

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 398 of 2010

Judgment Reserved on 24-9-2018

Judgment delivered on 29-10-2018

- Sakhanlal Yadav aged 27 years S/o Janturam Yadav R/o Village Saket, Police Station Pathariya, District Bilaspur (CG).

---- Appellant

Versus

- State of Chhattisgarh through the Police Station Pathariya, District Bilaspur (CG).

---- Respondent

For Appellant : Mr. Ritesh Verma, Advocate.
For Respondent/State : Mr. Ramakant Pandey, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred against the judgment of conviction and order of sentence dated 13-4-2010 passed by 2nd Additional Sessions Judge (FTC), Mungeli (CG) in Sessions Trial No. 30 of 2009 wherein the said Court convicted the appellant for the commission of offence under Section 201 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.500/- with default stipulations.

2. In the present case, on 10-3-2009 at about 11.00 a.m., prime accused Santosh Yadav came armed with a spade saying that deceased father Lakhnial mortgaged land and not giving

money and assaulted thrice on the head of deceased. When the complainant Saraswati (PW/5) tried to intervene, co-accused Santosh assaulted her too. Appellant has been tried for offence under Section 201 and 195-A of IPC, but he is convicted under Section 201 of IPC on the ground that he has given false information regarding falling of deceased from stairs in order to screen the real offender from legal punishment.

3. Learned counsel for the appellant would submit as under:

- i) Prosecution examined Ram Singh (PW/3), Urmila Bai (PW/4) and G.R. Baghel (PW/14) to prove guilt of the appellant. Ram Singh (PW/3) has been declared hostile, who did not say regarding disappearance of evidence. PW/4 Urmila Bai and G.R. Baghel (PW/14) did not state regarding disappearance of the evidence of offence by the appellant.
- ii) Prosecution could not prove the knowledge of commission of offence by appellant and, therefore, charge under Section 201 of IPC is not established.
- lii) The trial Court has not appreciated the material

contradiction, omission and improvement and therefore, there is no reliable evidence warranting conviction of the appellant, therefore, finding of the trial Court is liable to be reversed.

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the court below in which impugned judgment has been passed.

6. As per record of the trial Court, co-accused Santosh Yadav was charge-sheeted for commission of murder of father of Lakhanlal who assaulted him by spade and the present appellant is charged for offence under Section 201 of the IPC on the ground that he gave false information regarding falling of Lakhanlal from stairs in order to screen the main accused Santosh Kumar Yadav.

7. To substantiate the charge, prosecution examined as many as 14 witnesses. Case of the prosecution against the present appellant is based on the statement of Ram Singh (PW/3) and

Urmila Bai (PW/4). PW/3 Ram Singh did not depose anything against the present appellant in his examination-in-chief before the trial Court. He was subjected to leading questions by the prosecution side and on answering leading questions he deposed that the appellant said that true story is to be concealed and a new story of falling Lakhanlal from stairs should be published, but in his cross examination he admitted that no conversation took place between him and the present appellant. As per version of this witness when conversation was being done by the punch and the appellants, he was not present (para 13). PW/4 Urmila Bai though deposed in her examination-in-chief that the appellant told her that true story should be concealed and it should be published that Lakhanlal died due to fall from stairs. From the evidence of this witness, it is clear that no conversation took place between her and the present appellant during treatment of deceased Lakhanlal Yadav, therefore, it is not clear as to where the conversation took place between the appellant and this witness. Evidence adduced by the prosecution is shaky in nature and, therefore, it is unsafe to base any finding on the statement of this witness.

8. 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”.

9. In the present case, prosecution is basing its case against the appellant as per statement of Ram Singh (PW/3) and Urmila Bai (PW/4) but their version is not of sterling quality, therefore, ingredients of Section 201 of IPC are lacking and finding arrived at by the trial Court is not sustainable in the eye of law.

10. Accordingly, the appeal is allowed. Conviction of the appellant under Section 201 of IPC is set aside. He is acquitted of the charge under Section 201 of IPC. Fine amount, if paid, be refunded to the appellant. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju