



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 111 OF 2004

1. Neelkanth s/o Sadashiv Deshmukh
Age: 26 yrs., Occu.: Agri.
2. Aashabai w/o Sadashiv Deshmukh
Age: 57 yrs., Occu.: Household.
3. Sadashiv s/o Vishnu Deshmukh
Age: 61 yrs., Occu.: Agri.

All R/o. : At post Sukali, Tq.Shevgaon,
Dist.Ahmednagar.

(As per Court order dated 02-05-2013,
appeal is abated as against Appellant
no.3)

...Appellants

Versus

. The State of Maharashtra

...Respondent

.....
Advocate for Appellants : Ms.Shilpa Aurangabadkar h/f.
Mr.Satej S.Jadhav
APP for Respondent : Mr.K.K.Naik
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19 JULY, 2024

PRONOUNCED ON : 09 AUGUST, 2024

JUDGMENT :-

1. Appellants herein assail judgment and order passed by I Ad-hoc Additional Sessions Judge, Ahmednagar in Sessions Case no.131

of 2002 recording guilt and conviction of the appellants for offence under Section 201 read with 34 of the Indian Penal Code (IPC).

2. It is to be mentioned here that during pendency of the appeal, appellant no.3 namely Sadashiv s/o Vishnu Deshmukh, who is original accused no.4, died, therefore, by order of this Court dated 02-05-2013, appeal stood abated against him. Consequently, appeal of only appellant nos.1 and 2 has now remained for consideration.

IN NUTSHELL PROSECUTION CASE

3. Deceased Anita, daughter of informant PW1 Dada, was married with appellant no.1 and she went to cohabit with husband and in-laws. Everything was smooth for a period of one year. Thereafter, son-in-law i.e. appellant no.1 put up demand of Rs.35,000/- for setting up T.V. shop for his younger brother at village Mahi-Jalgaon. In the backdrop of such demand, there was maltreatment to Anita. When informant went and even when Anita came for festivals, she reported about above demand and ill-treatment to informant.

At 09:00 p.m. on 12-05-2002 information was received that Anita was sick and admitted in the hospital. Informant and all

relatives reached village Sukali i.e. where accused resided. On reaching, they were informed that Anita died and her funeral was also over. Therefore, on the next day, informant approached Shevgaon Police Station and lodged report, on the strength of which crime was registered bearing no.65 of 2002 against husband and in-laws for offence under Sections 498-A, 304-B, 201, 306, 34 of the IPC.

PW5 Bahure (PI), who was entrusted with investigation, carried out the same and chargesheeted accused, who were tried by I Ad-hoc Additional Sessions Judge, Ahmednagar vide Sessions Case 131 of 2002 for offence u/s 498-A, 304-B, 306, 201 read with 34 of IPC.

Prosecution adduced evidence of in all five witnesses. Defence also adduced evidence of one witness.

On appreciating oral and documentary evidence, learned trial Judge reached to a conclusion that prosecution failed to establish the charges against appellants for offence under Sections 498-A, 304-B, 306 read with 34, however, guilt was recorded for commission of offence under Section 201 read with 34 of the IPC and accordingly, present appellants were convicted and sentenced to suffer rigorous imprisonment for two years and to pay fine.

Above judgment is taken exception to by filing instant appeal on various grounds.

SUBMISSIONS

On behalf of appellants :

4. Learned counsel for appellants pointed out that prosecution has miserably failed to establish its case and charges by adducing cogent, reliable and trustworthy evidence. She pointed out that though there was charge of offence under Sections 498-A, 304-B, 306 read with 34 alongwith charge of 201 of the IPC, learned trial Court had already acquitted appellants and accused no.4 from such charges, but has held appellants guilty for offence under Section 201 read with 34 of the IPC. She would strenuously submit that main charges for which appellants were tried were not proved i.e. 498-A, 304-B as well as 306 of the IPC, therefore, she questions the conviction of appellants for offence under Section 201 of the IPC as according to her, there was no direct or circumstantial evidence.

5. According to her, prosecution version is false, fabricated and afterthought. Learned Counsel took this Court through the testimonies of father and brother of deceased and would submit that specific defence of accused is that deceased Anita was suffering from

incurable disease. She was treated for the said ailment. That treating Doctor has been examined and therefore, death of Anita was solely due to illness and ailment and therefore, no offence was committed or even made out. She pointed out that when offence is not shown to be committed, where is the question of recording guilt for causing disappearance of evidence for the offence which at all is not proved to be committed. According to learned Counsel, there is improper appreciation of evidence and non-consideration of legal requirements by the learned trial Judge.

6. Learned Counsel also pointed out that testimonies of informant father and brother of deceased are full of material omissions rendering the prosecution version doubtful. According to her, witnesses are not consistent or lending support to each other and therefore, learned trial Court has rightly discarded the prosecution version on main charges of Section 498-A, 304-B, 306 read with 34 of the IPC.

7. Lastly, she submitted that even essential ingredients for attracting charge of Section 201 of the IPC are not available on record. That informant father and brother of deceased, in their substantive evidence, admitted that information of admission of

Anita in hospital was conveyed to them. That they all had reached late night. That they had attended the last rituals, though they denied it in the witness box. There was no suppression of any information and when no offence is shown to be committed, learned Counsel questions the conviction and prays to interfere by allowing the appeal.

On behalf of State :

8. Per contra, learned APP supported the conviction by submitting that though in trial Court prosecution failed to establish charge of Sections 498-A, 304-B or 306 read with 34 of the IPC, he submitted that there is deliberate with-holding of information relating to death of Anita i.e. from parents. According to learned APP, to save themselves, last rituals are hurriedly performed. Therefore, it is his submission that required ingredients for attracting second limb of 201 are available in the evidence and therefore, learned trial Court committed no error in recording guilt for offence under Section 201 read with 34 of the IPC and so he prays to dismiss the appeal.

PROSECUTION EVIDENCE ON RECORD

9. In support of its case, prosecution has adduced evidence of five witnesses. Sum and substance of their evidence is as under :

PW1 Dada Anna Kale / informant father deposed at exh.27 that, after marriage, his daughter Anita went to reside with her husband and in-laws at village Sukali, Tq.Shevgaon. That she was treated properly for one year, but thereafter, appellant no.1 - son-in-law put up demand of Rs.35,000/- for starting T.V. shop for his younger brother. That as informant refused to comply, husband, sister-in-law started ill-treating Anita. That during Panchami festival, when Anita came to maternal home and went back to accused, she was not allowed to reside in the house. That during marriage of cousin brother-in-law of Anita, accused husband demanded Rs.20,000/-, which was assured to be thought over on consultation with son. That five days after the demand, news that Anita was sick and hospitalized was received and when informant and others reached at around 01:45 a.m., they were told that Anita has expired and even funeral is over and therefore, on the next day he lodged report.

PW2 Vishwanath Ramrao Pawar, Pancha to spot panchanama exh.30 deposed about panchanama being drawn in his presence on 15-05-2002 in house of accused.

PW3 Satish Dadasaheb Kale, brother of deceased, deposed that his sister was treated properly for one year. When his sister came to maternal home, she informed about ill-treatment by husband and in-laws on account of bringing money for setting up T.V. shop for younger brother of accused no.1. Initially demand was of Rs.35,000/- but subsequently demand was made for Rs.20,000/-. As demand was not met, accused persons beat Anita and made her sleep without food. She also reported about ill-treatment when she came for Diwali festival. During marriage of cousin brother-in-law of Anita, she had come, she cried and reported about serious torture. One Mohanrao Shelke came and informed that Anita was seriously ill and they all left for Ratnapur at around 09:00 p.m. to 10:00 p.m. and reached Sukali at 01:00 a.m. to 02:00 a.m. There, on enquiry, they were told that funeral is over. He deposed that they suspected that accused persons killed his sister by administering poison.

PW4 Virendra Chintaman Baraskar is Police Head Constable, who noted the FIR and registered crime.

PW5 Kisansing Sandosing Bahure (PI) is the Investigating Officer, who narrated all the steps taken by him during investigation.

DEFENDANT EVIDENCE ON RECORD

10. Defence has also adduced evidence of one witness i.e. **DW1** Dr.Amit Bhanudas Phadke, Medical Officer at exh.42, who testified about Anita being brought with history of per vaginal bleeding on 15-02-2000, 17-02-2000, 18-02-2000 and Sonography test revealed her pregnancy. During visit on 27-11-2000, there was complaint of burning micturation and was given medical treatment. During visit of Anita on 25-02-2002, she was two months' pregnant and at that time, she gave previous history. Doctor carried photocopies of medical papers exh.44 and 45.

ANALYSIS

11. Admittedly, though there was charge for Section 498-A, 304-B, 306 read with 34 of the IPC, appellants are acquitted from such charges, but they are held guilty and convicted for offence under Section 201 read with 34 of the IPC. State has not questioned the acquittal from above charges by filing any proceedings. Therefore, only the short point, which arises for consideration in this appeal, is whether prosecution at all succeeded in establishing charge of Section 201 read with 34 of the IPC.

12. Section 201 of the IPC for ready reference and comprehension is reproduced as under :

“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.”

13. The essentials to prove the offence punishable under Section 201 of the IPC are time and again dealt by the Hon’ble Apex Court in umpteen judgments. The relevant observations and requirements in some of the known cases are as under :

(i) In the case of ***Palvinder Kaur v. State of Punjab***, AIR 1952 SC 354, the Hon’ble Apex Court has observed in paragraph 14 as under :

“14. In order to establish the charge under 201 of the 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 reasons to believe that such offence had been committed and with requisite knowledge and with intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reasons to believe the same to be false.”

(ii) In the case of ***Suleman Rehiman Mulani v. State of Maharashtra*** AIR 1968 SC 829, the Hon’ble Apex Court has observed in paragraph 6 as under :

“6. The conviction of the Appellant 2 under Section 201 IPC depends on the sustainability of the conviction of

*Appellant 1 under Section 304-A IPC. If Appellant 1 was rightly convicted under that provision, the conviction of Appellant 2 under Section 201 IPC on the facts found cannot be challenged. But on the other hand, if the conviction of Appellant 1 under Section 304-A IPC cannot be sustained, then, the second appellant's conviction under Section 201 IPC will have to be set aside, because to establish the charge under Section 201, the prosecution must first prove that an offence had been committed not merely a suspicion that it might have been committed - and that the accused knowing or having reason to believe that such an offence had been committed, and with the intent to screen the offender from legal punishment, had caused the evidence thereof to disappear. The proof of the commission of an offence is an essential requisite for bringing home the offence under Section 201 IPC - see the decision of this Court in *Palvinder Kaur v. State of Punjab*."*

(iii) In the case of ***Nathu v. State of U.P.*** (1979) 3 SCC 574, the Hon'ble Apex Court has observed in paragraph 1 as under :

"1. Before a conviction under Section 201 can be recorded, it must be shown to the satisfaction of the court that the accused knew or had reason to believe that an offence had been committed and having got this knowledge, tried to screen the offender by disposing off the dead body."

(iv) In the case of **Ram Saran Mahto v. State of Bihar** (1999) 9 SCC 486, the Hon'ble Apex Court has observed in paragraph 13 as under :

“13. It is not necessary that the offender himself should have been found guilty of the main offence for the purpose of convicting him of offence under Section 201. Nor is it absolutely necessary that somebody else should have been found guilty of the main offence. Nonetheless, it is imperative that the prosecution should have established two premises. First is that an offence has been committed and the second is that the accused knew about it or he had reasons to believe the commission of that offence. Then and then alone the prosecution can succeed, provided the remaining postulates of the offence are also established.”

(v) In the case of **VL.Tresa v. State of Kerala** (2001) 3 SCC 549, the Hon'ble Apex Court has observed in paragraph 12 as under :

“12. Having regard to the language used, the following ingredients emerge :

(I) committal of an offence :

(II) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed:

(III) person charged with the offence under Section 201 IPC should have caused disappearance of evidence or should have given false information regarding the main offence; and

(IV) the act should have been done with the

intention of screening the offender from legal punishment.”

(vi) In the case of ***Sukhram v. State of Maharashtra*** (2007) 7 SCC 502, the Hon’ble Apex Court has observed in paragraph 18 as under :

“18. The first paragraph of the Section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation. To bring home an offence under Section 201 of IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has

caused the evidence to disappear in order to screen the offender, known or unknown.”

Very recently the Hon’ble Apex Court, while deciding Criminal Appeal 265–66 of 2018 in the case of ***Dinesh Kumar Kalidas Patel v. State of Gujarat***, (2018) 3 SCC 313, after discussing above referred precedent in paragraph 14 has observed as under :

“14. Thus, law is well settled that a charge under Section 201 IPC can be independently laid and conviction maintained also, in case the prosecution is able to establish that an offence had been committed, the person charged with the offence, had the knowledge or the reason to believe that the offence has been committed, the said person has caused disappearance of the evidence and such act of disappearance has been done with the intention of screening the offender from legal punishment. Mere suspicion is not sufficient, it must be proved that the accused knew or had a reason to believe that the offence has been committed and yet he caused the evidence to disappear so as to screen the offender. The offender may be either himself or any other person.”

14. Having regard to above legal position, if we revert to the factual matrix of the case in hand, it is noticed that PW1 informant and his son PW3, who are the only witnesses from family of deceased and who are examined by prosecution, they both in examination-in-

chief itself speak about news of Anita being sick and admitted in the hospital was received in the night of 12-05-2002. They claim to have reached Sukali village at around 01:00 a.m. to 02:00 a.m. (midnight). No other relative accompanying them has been examined to substantiate about receipt of news and they reaching village Sukali at around 01:00 a.m. to 02:00 a.m. Even no independent villager is examined. It is to be noted that even though PW1 informant claims that news was received from Mohanrao Shelke and he accompanied informant and others, he is not examined. Informant's testimony shows that at his instance they all returned back to their own village Ratnapur same night i.e. on intervening night of 12-05-2002 and 13-05-2002 without reporting occurrence to Police. Evidence to above extent was crucial because allegations of prosecution are that before parents and family members of Anita reached village Sukali, funeral was hurriedly performed. Therefore, it was expected of prosecution to show that without waiting for informant and other family members, deliberately to save themselves, funeral and last rituals were completed by the accused. Because one of the essentials for attracting offence under Section 201 of the IPC is suppression of commission of an offence.

15. Learned trial Court had already acquitted accused from charge of Sections 498-A, 304-B as well as 306 read with 34 of IPC. Prosecution witnesses i.e. PW1 Dada, informant, in FIR, alleges abetment to commit suicide whereas his own son PW3 Satish deposed that they suspected that accused persons killed his sister by administering poison. Consequently, witnesses are not consistent as regards to allegation of mode and manner of death.

16. Here, admittedly there is nothing to show that deceased Anita met unnatural death. Specific defence of accused in trial Court is that deceased was suffering from serious and incurable disease. Deceased was reported to be and also diagnosed of being pregnant, but surprisingly informant had flatly denied about any ailment, any treatment given to his daughter and has shown ignorance about her pregnancy. This is found in paragraph 8 of cross-examination where he has denied that Anita underwent abortion twice. He has also shown ignorance about accused husband taking Anita for medical check up from time to time at Nitya Seva Hospital, Shevgaon. He also denied that Anita lost her hairs and was finding it difficult to work and sit due to pains to her limbs and joints. He has flatly denied that she was suffering from serious disease. He also

expressed his ignorance that husband frequently took Anita to even Eknath Ayurvedic Hospital, Shevgaon. In paragraph 9 of cross-examination he has also denied that accused persons were waiting for them for funeral ceremony and that after they reached around 11:00 p.m., in their presence funeral was performed. He also denied in paragraph 10 of cross-examination about ritual of collecting bones and ashes was conducted on 3rd day of death and said rituals were attended by over 20-25 persons from his side.

17. Likewise, PW3 Satish, brother of deceased, in paragraph 5 has admitted that Anita died on 12-05-2002 and programme of collecting bones and ash was performed on 14-05-2002. He expressed his inability to state whether it was conducted in the morning and flatly denied that he and his family members attended the funeral programme.

18. Defence has examined **DW1** Dr.Amit Fadke, a Medical Officer working in Nitya Seva Hospital, Shevgaon, at exh.42 wherein he deposed that he worked as Medical Officer in said hospital for last six years. He has deposed that Anita Neelkantha Deshmukh visited the hospital on 15-02-2000. He himself and Dr.Karkaria, C.M.O.

attended Anita, who disclosed history of per vaginal bleeding. He deposed that on examination, it was revealed that she was carrying two months' pregnancy. He stated that she visited their hospital on 17-02-2000 and again made complaint of per vaginal bleeding. She even paid visit on 18-02-2000, and on said date her Sonography was performed, which revealed she to be two months' pregnant. That she visited hospital on 27-11-2000 and was complaining of burning micturation and was given medical treatment. Thereafter, she came on 25-02-2002 and that time she had given history of two previous abortions; one in 4th month and another in pre-term delivery i.e. in 7th months. Witness carried two medical papers maintained by the hospital, which are in his own handwriting as well as in the handwriting of Dr.Karkaria, which identified to be true and correct. Said documents are marked as exh.44 and 45.

