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SOU. VIJAYA @ BABY
v.
STATE OF MAHARASHTRA

SEPTEMBER 3, 2003

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[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Criminal Law :

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Penal Code, 1860—Section 201—Ingredients of—Conviction under—Maintainability of—Appellant's brother burning his wife to death while appellant was sleeping in another room—Held, intention to screen the offender must be the primary and sole object of accused—There is no material to bring in application of Section 201 by attributing knowledge of commission of offence to appellant—Conviction set aside—Sections 302; 304B and 498A.

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Brother of appellant was married to the deceased. Within a short period of marriage, deceased was burnt to death. Appellant alongwith her brother was charged for offences punishable under Sections 302, 304B, 498A and 201 of the Indian Penal Code. Appellant was held

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guilty for offence punishable under Section 201 IPC by Additional Sessions Judge and was acquitted of the other offences. Appeal before the High Court was dismissed. Hence the present appeal.

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On behalf of appellant, it was contended that the ingredients of Section 201 IPC are absent; that since the death was by burning, the question of causing disappearance of evidence does not arise; that in view of the appellant's acquittal relating to offence under Section 302 IPC, she had no role to play in the murder of the deceased and hence the conviction was unsustainable.

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On behalf of the State, it was contended that even if an accused is acquitted of offence relatable to Section 302 IPC, yet conviction under Section 201 IPC is permissible.

Allowing the appeal, the Court

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HELD : 1.1. Section 201 IPC requires 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. [344-B, C] A

1.2 The ingredients of the 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 the offender from legal punishment. On applying these legal principles to the factual scenario it is clear that the prosecution has not established the essential ingredients. [344-E-H] B C

2.1 Although the legal principle that notwithstanding acquittal with reference to the offence under Section 302 IPC, conviction under Section 201 is permissible in a given case cannot be disputed, in the present case in addition to the fact that the appellant has been acquitted of the charges relating to Section 302 IPC, there is no material to bring in application of Section 201 by attributing knowledge of the commission of the offence to her. Therefore, conviction of appellant cannot be maintained. [345-B-D] D E

V.I. Tresa v. State of Kerala, [2001] 3 SCC 549, referred to. F

2.2 The charges framed were for causing disappearance of evidence. Though in a given case defective charge does not vitiate trial in terms of Section 464 of the Criminal Procedure Code, 1908, where the omission is vital and even the substance of accusations is totally different from what is sought to be established by the prosecution and there is no evidence on record to attribute knowledge of commission of offence by the other accused that can be an additional factor for acquitting the accused. [345-C-D] G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 901 of 1996. H

A From the Judgment and Order dated 26.4.96 of the Bombay High Court in CrI. A. No. 362 and 394 of 1992.

U.R. Lalit and A.K. Sanghi for the Appellant.

B Mukesh K. Giri for Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by

C **ARIJIT PASAYAT, J. :** Appellant-Vijaya faced trial along with her brother Nepalchandra for alleged commission of offences punishable under Sections 302, 304-B, 498-A and 201 of the Indian Penal Code, 1860 (for short 'IPC'). The II Additional Sessions Judge, Bhandara, acquitted the appellant of offences relatable to Sections 302, 304-B, 498-A, but held her guilty for offence punishable under Section 201 IPC and sentenced her to undergo RI for five years. Her brother (hereinafter described as 'accused no.1 or A-1') was found guilty of offence punishable under Sections 302 and 201 IPC and was sentenced to undergo imprisonment for life and five years respectively. The High Court of Judicature at Bombay, Bench at Nagpur, dealt with the appeals filed by the appellant (hereinafter described as 'accused no. 2 or A-2'). Both the appeals were dismissed. We are informed that the SLP filed by A-1 has also been dismissed by this Court.

E The accusations which led to trial of both the accused-appellants are essentially as follows:

F Usha (hereinafter described as 'deceased') was married to A-1 on 16.5.1989. She came to the house of her parents on 18.5.1989 and remained there upto 4.6.1989. Thereafter the deceased was brought to the house of A-1. On 24.6.1989, father of the deceased came to know that she has been burnt to death. Though A-1 gave out that case was one of suicide. Father of the deceased did not believe it and lodged information with police. Investigation was undertaken and charge sheet was placed charging both **G** the accused-appellants for offences as noted above. At this point it is to be noted that A-2 was given on marriage on 15.5.1989 and had come to her brother A-1 house. Thereafter the prosecution brought materials on record to the effect that deceased and A-1 were sleeping in one room and **H** formers' dead body was found in the Kitchen. The Trial Court analysed the evidence on record to conclude that part played by both A-1 and

A-2 immediately after the incident, and giving wrong information that the deceased had committed suicide clearly established that both were guilty. They also gave false information to the police immediately, as well as the parents of the deceased and other relatives later about the incident and that attracted Section 201 IPC. It was further concluded that both the accused actively participated in causing disappearance of evidence, having known that murder of the deceased has been committed, in order to protect themselves from legal punishment. They tried to project as if there was a suicide. It analysed in detail the evidence so far as the role of A-1 is concerned. In appeal, unfortunately, the High Court did not deal with Section 201 IPC specifically and even did not discuss the evidence and came to the conclusion that since both the accused persons were present at the relevant time in the house, disappearance of evidence is the act of both the accused. With this observation the appellant A-2's appeal was dismissed.

In support of the appeal Mr. U.R. Lalit, learned senior counsel submitted that the ingredients of Section 201 IPC are absent. The charge as framed was that the appellant has caused certain evidence of the said offence (murder of Ushabai) to disappear. Section 201 according to him consists of two parts i.e. (1) causing disappearance of evidence; (2) giving false information to screen offender.

Admittedly the A-2 was sleeping in a different room. Since the death was by burning, the question of causing disappearance of evidence does not arise, in view of her acquittal relating to offence under Section 302 IPC. A-2 had no role to play in the murder of the deceased. That being so, the conviction is unsustainable.

Per contra, learned counsel for the State submitted that the High Court has endorsed view of the Trial Court, which analysed the evidence. This is clearly a case where Section 201 has application. Reference is made to a decision of this Court in *V.L. Tresa v. State of Kerala*, [2001] 3 SCC 549 to contend that even if an accused is acquitted of offence relating to Section 302 IPC, yet conviction under Section 201 is permissible.

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."

- A** (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.
- B** 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.
- C** 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”.
- D** 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.
- E**
- 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 the offender from legal punishment.
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On applying the aforesaid legal principles to the factual scenario it is clear that the prosecution has not established the essential ingredients. The decision relied upon i.e. *V.L. Tresa* (supra) by the respondent-State is really of no assistance to it. There is no quarrel with the legal principle that notwithstanding acquittal with reference to offence under Section 302 IPC, conviction under Section 201 is permissible, in a given case. In the present case in addition to the fact that the appellant A-2 has been acquitted of the charges relating to Section 302 IPC, there is no material to bring in application of Section 201 by attributing knowledge of the commission of the offence to her. It is rightly contended by Mr. Lalit that the charges framed were for causing disappearance of evidence. Though in a given case defective charge does not vitiate trial in terms of Section 464 of the Criminal Procedure Code 1908, (for short 'the Code') where the omission is vital and even the substance of accusations is totally different from what is sought to be established by the prosecution, and there is no evidence on record to attribute knowledge of commission of the offence by the other accused that can be an additional factor for acquitting the accused. Looked at from any angle conviction of the appellant-accused A-2 cannot be maintained and is set aside. The appeal is allowed. The bail bonds are cancelled.

M. P.

Appeal allowed.