rate of the first victim, was due to culpable homicide. [613 D]

(6) From the very start, the investigation conducted by A. 2 was dishonest and fraudulent. He intentionally indulged in suppressio veri and suggestio falsi. [613 E-F]

(a) The morning after the night when the dead body was seen on the beach, a report was handed at the Police Station but the Head Constable returned it saying that it should be drawn up in the printed form and signed by the village Munsuff. A little later, A-2, the sub-inspector incharge of the police station, came there and the Head Constable told him about the report. At that time A.1 and P. W. 49, also came to the Police Station, and A.1 also referred to the finding of the dead-body on the seashore. Thereafter, A.1, A-2 and P.W. 49 and others went to the seashore at about noon. A-2 did not hold any inquest on the dead body, but instead, directed the body to be buried. When the Karnam questioned A-2 why he did not send the body for post mortem examination, A-2 replied that the body was that of a prostitute-though the body was in an identifiable condition and he knew the victim personally. He also said that it was a case of suicide and that P.W, 49 was a relation of the victim. A.1, who heard this, also said that P.W. 49 was a relation of the victim. Thereafter, A-2 fabricated an Inquest Report in which he stated falsely that there were no injuries on the dead body and that the stomach was bloated due to drinking of water, suggesting that it was a case of death by drowning. He also fabricated a false report as if given to him by one who knew the victim and the other girl to be prostitutes. That report was handed over by A-2 at the Police Station only 5 days later and he asked the Head Constable to note the date as if given 3 days before. The Head Constable did so after some hesitation. Inspire of

persistent requests by the D.S.P., A-2 sent the copies of the F.I.R. and Inquest Report prepared by him only after an inordinate delay. A-2 also made false entries in the General Diary of the Police Station to corroborate the false Inquest Report and the fictitious complaint. He even tried to dissuade the father from getting the body, which was buried, exhumed. [605 G-607 C; 614 G-616 E]

(b) It was A-2's duty to enter faithfully and truly the substance of the information in the station diary and to record further that he was proceeding for investigation on the basis thereof when he received information from the Head Constable about the reports regarding the finding of a dead-body on the seashore. Instead of retrieving the written report that had been first received at the police station and returned by the head-constable, he fabricated another document purporting to be the first information. All the reliable witnesses for the prosecution have deposed that no such person as the one who gave the first information was present at the scene of occurrence. When the D.S.P. was investigating into the matter, A-2 was not able to produce or give any indication about that informant though he claimed to have known him. Efforts to trace the existence of the two prostitutes mentioned in that report were also futile leading to the inference that they were also fictitious persons. [613 F-614 F]

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The credible circumstantial evidence on record reinforced by the inference available from the incriminating conduct of the appellants, particularly A-2, in deliberately preparing false records to suppress the identity and the cause of death of the deceased girls fully justifies the conclusion reached by the High Court. [611 B-C]

(c) Section 174, Cr. P.C. peremptorily requires that the officer should hold an inquest on a dead body at the spot. This mandate is conveyed by the word there occurring in s. 174(1). Section 174(3) gives a discretion to the Police officer not to send the body for post mortem examination only in one case, namely, where there can be no doubt as to the cause of the death. This discretion has to be exercised prudently and honestly. [616 A-C]

(d) A-2 is a police officer of standing and experience, who was expected; to discharge the duties entrusted to him by law with fidelity and accuracy. He was required to ascertain the cause of death and investigate the circumstances and the efforts in which it was brought about. His duty was to make honest efforts to reach at the truth. He knew the deceased and saw the injuries on her dead body and must have known that in the circumstances of the case autopsy of the dead body was necessary to ascertain the cause of her death. He flouted all the salutary requirements of s. 174, Cr. P.C. and his conduct in distorting and suppressing material evidence and preparing false records as to the identity of the dead body the cause of death and the

falsification of the data bearing on that cause, could not be explained on any reasonable hypothesis save that of his guilt. [617 B-E; 618 D-F]

(7) As regards A-1, his concerted conduct, including that in supporting the fraudulent misrepresentation made by A-2 to the Karnam. regarding PW 49 being a relation of the deceased, shows that he was a guilty associate of A-2.

JUDGMENT :

CRIMINAL APPEALLATE JURISDICTION: Criminal Appeal No. 392 of 1974 Appeal by Special Leave from the Judgment and order dated the 25th April, 1974 of the Andhra Pradesh High Court in Criminal Appeal No. 701 of 1972.

P. Basi Reddy and G. Narasimhulu, for the appellant, A, S. Mulla, T. V. S. N. Chari and P. P. Rao, for the respondent.

The Judgment of the Court was delivered by SARKARIA J.-This appeal is directed against a 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 Police in-charge of this Police Station, The appellants and one other person were tried by the Firs Additional Sessions Judge Nellore on charges under ss.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 Chandrika Rani of Nellore. The Sessions Judge acquitted the three accused of all the charges. Against the acquittal of the appellants only the State preferred an appeal. The High Court partly allowed the appeal, set aside the acquittal on charges 7, 8, 9 and convicted A-2 and A-I. under ss, 201, 201b34, Penal Code and sentenced each of them to five years rigorous imprisonment. A-2 and A-1 were further Convicted under S. 218 and 218/109, Penal Code and sentenced to two years rigorous imprisonment, each. They were also convicted under s. 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.

The facts of the prosecution case, as they emerge from the record" arc as follows:

Kalarani and Chandrika Rani deceased were two of the six daughters of PW1, a legal practitioner of Nellore. Kalarani was aged 21 and a graduate from the local Women's College, Nellore. She used to be the President of the College Union and as such was well known. Chandrika Rani was, aged 17 and a B.A. student in that very college. on 6- 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 (P.W.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 sea-shore

resort at a distance of 11 miles from Nellore. At about 5.40 p.m. they were seen alighting from the bus as 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 P.Ws. 11, 12, 13 and 14. Shortly there after, P.W. 18, a rickshaw puller was attracted to the seashore by the outcry of a woman. When he proceeded in that direction, Chandrika Rani came running to him for help. P.W. 18 saw 4 persons including A-1 and A-2 carrying away Kalarani who was groaning. On seeing P.W. 18, A-1 and A-2 turned on him. A-1 first slapped and then stabbed P.W. 18 on his right arm with a pen knife, while A-2 gave blows on his back. Out of fright, P.W. 18 took to his heels while Chandrika Rani was dragged away by the appellants.

On 6-6-1971 Chamundeshwari Festival was being celebrated in Gangapatnam and neighbouring areas at about 9 p.m. It was a bright moonlight. 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. P.W. 23, a fisherman of Pallipalem and P.W. 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 built. Blood was oozing from a reddish abrasion on the forehead. There was a gold ring with a red stone on the finger of the body. Next morning, P.W. 23 went to P.W. 26, the Sarpanch of Gangapatnam and informed him about the corpse on the seashore. P.W. 23 and P.W. 26 then went to the village Karnam (P.W. 27) as they found the village Munsiff absent. The Kamam scribed a report to the dictation of P.W. 23. The Sarpanch signed it and sent it at about 7-30 a.m. through a bus driver (P.W. 29) to the Police Station, Indukurpet. The report was handed over in the Police Station at about 8-30 a.m. to the Head-Constable (P.W. 34), as A-2, the Sub-Inspector was away. The Head Constable (P.W. 34) read the report and returned it to P.W. 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 to the Police Station. Just at this juncture P.W. 49, a Personal Assistant to P.W. 38, a cine actor of Madras, and A-1, arrived there in Car No. M.S.V. 1539, driven by a motor driver. The car had met an accident on the 4th June within the jurisdiction of this Police Station. The car was therefore at least theoretically in the custody of the Police.

A-1 was a mutual friend of A-2 and of the owner of the car. P.W. 49 therefore, had brought A-1 to the Police Station to help the former in getting the car released. A-1 introduced P.W. 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 sea-shore. 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 sea-shore at Pallipalem had been received but had been returned, as it was not from the village Munsiff. A-2 said 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 P.W. 49 to take him in his car to the spot. Thereupon A-1, A-2, P.W. 49, two constables and two

others in 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 (P.W. 26) and asked him to follow them to Pallipalem. The car was then taken to Gangapatnam. There the Constables were dropped. They left a message for the Karnam of the village to reach Pallipalem. Thereafter, they proceeded to the sea-shore of Pallipalem. The car was left at the canal before the sea.

A-2, A-1, P.W. 49 and P.W. 26; then at about Noon, went to the beach where the dead body lay. P.W. 23 and P.W. 25 were guarding the deadbody. It was the body of a fair, stout girl aged about 20 years, who was wearing brassiers, blouse, striped drawers and a white petticoat. P.W. 23 handed over the ring M.O.9 to A-2 after removing the same from the body. On being directed by A-2, P.W. 23 washed ' the face of the corpse. There was a mark on the forehead from which blood was oozing out. There was a 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 Mypad, while A-2 and party went to Mahalaxamma Tample in village Pallipalem. There A-2 secured the signature of P.W. 25, P.W. 26, P.W. 28 and A-1 on a blank sheet of paper. A-2 and his companions then went to the car. The Karnam (P.W. 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 P.W. 49 and said that he was the person connected with the deceased. A-1, A- 2, P.W. 26, P.W. 27 and P W. 49 then got into the car and proceeded. P.Ws. 26 and 27 were dropped near their houses. On the way P.W. 49 asked A-2 as to why he had represented him (P.W. 49) as a relation of the deceased. A-2 assured P.W. 49 that there was nothing to worry.

According to the prosecution, this dead body found ashore near Pallipalem-which is about 2 miles from Mypad-was of Kala Rani deceased who was well-known to A-2. Inspite of it in the inquest report (Ex P-11) which was not prepared on the spot but sometime later, A-2 wrote That the body was of a prostitute, named Koppolo Vijaya, daughter of Crhandravaya, Baliya by caste of Ongole Town who had on 6.6.71, come to Mypad along with her prostitute friend Nirmala by Bus A.P.N. 1400 at 5.45 P.M. and thereafter both these girls committed suicide by entering sea at about 6.30 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 A-2 recorded: "There are no injuries 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".

The prosecution case further is that A-2 fabricated some time after the burial of the deadbody, a false report (Ex.P-25) purporting to have been made to him on 7.6.1971 by one Nuthalapati Subba Rao 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 Venkateswarlu, aged about 30 years"
Vysya of Patha-Guntur:

Being an orphan for about 1 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 Sundrayya of Ongole and Paranjapi Nirmala d/o Raghavayya of Chilakaluripeta 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 Venkateswara Lodge till 3.30 p.m. Their demand came for the girls. I booked two males for these two girls. Afterwards dispute arose between me and the girls in respect of my broekerage, 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 Pattapulalem and entered the sea at 6 p.m. Having learnt that the body of Vijaya was washed ashore I went and saw the dead body. She had died and appears to have committed suicide. It was also learnt that the second girl also committed suicide but her dead body 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. 7-6-1971."

The dead-body of the other girl, Chandrika Rani was not washed ashore. But in the morning of 7-6-1971, P.W. 36, a fisherman saw the dead-body of a girl agled 16 or 17 years floating in the sea at a

distance of about 21 or 3 miles from Pallipalem, P.W. 36 saw a piercing wound on the left arm and black marks indicating throttling, on the neck of the deadbody. P.W. 36 removed a wrist watch, a ring and an ear-ring from the deadbody and allowed it to drift away. These articles were later handed over by P.W. 36 to the investigating officer and were identified to be of Chandrika Rani.

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 P.W. 59, a Probationer D.S.P., to investigate the matter. On 18-6-1971, at the request of P.W. 59, the Tehsildar (P.W. 40) proceeded to exhume the deadbody of Kalarani. The place was pointed out by P.W. 33. A-2 was also present there. On digging the bit 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, P.W. 45, who examined it at the spot. The skeleton was sent to P.W. 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 P.W. 60, the C.I.D. Inspector who, after completing it laid the charge-sheet against A-1, A-2 and one other person in the court of the Magistrate.

A-1 pleaded that he had been falsely implicated. He stated that he knew nothing about the deceased girls. He added that on 7-6-1971, he was in the Travellers' Bungalow at Mypad and went away from that place in the afternoon. He admitted that he had accompanied, P.W. 49, to the Police Station on 7-6-1971 to assist the latter in getting the car release, and from the Police Station both of them (A-1 and P.W. 49) on being asked by A-2, went with the latter in the car to the spot. He further admitted that he had slab-signed on a sheet of paper like others but he expressed ignorance if any inquest was held by A-2.

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 dead body. Pleading alibi for the 5th and 6th June 1971, he said that on these dates he was away on casual leave to attend the marriage of a cousin at Chiraja which 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 the 7th June, resumed duty at Indukurpet Police Station. On receiving information about the corpse of a female washed ashore, he went to Mypad and enquired about a person named Nathalapati Subba Rao. The latter gave the information, Ex. P.25, which he (A-2) reduced into writing and then held the inquest in the presence of this Subba Rao 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 Subba Rao in response to the memo dated 15-6-1971, issued by the D.S.P. (P.W. 59) during the stipulated time of 48 hours.

The Additional Sessions Judge held that the dead bodies found floating near the sea shore were of Kala Rani and Chandrika Rani. He further found that PW 18, who claimed to be an eye-witness 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 S. 201, Penal Code, the trial Judge held that the 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.

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 charge of abduction, rap and murder, but reversed the findings of the trial Judge in regard to the charges under ss. 201, 218 and 468, Penal Code against A1 and A2.

In order to bring home an offence under s. 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.

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

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 s. 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.

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

The concurrent finding of the courts below that the dead body washed ashore near Pallipalem was of Kala Rani deceased and that seer. floating in the sea, two miles away was of Chandrika Rani deceased, has not been disputed before us. It is also not controverted that these two girls died an unnatural death on the night between the 6th and 7th of June, 1971 sometime after 6.30 P.M. at Mypad. 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. First, the girls

committed suicide by drowning. Second, that their deaths were accidental. Third, that they were done to death by some person or persons.

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.

In our opinion, the credible circumstantial evidence on record reinforced by the inferences available from the incriminating conduct of the appellants, particularly of A2 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. First, we take up the possibility of suicide. Mr. Reddy submits with reference to the statement of PW1, 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 Kala Rani deceased had about 4 or 5 years before the occurrence taken an overdose of tranquilizers presumably to end her life that they did not feel happy in their parental house and once attempted to join the Ashram. This background, according to the learned Counsel, shows that the deceased had a predisposition to commit suicide. In the alternative, suggests Mr. Reddy, something might have happened at Mypad on the 6th June, 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.

We are not impressed by these arguments. It is wrong to assume that these girls were very unhappy in their parental house, or their relations with their parents were estranged. Kala Rani, particularly, was a 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 Mypad. They first went to the Travellers' Bungalow and were then last seen together at about 6-30 p.m. On the sea-shore. It is in evidence that the evening of the 6th June, was an occasion of Channamma Festival. Procession of the deity accompanied by festivities was being taken out by the devotees of the neighbouring villages. These circumstances unmistakably show that the deceased girls had come to enjoy and stay at the sea-side resort of Mypad for 2 or 3 days. They were not suffering from any mental depression or schizophrenia with suicidal tendencies.

Another circumstance in the case of Kala Rani 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 6-3 P.M. It can be argued that the sari was washed off her body by the sea-waves. 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 or near the coastal towns to tie their sari tightly, the possibility of

the sari having been swept off by the sea-waves 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.

Another important circumstance which militates against the suggestion of the death of Kala Rani from drowning is that when the body was first seen at 9 P.M., its stomach was not in a bloated condition, for was any froth seen coming out of the mouth of the corpse. the fact was 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 has 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 A2 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 life (see Taylor's Medical Jurisprudence, 12th Edn. Vol. I pp. 374-375).

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 to a long way to exclude the possibility of death being as a result of suicide by drowning.

Then there were 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 (under-garment) 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 A2, stated that he had seen a reddish strain (stain ?) on the forehead and blood marks on the drawer of the deceased. Out of these PWs, 23, 25 and 26 were present near the dead body when A2, accompanied by A1 and P.W. 49, went there to hold the presence 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 deadbody washed ashore at about 9 P.M. On 6-6-71. The High Court found that the version of these witnesses in regard to the injuries and blood-marks on the deadbody was entirely reliable. No reason has been shown why we should take a different view of their evidence.

It is further in the evidence of PWs. 23, 25, 26 and 49 that when the blood-marks on the drawer pointed out to A2, 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, A2 wrote in the inquest report, P-11, Col. VII: "There are no injuries on the dead- body".

Having excluded the possibility of suicide, we may now consider, whether the deaths of these girls were accidental. It is no-body's case that on the 6th June, 1971, any sea craft, vessel or boat met with an accident off or near about Mypad resulting in loss of human life. No suggestion of accidental death of any person, much less a women, off or. On the sea-share near or far from Pallipalem was

put to any of the prosecution witnesses. Nor such a plea has been put forward by the accused in their statements recorded under s. 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.

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

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 Kala Rani had been committed. This circumstance is the conduct of A2, in intentionally preparing false records and its abetment by A1.

From its very start the investigation conducted by A2 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 A.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 real 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 departure from the Police Station in the records prepared by him or by 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 F.I.R. given to him at Mypad by one N. Subba Rao. The false story contained in this document has been substantially repeated in the inquest report, Ex. P.

25. P.Ws. 23, 25, 27 and 49 discount the presence of any such person, named N. Subba Rao either at the inspection of the dead-body in the sea-shore 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. Subba Rao was recorded in their presence by A-2. No specific question was put by the defense to PW 49 in cross-examination to establish that the report Ex. P-25 was scribed by A2 at Mypad at about 11.30, to the dictation of N. Subba Rao or any other person although the witness was generally questioned as to the number of persons carried in the car. P. W. 27, the Karnam, has definitely excluded the presence of any informant named Subba Rao. P.W. 27 testified that after the inquest, A1, A2, P.W. 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. P.W. 27 did not vouch the presence of a sixth man in the car. Only PW 26 has stated that R2 had recorded the statements of witnesses including that of a person named N. Subba Rao. PW 26 had reason to tell a lie on this point. PW

26 admitted that at the time of the inquest, he was an accused in a criminal case of Indukurpet Police Station. A2 was at the material time In-charge of that 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. Subba Rao, 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.

In the inquest report, as also in Ex. P-25, the address of this mysterious person is recorded as "Nuthalapatti Subba Rao 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 Pata 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. Subba Rao, nor give any indication about his existence, though A2 claimed to have known him. For these reasons, the High Court was right in holding that this Nathalapatti Subba Rao was a fictitious person of A2's imagination. Similarly, during investigation all efforts made by PWs 59 and 60 to trace and find if Vijay 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 A2.