In **cross-examination** above Medical Officer answered that he had examined Anita on 29-04-2002 and he stated that she had not come there for any treatment of Cancer nor complaint of any disease.

19. From above material, it is emerging that though PW1 informant father is denying any ailment or even pregnancy of his deceased daughter, defence witness DW1 examined by accused does

show that Anita was being treated for complaint of per vaginal bleeding since February 2000. There is history of two previous abortions. There was complaint of micturation and was being treated for the same. Surprisingly, informant father is either expressing ignorance or denying any disease or ailment to his daughter.

20. Above discussed material shows that Anita did have health issues. PW1 Informant and his son PW3 both do not deny about news being received about hospitalization of Anita. News of hospitalization was passed on to them by one Mohanrao Shelke. Informant and other relatives have reached village of accused same night. No complaint has been lodged that night and complainant party had returned back to their village Ratnapur and had come on the next day to lodge report. Cross-examination of informant shows that it was very much possible to lodge report on same night if at all there was any complaint. Why he refrained same night from doing so has not been properly explained. Only reason quoted by him is that he was frightened. Even his cross-examination in paragraph 6 shows that he had gone back to Shevgaon Police Station at around 07:00 p.m. to 08:00 p.m. next day.

21. Therefore, apparently there is no prompt lodgment of complaint. There are direct suggestions, though denied, that all family members had attended the last rituals and even attended the 3rd day ritual ceremony. Except PW1 father and PW3 brother of deceased, there is no independent witness in support of their case that before they reached, funeral was concluded. It does not seem to be a case that without any intimation, accused persons completed the funeral and last rituals. In spite of news of hospitalization being allegedly received at around 09:00 p.m. and when informant himself claims that distance between his village Ratnapur and village of accused is about 2-3 hours, complainant party claims to have reached Sukali at around 01:00 a.m. to 02:00 a.m. (midnight). PW1 father has admitted that his son Satish, being at Bombay, was informed late and he reached late.

Therefore, such circumstances goes to show that complainant party did go to the village of accused. Though denied, there are clear suggestion that they had all attended the funeral and thereafter, returned back. Delayed FIR without plausible explanation renders defence version doubtful and possibility of false implication on afterthought story cannot be brushed aside lightly.

SUMMATION

22. In the light of above, keeping the above legal requirements in mind, here firstly commission of offence has not been proved and death of Anita is not proved to be either due to suicide or administration of poison, which are alleged by PW1 father and PW3 brother of deceased. It appears that Anita, who had physical ailment and was being treated for same, did meet unnatural death, but there is nothing to show that accused are responsible for the same. The essential ingredients for attracting offence under Section 201 read with 34 of the IPC are not available in the prosecution evidence.

23. Perused the judgment under challenge. Learned trial Judge had readily accepted prosecution version regarding the offence under Section 201 read with 34 of the IPC without getting convinced and satisfied regarding availability of essential ingredients required for convicting accused for the said charge. Hence, it is a case calling for interference by allowing the appeal. Accordingly, I pass the following order :

ORDER

I) Criminal Appeal No.111 of 2004 is allowed.

II) The conviction awarded to appellant nos.(1) Neelkanth s/o Sadashiv Deshmukh and (2) Aashabai w/o Sadashiv Deshmukh in Sessions Case No.131 of 2002 by the learned I Ad-hoc Additional Sessions Judge, Ahmednagar on 22-01-2004 for the offence punishable under Section 201 read with 34 of the Indian Penal Code, stands quashed and set aside.

III) The appellant nos.1 and 2 stand acquitted of the offence punishable under Section 201 read with 34 of the Indian Penal Code.

IV) **The bail bonds of appellant nos.1 and 2 stand cancelled.**

V) The fine amount deposited, if any, be refunded to the appellant nos.1 and 2 after the statutory period.

VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

**(ABHAY S. WAGHWASE)
JUDGE**