

Ram Saran Mahto and Another

Vs

State of Bihar

(K. T. Thomas, M. B. Shah JJ)

Criminal Appeal Nos.912-13 of 1999

08.09.1999

JUDGMENT

THOMAS, J:-

1. Leave granted.

2. The corpse of a teenaged dame was recovered from a well attached to her nuptial home. That corpse was consigned to flames without loss of time. For that incident her husband Kalpu Mahto and three others stand convicted of the offence under Section 201 of the Indian Penal Code. Though the prosecution did not even venture to establish any other offence in respect of the death of that young lady, the trial court passed a sentence of rigorous imprisonment for seven years on one of the convicted persons while a sentence of RI for three years was imposed on the remaining convicted persons. They appealed to the High Court of Patna, but failed.

3. We cannot comprehend how the Session Court could have escalated the conviction to the topmost layer of the offence for awarding the maximum sentence of imprisonment for seven years as the said upper limit is fixed only for one category of cases falling under Section 201 IPC. The Sessions Judge did not even advert to the possibility of the offence falling within the aforesaid top category though he had chosen to award the maximum sentence only to one of the four convicted persons. Learned Single Judge of the Patna High Court while reseating the sentence portion in his judgment seems to have committed an error in the following manner:

"By the judgment and order the learned trial court convicted the 4 appellants under Section 201 of the Indian Penal Code and sentenced them to undergo RI of 7 years each."

4. The aforesaid error in the restatement would have escaped the notice of the learned Single Judge, but we mention it here for averting any possible consequences on its account.

5. Facts of the case are these: deceased Asha Kumari was aged only 18 when she died. She was given in marriage to Kalpu Mahto(A-2). While she was living in her husband's house A-3 Ram Saran Mahto (a cousin of her husband) dashed down to her parental house during the wee hours of 11-6-1986 and conveyed the disquieting information that Asha Kumari was missing from the house. Immediately her brother Ram Balak Mahto (PW 3) rushed to the marital home of Asha Kumari on a bicycle, followed by his father (PW 1) on foot.

6. PW 3 Ram Balak Mahto could reach the house earlier as he was on a two-wheeler. In his presence

A-3 Ram Saran Mahto suggested that the well of the house should be searched. When a search was made pursuant thereto the dead body of Asha Kumari was spotted out and later that was winched out of the well. Thus far the story seems to be by and large, undisputed.

7. Thereafter, Asha Kumari's husband Kalpu Mahto and some other persons, who were closely related to him. Showed impatience to have the obsequies of the departed soul. PW 3 only wanted the cremation to be postponed till the arrival of his father but that suggestion was spurned down. An altercation would have followed and a wrangle ensued therefrom. PW 3 was trussed up and his cycle was snatched away. When PW 1, father of Asha Kumari, arrived at the place he too was fastened with a either. The dead body of Asha Kumari was then removed to the nearby orchard where it was set ablaze and cremated.

8. PW 1 and PW 3 went to the police station and lodged a complaint. After investigation the police charge-sheeted 13 persons, including the appellants, for various offences such as Section 302 read with Section 34, 201, 324 and 379 of the Penal Code. The trial court came to the undisputed conclusion that "prosecution has failed to prove the charge of commission of murder". Nevertheless, learned Sessions judge proceeded to award the sentence under Section 201 of the Penal Code and the only discussion he made for that purpose was on the question whether anyone other than the four appellants had committed that offence. After holding that none among them, except the four appellants, can be convicted, learned Sessions Judge proceeded to convict on the culpability of the appellants regarding the said offence.

9. Of course appellant Ram Saran Mahto alone was convicted under Section 379 and 342 of the Penal Code also and he was sentenced to undergo RI for six months and three months respectively and the High Court has confirmed the said conviction and sentence. We are not dealing with the conviction and sentence on those two courts as they have not been challenged before us. For convicting the appellants under Section 201 of the Penal Code learned Single Judge of the High Court discussed the case only in the following lines:

"However, the learned trial court proceeded to consider the evidence on the point of charge under Section 201 IPC. On this point the informant himself started first and came to his sister's village and on arrival at the village he started searching for the sister and the dead body was recovered from a well and when the accused persons were contemplating to dispose of the dead body he objected and then he was overpowered. His father (PW 1) Moti Mahto has also supported the prosecution story on this point that when he arrived subsequently he found that the accused persons were engaged in burning the dead body. The father (PW 1) had arrived late because he was no foot; while his son proceeded on a cycle. It has been stated that cycle of the informant was snatched by the accused persons. Thus, learned trial court held that unless the dead body was burnt by the accused, they could not inform the police station and give opportunity to the police to seize the dead body to hold post-mortem examination. It is therefore obvious that the appellants have disposed of the dead body with a view to suppress the crime."

10. In this case we find it necessary to extract Section 201 of the Penal code which is as follows:

"201. *Causing disappearance of evidence of offence, or giving false information to screen offender.*---- Whoever, knowing or having reason to believe to have been committed, cause any evidence of the commission of that offence to disappear, with

the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

*[if a capital offence]* shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine:

*[if punishable with imprisonment for life]* and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine:

*[if punishable with less than ten years' imprisonment]* and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth party of the longest term of the imprisonment provided for the offence, or with fine, or with both."

11. The first paragraph of the section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation. The two indispensable ingredients for all the three tiers in Section 201 are:

(1) The accused should have had the knowledge that an offence has been committed or at least that he should have had reasons to believe it.

(2) He should then have caused disappearance of evidence of commission of that offence.

The prosecution cannot escape from establishing the aforesaid two basic ingredients for conviction of the accused under Section 201.

12. The gravest degree contemplated in Section 21 is punishable with the maximum sentence of imprisonment for seven years. The minimum requirement for the offence to reach the said peak degree is that the offender should have caused disappearance of evidence of another offence which is punishable with death, and that should be established in addition to the above-mentioned two basic ingredients. Even if the two basic are established, and the prosecution failed to establish the next requirement, the court cannot convict the accused for the highest tier specified in the section.

13 it is not necessary that the offender himself should have been found guilty of the main offence for the purpose of convicting him of offence under Section 201. Nor is it absolutely necessary that somebody else should have been found guilty of the main offence. Nonetheless, it is imperative that the prosecution should have established two premises. The first is that an offence has been committed and the second is that the accused knew about it or he had reasons to believe the commission of that offence. Then and then alone the prosecution can succeed, provided the remaining postulates of the offence are also established.

14. The above position has been well stated by a three-Judge Bench of this Court way back in 1952, in *Palvinder kaur v. State of Punjab*:

"In order to establish the charge under Section 201, Penal Code, it is essential to prove that an offence has been committed, -- mere suspicion that it has been committed is not sufficient -- that the accused knew or had reason to believe that such offence had been committed and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false."

15. It is well to remind that the Bench gave a note of caution that the court should safeguard itself against the danger of basing its conclusion on suspicions however strong they may be. In *Kalawati v. State of H.P.* a Constitution Bench of this Court has, no doubt, convicted an accused under Section 201 IPC even though he was acquitted of the offence under Section 302. But the said course was adopted by this Court after entering the finding that another accused had committed that murder and the appellant destroyed the evidence of it with full knowledge thereof. In a later decision in *Natthu v. State of U.P* this court has repeated the caution in the following words:

(SCC p.575. para 1)

"Before a conviction under Section 201 can be recorded, it must be shown to the satisfaction of the court that the accused knew or had reason to believe that an offence had been committed and having got this knowledge, tried to screen the offender by disposing of the dead body."

16. In this context a reference to a more recent decision of this Court would be apposite. The following observations of the Bench in *Hanuman v. State of Rajasthan* are relevant : (SCC Headnote).

"The mere fact that the deceased allegedly died an unnatural death would not be sufficient to bring home a charge under Section 201 IPX, unless the prosecution was further able to establish that the accused persons knew or had reason to believe that an offence had been committed, causing the evidence of the commission of the offence to disappear."

17. In the present case, all that the prosecution could establish was that the dead body of Asha Kumari was recovered from the well situated in the compound of her marital home and that the cremation was hurried through after physically keeping her kith and kin away from the scene. No doubt, such a culpable hurry enkindles fumes of suspicion which can be regarded as an incriminating circumstance against those who showed such haste. But that circumstance stands isolated and unconcatenated with any other circumstance.

18. The prosecution has not even attempted to show, much less prove, that any offence has been committed by anyone in respect of the death of Asha Kumari, which should have been the foundation for establishing the offence under Section 201 IPC. It now stands as an unfounded conviction and hence we have to interfere. We, therefore, allow this appeal and set aside the conviction and sentence passed on the appellants. They are acquitted. We direct the appellants to be set at liberty forthwith unless they are required in any case.