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 the 11th June. A-2 did not send it to the Police Station for registration before that date. It is in the evidence of P. W. 55, who at the material time was a Head Constable posted in this Police Station, that after his departure in 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 the 7th June, 1971. The Head Constable after slight hesitation agreed and inserted this report in the blank space meant for the entries of the 7th June, and thereafter, as required by A2, 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 10.6.1971 on 11.6.1971 at 2 A.M. It reads:

"Returned to P.S. after leaving it on 7.6.71 at 9.30 a.m. visited Mypadu en route to Gangapatnam at 11- 00 hours at 11-30 a.m., recorded statement of N. Subba Rao, 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 Mypadu at 21.30 hours, made enquiries in Cr. 48/71 and halted. On 9.6.71 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 9.6.71 visited Mypadu for petition enquiry and investigated into Cr. 48/71, 41,42 and 44/71 and hailed. 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."

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 to send the copies of the F.I.R. and the Inquest Report. A-2 was unable to supply any copy of the F.I.R. before the 12th of June, when the D.S.P. himself came to the Police Station and collected it. The D.S.P. (P.W. 59) testified that on the 11th June, 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 14.6.71, he telephoned to A2 to send the case diaries and inquest report without further delay. Despite these efforts, the D.S.P. did not receive whose records on that day. on 15.6.71, he issued a memo. to A-2 directing the latter to produce immediately the complaint of N. Subba Rao, the inquest report and the case diaries. It was only then that A2 produced the persistently requisitioned records.

These inordinate delays in sending the records prepared by A2, 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 obtained by A2 on a blank sheet of paper. Of course PW 26 stated that A2 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 A2. 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. 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 sec. 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 purification 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 Kala Rani being from drowning ?

In this connection it is important to note that Kala Rani was not a total stranger to 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 Kala Rani who was a prominent student-leader. The testimony of P.W. 47 is to the effect that when on 17.7.1971, A2 came to him and requested the witness to dissuade the father of the deceased from getting the dead-body exhumed, he (A2) admitted that Kala Rani deceased was well-known to him The body was not in an unidentifiable condition. A-2 therefore could he 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 deadbody was of a prostitute named Vijaya.

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. That is what Taylor the renowned medical jurist, has said on the point:

"When a deadbody is thrown into the water. and has remained there sometimes 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 amount which passes through the glottis is small. If immersed after death 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.***When decomposition is advanced the lungs may be so putrefied 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." (emphasis supplied) A2 was a Police officer of standing and experience. He knew the deceased. He saw injuries on her deadbody. 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 deadbody 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 A2. In response to the queries made by the Karnam, A2 made false excuses. He intentionally misrepresented (in concert with A1) that PW 49 was a relation of the deceased. He flouted all the salutary requirements of s. 174, Cr. P.C. A-2's conduct in distorting and suppressing material evidence and in preparing false records (Ex. 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 irresistably point to the conclusion that within all human probability, accused No. 2 knew or had reasons to believe that Kala Rani had been done to death by some person or persons. All the elements of the charge under s. 201 had thus been proved to the hilt against him.

Before considering the case of A1, we may notice here the decision of this Court in *Palvinder Kaur, v. State of Punjab*(1). 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 their conclusions on suspicions howsoever strong.

The decision in Palvinder Kaur's case (supra) 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 (1) [1953] S.C.R. 94.

9-L925SupCI/75 a question which belongs to the realm of facts 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".

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. In 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.

The position of A2 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 short circuited the procedural safeguards. In short, he did everything against public justice which is penalised by s 201, Penal Code. The other circumstantial evidence apart, the series of these designed acts of omission and commission on the part of A2, were eloquent enough to indicate in no uncertain terms that A2 knew or had reasons to believe that Kalarani's death was homicidal.

It is not disputed that A1 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 conduct 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 deadbody ordered 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 4 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 sec. 201, Penal Code.

There can be no doubt that on the basis of the facts found, the charges under ss. 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 or offenders from legal punishment. obviously, he prepared this false and forged record with the fraudulent and dishonest intention of misleading his, superior officers and in during 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 record.

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.

V.P.S.

Appeal dismissed.