

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (SJ) No.43 of 2011**

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Naresh Prasad Singh S/o Late Budhan Prasad R/o Village Murgaon, P.S.  
Hulasganj, District Jehanabad

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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**Appearance :**

For the Appellant : Mr. Sanjay Prasad, Advocate  
For the State : Mr. Parmeshwar Mehta, APP

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

**ORAL JUDGMENT**

**Date : 22-03-2018**

Heard learned counsel for the appellant and the learned APP for the State.

2. The present appeal has been preferred against the judgment of conviction dated 23.12.2010 and the order of sentence dated 24.12.2010, passed by learned Additional Sessions Judge (F.T.C.) III, Jehanabad in Session Trial No.240 of 2007/58 of 2007, arising out of Ghosi (Hulasganj) P.S. Case No.14 of 2002 whereby the appellant has been convicted under Section 201 of the Indian Penal Code and awarded to undergo RI for five years with fine of Rs.5000/- and in case of default of payment of fine within a month, the appellant shall further undergo RI for six months.

3. Being aggrieved and dissatisfied with the judgment of conviction and order of sentence the present appeal has been preferred.



4. The short fact giving rise to the case of the prosecution according to the informant Kamta Prasad (not examined) is that Naresh Prasad Singh, the appellant was married with his sister Janak Devi (not examined) 15 years back and out of the wedlock a daughter named Rubi Kumari was born but his brother-in-law, Naresh Prasad Singh again married with another lady, Janti Devi and both together started torturing and committing cruelty and harassment to his sister, Janak Devi and her daughter Rubi Kumari and they killed Rubi Kumari in order to avoid the partition of the property and after killing her buried the dead body somewhere else.

5. On the basis of written report of the informant Kamta Prasad, Ghosi (Hulasganj) P.S. Case No.14 of 2002 was registered against accused persons, after investigation charge-sheet was submitted, cognizance was taken and the case was committed to the court of sessions.

6. Learned counsel appearing on behalf of the appellant submits that altogether four witnesses have been examined including the Investigation Officer, Niranjana Das (PW4), however, Pws.1 to 3 have been declared hostile by the prosecution. Not only that even the informant Kamta Prasad and his sister Janak Devi both were not examined by the prosecution. The charge under Sections 302, 498A and others were not proved by the prosecution, so the trial court acquitted the appellant from those charges but ridiculously convicted



the appellant under Section 201 of the Indian Penal Code without proof of charge under Section 302 of the Indian Penal Code that the appellant had killed his daughter and thereafter disposed of her dead body secretly to disappear the evidence.

7. Learned Additional Public Prosecutor submits that the Investigation Officer, Niranjana Das (PW4) has proved the prosecution case under Section 201 of the Indian Penal Code.

8. Having gone through the entire records as well as after considering the rival submissions of both sides, the Court finds that the appellant was convicted by the trial court under Section 201 of the Indian Penal Code without any evidence on the record. Section 71 of the Criminal Procedure Code gives jurisdiction to the police to inquire and report in case of any suicide committed by a person or if any person is killed by animal or by machinery or killed in accidental death subject to information received by the police in order to ascertain the cause of death by holding inquiry but there is no penal law attracting punishment for not giving information regarding accidental death. Moreover any criminal charge is to be proved by the prosecution against an accused beyond all reasonable doubt. In the present case the appellant was charged for committing murder of his daughter Rubi Kumari and disposing off the dead body attracting offence under Section 201 of the Indian Penal Code causing disappearance of the evidence. Further charge is of committing



cruelty and harassment to his wife Janak Devi but there is absolutely no evidence on the record to prove any of the charges. Even the mother of the girl, the so called first wife, Janak Devi or the informant Kamta Prasad the most material prosecution witnesses have not been examined by the prosecution. Niranjana Das (PW4), the Investigating Officer of the case has not collected any evidence during investigation with regard to the cogent evidence in respect of charge of murder of Rubi Kumari. All independent prosecution witnesses Pws.1 to 3 have not supported the case of the prosecution, so declared hostile by the prosecution. Even in the cross-examination, no evidence has been elicited to prove the charge brought by the prosecution against the appellant. Section 201 of the Indian Penal Code reads as follows:-

“201. Causing disappearance of evidence of offence, or giving false information to screen offender.-Whoever, knowing or having reason to believe that an offence has been committed, causes 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 part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

9. Though an accused despite acquittal under Section 302 of the Indian Penal Code can be convicted under Section 201 of the Indian Penal Code but prosecution is required to bring home an offence under Section 201 of the Indian Penal Code by establishing its ingredients during the course of trial which are as follows:-

(i) Committal of an offence as in the present case the murder of Rubi Kumari, the daughter of the appellant.

(ii) A person charged with the offence under Section 201 of the Indian Penal Code must have the reason or reason to believe that such an offence has been committed.

(iii) The said person has caused the disappearance of the evidence regarding such offence.

(iv) The act should have been with intention to screening the offender.

10. The Apex Court in the case of Palvinder Kaur v. State of Punjab, reported in AIR 1952 SC 354 held as follows:-



“In order to establish the charge under s. 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.”

Similar proposition has been laid down in the case of Suleman Rahiman v. State of Maharashtra, reported in AIR 1968 SC 829, so it is imperative on the part of the prosecution to establish two premises that an offence has been committed and the accused knew about it and then has caused the disappearance of the evidence with respect to such offence.

11. In the present case, there is no evidence on the record with regard to torture perpetuated by the appellant to his wife Janki Devi and his daughter Rubi Kumari subsequently causing death of his daughter. Even the most pertinent witnesses Janki Devi and her brother Kamta Prasad (informant) also not turned up for giving evidence, so in absence of any evidence of committing cruelty to the girl and her mother and causing the death of Rubi Kumari by the appellant, it would be incongruous to hold that the appellant in order to screen himself with regard to commission of murder of his daughter has disappeared evidence, so the charge under Section 201 of the Indian Penal Code has also not been proved by the



prosecution, so the appellant is acquitted from the charge under Section 201 of the Indian Penal Code.

12. In the result, the appeal is allowed and the judgment of conviction dated 23.12.2010 and the order of sentence dated 24.12.2010, passed by learned Additional Sessions Judge (F.T.C.) III, Jehanabad in Session Trial No.240 of 2007/58 of 2007, arising out of Ghosi (Hulasganj) P.S. Case No.14 of 2002 is set aside. The appellant is on bail. He is charged from liability of his bail bond.

**(Arun Kumar, J)**

S.KUMAR/-

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