
(2003) 09 SC CK 0138

In the Supreme Court Of India

Case No : Criminal Appeal No. 901 of 1996

Sou. Vijaya @ Baby

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 464

Penal Code, 1860 (IPC) — Section 201, 302, 304B, 398A, 498A

Citation : (2004) 1 ACR 134 : AIR 2003 SC 3787 : (2003) 2 ALT(Cri) 329 :
(2003) 2 CGLJ 337 : (2003) CriLJ 4318 : (2003) 1 JT 270 Supp : (2004) 1 OLR
53 : (2003) 7 SCALE 181 : (2003) 8 SCC 296 : (2003) 3 SCR 340 Supp : (2004)
1 UJ 50

Hon'ble Judges : Doraiswamy Raju, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : U.R. Lalit and A.K. Sanghi, for the Appellant; Mukesh K. Giri, for
Ravindra Keshavrao Adsure, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Appellant Vijaya faced trial along with her brother, Nepalchandra for alleged commission of offences punishable under Sections 302, 304-B, 398-A and 201 of the Indian Penal Code, 1860 (for short 'IPC'). The II Additional Sessions Judge, Bhandara, acquitted the Appellant of offences relatable to Sections 302, 304-B, 498-A, but held her guilty for offence punishable u/s 201 IPC and sentenced her to undergo RI for five years. Her brother (hereinafter described as 'accused No. 1 or A-1') was found guilty of offence punishable under Sections 302 and 201 IPC and was sentenced to undergo imprisonment for life and five years respectively. The High Court of Judicature at Bombay, Bench at Nagpur, dealt with the appeals filed by the Appellant (hereinafter described as 'accused No. 2 or A-2'). Both the appeals were dismissed. We are informed that the SLP filed by A-1 has also been dismissed by this Court.

2. The accusations which led to trial of both the accused-Appellants are

essentially as follows:

3. Usha (hereinafter described as 'deceased') was married to A-1 on 16.5.1989. She came to the house of her parents on 18.5.1989 and remained there upto 4.6.1989. Thereafter the deceased was brought to the house of A-1. On 24.6.1989, father of the deceased came to know that she has been burnt to death. Though A-1 gave out that case was one of suicide. Father of the deceased did not believe it and lodged information with police.

Investigation was undertaken and charge sheet was placed charging both the accused Appellants for offences as noted above. At this point it is to be noted that A-2 was given on marriage on 15.5.1989 and had come to her brother A-1 house. Thereafter the prosecution brought materials on record to the effect that deceased and A-1 were sleeping in one room and farmer's dead body was found in the Kitchen. The Trial Court analysed the evidence on record to conclude that part played by both A-1 and A-2 immediately after the incident and giving wrong information that the deceased had committed suicide clearly established that both were guilty. They also gave false information to the police immediately, as well as the parents of the deceased and other relatives later about the incident and that attracted Section 201 IPC. It was further concluded that both the accused actively participated in causing disappearance of evidence, having known that murder of the deceased has been committed, in order to protect themselves from legal punishment. They tried to project as if there was a suicide. It analysed in detail the evidence so far as the role of A-1 is concerned. In appeal, unfortunately, the High Court did not deal with Section 201 IPC specifically and even did not discuss the evidence and came to the conclusion that since both the accused persons were present at the relevant time in the house, disappearance of evidence is the act of both the accused. With this observation the Appellant A-2's appeal was dismissed.

4. In support of the appeal Mr. U.R. Lalit, learned senior counsel submitted that the ingredients of Section 201 IPC are absent. The charge as framed was that the Appellant has caused certain evidence of the said offence (murder of Ushabai) to disappear. Section 201 according to him consists of two parts i.e. (1) causing disappearance of evidence; (2) giving false information to screen offender.

5. Admittedly the A-2 was sleeping in a different room. Since the death was by burning, the question of causing disappearance of evidence does not arise, in view of her acquitted relating to offence u/s 302 IPC. A-2 had no role to play in the murder of the deceased. That being so, the conviction is unsustainable.

6. Per contra, learned Counsel for the State submitted that the High Court has endorsed view of the Trial Court, which analysed the evidence. This is clearly a case where Section 201 has application. Reference is made to a decision of this Court in V.L. Tresa Vs. State of Kerala, to contend that even if an accused is acquitted of offence relatable to Section 302 IPC, yet conviction u/s 201 is

permissible.

7. Section 201, IPC presents a case of accusations after the fact. "An accessory after the fact" said Lord Hale, "may be, where a person knowing a felony to have been committed, receives comforts, or assists the felon. (See 1 Dale 618). Therefore, to make an accessory ex post facto it is in the first place requisite that he should know of the felony committed. In the next place, he must receive, relieve, comfort, or assist him. and generally any assistance whatever given to a felon to hinder his being apprehended, tried or suffering punishment, makes the assister an accessory. What Section 201 requires is that the accused must have had the intention of screening the offender. To put it differently, the intention to screen the offender, must be the primary and sole object of the accused. The fact that the concealment was likely to have that effect is not sufficient, for Section 201 speaks of intention as distinct from a mere likelihood.

8. Section 201 punishes any person, who knowing that any offence has been committed, destroys the evidence of that offence or gives false information in order to screen the offender from legal punishment. Section 201 is designed to penalize "attempts to frustrate the course of justice".

9. Section 201 deals with the following two types of offences:

(1) Where the offender causes the evidence of the commission of the offence to disappear.

(2) where the offender gives information respecting the offence which he knows or believes to be false.

The ingredients of offence u/s 201 are-

(i) that an offence has been committed,

(ii) that the accused knew or had reason to believe the commission of such an offence,

(iii) that with such knowledge or belief he-

(a) caused any evidence of the commission of that offence to disappear, or

(b) gave any information relating to that offence which he then knew or believed to be false.

(iv) that he did so as aforesaid with the intention of screening the offender from legal punishment.

10. On applying the aforesaid legal principles to the factual scenario it is clear that the prosecution has not established the essential ingredients. The decision relied upon i.e. V.L. Tresa (supra) by the Respondent State is really of no assistance to it. There is no quarrel with the legal principle that notwithstanding acquittal with reference to offence u/s 302 IPC, conviction u/s 201 is permissible, in a given case. In the present case in addition to the fact that the Appellant A-2

has been acquitted of the charges relating to Section 302 IPC, there is no material to bring in application of Section 201 by attributing knowledge of the commission of the offence to her. It is rightly contended by Mr. Lalit that the charges framed were for causing disappearance of evidence. Though in a given case defective charge does not vitiate trial in terms of Section 464 of the Criminal Procedure Code 1973, (for short 'the Code') where the omission is vital and even the substance of accusations is totally different from what is sought to be established by the prosecution and there is no evidence on record to attribute knowledge of commission of the offence by the other accused that can be an additional factor for acquitting the accused. Looked at from any angle conviction of the Appellant-accused A-2 cannot be maintained and is set aside. The appeal is allowed. The bail bounds are cancelled.