

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1046 of 1999**

- Kanhaiya Lal S/o Dukhi Ram Patel, aged about 48 years, Occupation cultivation, resident of village Amapali, thana Lailunga District- Raigarh (M. P.).

---- Appellant**Versus**

- State of Madhya Pradesh, through the District Magistrate, Raigarh.

---- Respondent

For Appellant	: Ms. Praggya Pandey, Advocate
For Respondent/State	: Mr. Dinesh Tiwari, Dy. G. A.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****21/05/2020**

(1) When the matter is called out for hearing, none is present on behalf of the appellant/accused to prosecute the appeal. In the facts and circumstances of the case, in particular the long pendency of the appeal, this Court has no other option but to appoint the Advocate from the panel of High Court Legal Service Committee to represent the appellant/accused.

(2) On being asked, Ms. Praggya Pandey, Advocate who is one of the empanelled lawyers of High Court Legal Service Committee, is

ready and willing to argue the matter. Therefore, in the interest of justice, Ms. Praggya Pandey, Advocate is appointed as counsel to represent the appellant.

(3) Registry is directed to inform the High Court Legal Services Committee in this regard for compliance and needful.

(4) This appeal arises out of the judgment of conviction and order of sentence dated 08.04.1999 passed by the 2nd Additional Sessions Judge, Raigarh (C.G.) in Sessions Trial No. 65/1997, convicting the accused/appellant for the offence punishable under Section 212 of Indian Penal Code (henceforth "IPC") and sentencing him to undergo rigorous imprisonment for 5 years with fine of Rs. 1,000/-, in default of payment of fine, to further undergo rigorous imprisonment for three months.

(5) Case of the prosecution, in brief, is that on 11.11.1996 at about 10.00 AM Nanhiram (since deceased) had gone to village Ghuma Budapara for recovery of loan amount granted to Kashi Ram but when he did not come back, his wife Hemanti Bai went to the house of Kashi Ram and saw that Kashi Ram & one Bhoj Ram were having chit-chat with her husband (Nanhiram). On being asked by Hemanti Bai about the recovery of loan, Kashi Ram told that he has returned Rs.300/- per month to Nanhiram (since deceased). Thereafter, the couple went to house of Prem Sai and asked for return of Rs.5/- but Prem Sai offered him '*Kosna Liquor*', here again Nanhi Ram has stayed for about one hour and, thereafter, when Nanhiram and his wife Hemanti Bai were coming back to their village, on the way, accused persons namely

Dasha Ram, Sunder Lal and one absconded accused Nahar @ Ghashiya (Nehru) (son of present appellant – Kanhaiya Lal) met them and they demanded money for purchasing liquor but Nanhi Ram refused to do so and came back. When Nanhi Ram and his wife Hemanti Bai reached near village Ghumabuda, all the three persons assaulted the deceased by kicks and fists, which was witnessed by Hemanti Bai (PW-4), who also got injured during the assault made by accused persons including the son of appellant-Kanhaiya Lal when she was trying to intervene. She fled away from the place of occurrence and narrated the entire incident to Anandram and other villagers and when the villagers reached the place of incident, Nanhi Ram had already dead. FIR (Ex.P-10) & merg (Ex.P-11) to that effect were lodged by Hemanti Bai (PW-4) on the same day of incident against the accused persons namely- Dasharam, sundarlal and Nahar @ Ghasiya (Neheru). During investigation, inquest report (Ex.P-6) was prepared. Spot map (Ex. P/4) was prepared by Investigating Officer. During investigation broken bangle was seized vide Ex. P/7. Articles as mentioned in seizure memo (Ex. P/8) were seized from the place of occurrence. Merg intimation No. 49/96 was also recorded by K.P. Awasthi. Seized articles were sent for chemical examination and as per FSL report Ex. P/15 blood stain was found on *Dhoti* as Article “C”; blood stain found on stones as Articles “D, E, F & G” and found on blood stained Shirt as Article “H”. Dr. Shailendra Upadhyay (PW-1) conducted postmortem of the deceased vide Ex.1, who noticed following injuries :-

(I) A lacerated wound was found above left eyebrow in the size of 1”

x 1" bone deep.

(ii) A lacerated wound 1" medial to right ear 1" x 1" bone deep.

(iii) A lacerated wound above right eyebrow in the size of 1" x 1" bone deep, and

(iv) One lacerated wound 1" lateral to right eye 1 cm x 1 cm bone deep found on the deceased.

He also noticed 3rd, 6th, 7th & 8th ribs fracture on the left side and likewise 2nd, 3rd, 4th, 5th, and 6th ribs fracture on the right side.

In his opinion, the cause of death was syncope due to excessive internal and external hemorrhage caused by rupture of spleen, due to external compression of chest and abdomen. Death was estimated to have occurred 18 to 36 hours earlier, homicidal in nature.

(6) After usual investigation, charge sheet was filed against Dasha Ram, Sundar Lal and Kanhaiya Lal showing accused- Nahar @ Ghashiya (Nehru) is absconding, under Section 302 read with Section 34 of the IPC. However, while framing charge, the trial Court framed charge under Section 302/34 of the IPC against the accused persons namely Sunderlal & Dasharam *whereas* the trial Court framed charge under Section 212 of the IPC against present appellant- Kanhaiya Lal. Accused persons denied the charges levelled against them and prayed for trial.

(7) So as to hold the accused persons/appellants guilty, the prosecution examined as many as 13 witnesses namely- Dr. Shailendra Upadhyaya (PW-1), Deeleeeram Bhagat (PW-2), Anandram (PW-3), Hemanti (PW-4), Ramsai (PW-5), Regati (PW-6), Subaso Bai (PW-7), Asharam (PW-8), Santram (PW-9), K.P. Awasthi (PW-10), Amar Singh (PW-11), Kashiram (PW-12) & S.P. Singh (PW-13).

Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. Apart from this, one witness namely Janki Ram has also been examined as defence witness No. 1.

(8) The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused appellant as mentioned in opening paragraph of the judgment.

(9) It is relevant to mention here that another two accused persons namely Sundar Lal & Dasha Ram, who were convicted and sentenced under Section 302/34 of the IPC, both had filed an appeal before this Court being Criminal Appeal No. 2552 of 1999 and the said appeal was allowed in part vide judgment dated 05.05.2015 by altering the conviction of the said appellants from Section 302/34 IPC to Section 325/34 of the IPC and they are sentenced to the period already undergone by them.

(10) Learned counsel for the appellant submits that appellant has been falsely implicated in the crime in question as there is no evidence on record to the effect that appellant is guilty of harbouring or concealing the absconded accused Nehru and only due to the fact that present appellant is father of absconded accused – Nahar @ Ghashiya (Nehru), the present appellant has been implicated in the crime in question. He further submits that basic ingredients of Section 212 are missing in the present case and without proper appreciating the oral and documentary evidence available on record, the trial Court, by the

impugned judgment, has convicted and sentenced the accused/appellant as aforementioned, which is liable to be set aside by acquitting the accused/appellant of the charge framed against him.

(11) Per contra, learned counsel for the State, while supporting the impugned judgment, would submit that despite the appellant being fully aware of the fact that his son was involved in the commission of offence of murder of deceased Nanhi Ram, he tried to harbour or conceal his son and asked Anandram (PW03) for compromising the matter with his son (absconded accused – Nehru) and, therefore, the trial Court is absolutely justified in convicting and sentencing the accused/appellant for the aforesaid offence.

(12) I have heard learned counsel appearing for the parties and perused the impugned judgment including record of court below.

(13) The conviction of the appellant by the trial Court is under Section 212 of the Indian Penal Code, which read as under :-

“212. **Harbouring offender.**- Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment;

If a capital offence. - shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to the fine;

If punishable with imprisonment for life, or with imprisonment.- 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;

and if the offence is punishable with imprisonment which may extend to one year, and not 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 imprisonment provided for the offence, or with fine, or with both.”

(14) A plain reading of Section 212 of the IPC would show that for convicting a person under Section 212 IPC, the following essential ingredients must be established:

- (i) the offence must have been committed, i.e., completed and there must be an 'offender';
- (ii) there must be harbouring or concealment of a person by the accused;
- (iii) the accused knows or has reason to believe that such harboured or concealed person is the offender; and
- (iv) there must be an intention on the part of the accused to screen the offender from legal punishment.

(15) It is not in dispute that except Anandram (PW-3), all the witnesses namely- Dr. Shailendra Upadhyaya (PW-1), Deeleeram Bhagat (PW-2), Hemanti (PW-4), Ramsai (PW-5), Regati (PW-6), Subaso Bai (PW-7), Asharam (PW-8), Santram (PW-9), K.P. Awasthi (PW-10), Kashiram (PW-12) & S.P. Singh (PW-13) have not stated anything about the accused /appellant -Kanhaiya or the fact that appellant tried to conceal or harbour his son.

(16) Anand Ram (PW03) has stated in paragraph two of his statement that after three days of incident, present appellant- Kanhaiya approached him and requested to compromise the case with his son –

Nehru (absconded accused). Except this, no other evidence was adduced by the prosecution with regard to the fact that appellant being well aware that his son -accused- Nehru was involved in the commission of offence, tried to harbour or conceal his son with intention to save accused – Nehru. Thus, it is apparent that prosecution has utterly failed to prove that the present appellant tried to conceal or harbour his son with intention to save him from legal punishment.

(17) In the matter of **Sumativijay Jain Vs. The State of M. P. & Others** reported in **1992 CRI. L. J. 97** while dealing with offence under Section 212 of IPC the High Court of M. P. observed as under:

“8. For an offence u/S. 212, IPC for harbouring an offender, it has to be proved that an offender was harboured or concealed by a person with the knowledge or having reason to believe that such person was the offender and such harbouring or concealment has to be with the intention of screening him from legal punishment. The material on record does not even *prima facie* indicate that Sumativijay harboured or concealed Mukesh and Maniya. It was only the opinion expressed by the witnesses that Sumativijay had the motive to harbour or conceal the offenders and he might have done so. The evidence is not sufficient to frame charge u/S. 212 of the IPC also against the applicant Sumativijay. As observed in AIR 1990 SC 1962 : (1990 Cri LJ 1869) (Supra) the Court has to evaluate the material on record at the time of framing of a charge with a view to finding out if the facts emerging therefrom taken on their face value disclose the existence of the

ingredients constituting the alleged offence. The Sessions Judge has clearly failed to do so. The material collected by the police against the applicant Sumativijay taken on its face value does not disclose the existence of the ingredients constituting an offence u/S. 120-B and S. 212 of the IPC. Both the charges against the applicant are, therefore, groundless and deserve to be quashed.”

(18) Looking to the facts & circumstances of the case, evidence available on record and the basic ingredients of Section 212 of the IPC and the judgment in the matter of **Sumativijay Jain Vs. The State of M. P. (Supra)** it is quite clear that merely for the reason that the present appellant is father of the absconding accused – Nahar @ Ghashiya (Nehru), therefore, it can not be presumed that he willingly and knowingly tried to conceal or give shelter to his son with intention to save him from legal punishment. The prosecution has failed to prove the offence under Section 212 of the IPC against the accused/appellant.

(19) Consequently, the appeal is allowed. Impugned judgment dated 08.04.1999 convicting and sentencing the appellant is set aside and the appellant is acquitted of the charge framed against him. The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge