

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 557 of 2001**

1. Jageswar Majhi S/o Bhokas Majhi, Age 40 years **(Died)**,

2. Budhan Majhi S/o Bhokas Majhi, Age 38 years,

Both residents of village Narbadapur, PS, Kamleswarpur, District
Surguja, Chhattisgarh

--- **Appellants**

Versus

The State of Chhattisgarh through SO Kamleshwarpur District Surguja,
Chhattisgarh

--**Respondent**

For the Appellants	:	None
For the Respondent :	:	Shri Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

11.12.2017

1. This appeal is preferred against the judgment of conviction and order of sentence dated 23rd June, 2001 passed by the Sessions Judge, Sessions Division Surguja at Ambikapur (CG) in Sessions Trial No. 432/2000 wherein, the said Court has convicted the accused/appellant Budhan for commission of offence under Section 201 IPC and sentenced him to undergo rigorous imprisonment for 2 years.

2. As per prosecution case, name of the deceased is Somari Bai who was wife of appellant Jageswar. Appellant Budhan is brother of Jageswar. On 2.10.2000, accused/appellant Jageswar, seen his wife with some other person and that is why there is a quarrel between Jageswar and his wife, on which, Jageswar assaulted his wife by axe. It is alleged that the

accused/appellant Budhan and Jageswar knowing that Somari Bai has murdered, buried her dead body without giving information to the police authorities in order to screen the offender Jageswar from legal punishment.

3. As per appellant Budhan, he is living in other village Kesra which is 10 km away from the place of incident and he had no knowledge about the crime. As per version of appellant Budhan, his brother informed him that Somari Bai died due to illness and this fact was admitted by the prosecution witnesses and therefore, there is no evidence against the appellant Budhan that he knew or had reason to believe the commission of offence and he did nothing to cause any evidence of commission of offence to disappear. He had never given any information relating to that offence which he knew or believe to be false nor screening the accused/appellant Jageswar.

4. The appeal is preferred on the ground that no offence under Section 201 IPC is made out against the accused/appellant Budhan even then the trial Court has convicted him contrary to law.

5. On the other hand, learned counsel for the State supporting the impugned judgment submits that the finding of the trial Court is well within its jurisdiction and the same is not liable to be interfered with invoking jurisdiction of appeal.

6. In the matter of ***Sou.Vijaya alias Baby Vs. State of Maharashtra***, reported in **2003 (2) CGLJ 337**, it has been stated as under:

“6. 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.

7. 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".

8. 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 any information respecting the offence which he knows or believes to be false.

9. The ingredients of offence under Section 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 that offender from legal punishment".

7. To substantiate the charge, prosecution has examined as many as 11 witnesses. To nullify the charge, defence side has not examined any witness.

8. Jagjivan (PW1) had deposed that Somari Bai died due to illness. Indraso (PW2) had deposed that she heard the sound of some quarrel but,

she did not go to the house of the accused/appellant Jageswar. She further deposed that she has not seen anyone taking body of the deceased. Sudhnai Bai (PW3) deposed that wife of Jageswar was crying as to why he is beating her, but she fled away from the spot due to fear. Budhni Bai (PW4) deposed that accused/appellant Jageswar and his brother took away the body of the deceased for cremation. Dr. B.P. Sonkar (PW5) has conducted autopsy on the dead body of the deceased. Mangli Bai (PW6) deposed that Jageswar informed her that Somari died of illness. Ramprasad (PW8) deposed that no axe was seized from the accused/appellant before him. Bhagirathi (PW9) deposed that Jageswar gave one axe to the police authorities. Sankharam (PW10) deposed that he has seen Jageswar assaulting his wife by axe. R.C. Nishad (PW11) is the Investigating Officer.

9. The trial Court had convicted the accused/appellant Jageswar for commission of offence under Section 304 Part II and 201 of the IPC but the said Jageswar has died, therefore, this Court has to consider only about the conviction and sentence awarded to accused/appellant Budhan, who has been convicted under Section 201 IPC and sentenced to undergo R.I. for 2 years.

10. On applying the aforesaid legal principles to the factual scenario, it is clear that prosecution has not established by any evidence that accused/appellant Budhan was aware of the fact that any offence has been committed. There is also no material to bring in application of Section 201 IPC by attributing knowledge of the commission of the offence. Unless it is proved that the accused is having knowledge regarding commission of crime, Section 201 IPC will not apply.

11. Even if, accused/appellant Budhan had participated in burying the dead body of the deceased, the same cannot be termed as causing of the evidence for commission of offence to disappear. It is not a case where accused/appellant Budhan has given any information relating to the offence which he knew or believed to be false. It is not established that he did

anything with an intention of screening Jageswar from the legal punishment. Neither the accused/appellant Budhan was present at the time of commission of offence nor there is evidence that anyone had given him information regarding commission of offence.

12. The ingredients of Section 201 IPC are lacking and the finding arrived at by the trial Court is not sustainable in the eyes of law. Consequently, the judgment of conviction and order of sentence passed by the trial Court against the accused/appellant Budhan for offence under Section 201 IPC are set aside and he is acquitted of the said charge.

13. The appellant is reported to be on bail. His bail bond stands discharged.

**Sd/
(Ram Prasanna Sharma)
JUDGE**