

Ishwari and Others Vs. State of Chhattisgarh

Ishwari and Others Vs. State of Chhattisgarh

SooperKanoon Citation : sooperkanoon.com/1172476

Court : Chhattisgarh

Decided On : Sep-26-2014

Judge : P. Sam Koshy

Appeal No. : Criminal Appeal No. 25 of 2003

Appellant : Ishwari and Others

Respondent : State of Chhattisgarh

Judgement :

(1) The instant criminal appeal has been filed by the three accused persons (appellants) against the judgment of conviction and order of sentence dated 16.12.2002 passed by Third Additional Sessions Judge (F.T.C), Mungeli, Distt. Bilaspur, in Sessions Trial No.132/1996.

(2) Facts of the case as per the prosecution, in brief, are that a charge-sheet for the offences punishable under Sections 306, 201/34 was filed against the accused persons, i.e., the appellants and their father Lekhani Sahu, accused No.4 (since expired). According to the prosecution, one Nirmala Bai (deceased), wife of appellant No.3 Shiv Kumar, was forced to commit suicide by the accused persons after she was subjected to physical and mental torture. As per the prosecution, on account of excessive cruelty made out by the accused persons, Nirmala Bai had left the house on 28.1.1995 and that since then she was missing. However, subsequently, on 2.11.1995, dead body of Nirmala Bai was recovered from a

nearby well belonging to one Jhamman Satnami. After recovering the dead body from the well, the accused persons in order to conceal the dead body took and buried the same without intimating the incident to the villagers in general. Thus, the accused persons concealed the death of the Nirmala Bai. The prosecution after due investigation of the case filed a charge-sheet against the accused persons for the offences punishable under Sections 306, 201/34, before the Court of Judicial Magistrate First Class, Mungeli. After committal, the matter was put to trial before the Court below, which was registered as Sessions Trial No.132/1996.

(3) During trial, the prosecution examined 24 witnesses in all in support of its case. Statements of the accused persons were recorded under Section 313 of Cr PC in which they denied the circumstances appearing against them in the prosecution case, abjured their guilt and pleaded innocence and false implication.

(4) After conclusion of the trial, the Court below, vide impugned judgement dated 16.12.2002, held that the accused persons are not guilty of having committed the offence punishable under Section 306 of IPC and, therefore, the Court below exonerated the accused persons for the said offence. However, the Court below has held the accused persons to be guilty of having committed the offence punishable under Section 201 read with Section 34 of IPC. Accordingly, the Court below convicting the accused persons for the said offence, sentenced them to undergo R.I. for 3 years and fine of Rs.3000/- each and, in default of payment of fine to suffer additional R.I. for 6 months.

(5) It is this judgement of conviction and sentence of the accused persons, which has been challenged by the appellants-accused in the instant criminal appeal.

(6) Learned counsel for the appellants submits that the finding of the Court below firstly is erroneous, secondly is illegal and lastly that the appellants under the given facts and circumstances could not have been convicted for the offence punishable under Section 201/34 of IPC. Learned counsel for the appellants further submits that the conviction as passed by the Court below is not sustainable and maintainable for the reason that unless there is a conviction of the accused person for a principal offence which in the instant case was under Section 306 of IPC, the conviction under Section 201 of IPC alone is apparently bad in law.

(7) According to the counsel for the appellants the impugned order under challenged convicting the accused appellants for the offence under Section 201 of IPC is *per se* illegal on three grounds; firstly, as per the counsel for the appellants the offence under Section 201 of IPC can be made out only in the event when the accused persons are primarily of having committed a different offence and that after the commission of the said offence if there is any concealment of evidence or any act on the part of the accused persons in screening the offender from legal punishment or causes something causing any evidence of the commission of that offence to disappear or acts with that intention and gives any information respecting the offence which he knows or believes to be false. Thus, according to the counsel for the accused appellants, the accused persons could not be charged or convicted for the offence under Section 201 of IPC independently without there being an offence proved under any of the such provisions of the IPC or criminal law. Secondly, counsel for the appellants further submits that the conviction under Section 201 of IPC could only be done in the event if there is a proof that the accused persons have acted in the manner causing any evidence of commission of that offence to disappear which again has not been established in the instant case according to the appellants and, therefore, the conviction of the appellants for the offence under Section 201 alone cannot be sustained and the order of conviction deserves to be set aside. Lastly, according to the counsel for the appellants the prosecution has failed to prove the case against the appellants for which they were charged beyond all reasonable doubt and for this reason also the impugned order of conviction deserves to be set aside and the appellants should be acquitted of the offence under Section 201 of IPC.

(8) On the contrary, opposing the submissions of the counsel for the appellants, learned counsel for the respondent-State submits that even in the event if the accused persons have not been found guilty of any other substantial charge the conviction of the appellants for the offence under Section 201 of IPC alone also is sustainable. According to the counsel for the appellants if the accused persons have acted in a manner concealing of material facts relating to the commission of an offence and by way of the said concealment of facts the accused persons have tried to disappear commission of that offence. Similarly, according to the counsel for the State in the instant case the appellants with a *mala fide* intention gives a

false information in respect of the offence they know or believe to be false. According to the State's counsel the conduct of the accused persons after they had found the dead body in a well clearly shows that the accused persons have acted in a manner whereby they did not want the villagers or for that matter the family members to know about the death of the deceased and knowing this fact that the deceased has died the accused persons misguided the family members, relatives and neighbours about the deceased being alive and that she had gone to earn her livelihood itself establishes the fact that there have been material suppression and concealment of facts by the accused persons and for which the conviction of the accused persons for the offence under Section 201 of IPC is proper, legal and justified and does not warrant any interference or indulgence at this juncture.

(9) Considered the arguments put forth by the learned counsel for the appellants as well as the respondent-State. On due consideration of the submissions made by the counsel for either side, it is trite to reproduce the relevant portion of Section 201 of IPC so as to understand the case in a proper manner:

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 an 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:.....

(10) A plain reading of Section 201 of IPC itself reflects that the offence under Section 201 would be made firstly when the accused persons 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 only then the provisions of the said Section can be attracted.

(11) In the instant case the substance against the accused persons is offence under Section 306 of IPC whereby it is alleged that the accused appellants have

abetted in the act of suicide by the deceased Nirmala Bai, wife of Appellant No.3 Shiv Kumar and that subsequently all the accused persons have acted in a manner to disappear the commission of that offence with an intention of screening the offender having disappeared the dead body of the deceased Nirmala Bai. According to the prosecution the accused persons had got the information and knowledge about the deceased Nirmala Bai having committed the act of suicide by drowning herself in a well in the house of Jumman Satnami and it is alleged that after the body was found in the well of Jumman Satnami the appellants recovered the body from the well and buried the body digging a pit in the canal. Further, the appellants also misguided the neighbors and relatives and the other family members stating that the deceased has gone to Rajasthan for livelihood purpose and from Rajasthan she has written a letter about the fact that she is in Rajasthan and has gone to earn her livelihood. If we read the provisions of Section 201 of IPC which clearly shows that the said offence becomes applicable only when the accused persons are guilty of an offence to have been committed and that the accused persons act in a manner causing any evidence of that offence to disappear. The provisions of Section 201 of IPC when compared to the facts of the instant case it must first be established that the accused persons have committed an offence of abetment of suicide and that the accused persons further acted in a manner so as to screen the offender and in the course disappear the evidence of commission of that offence i.e. the abetment to suicide. But the fact remains that the Court below after completion of the trial reached to the conclusion that there is no material evidence available with the prosecution or for that matter the prosecution has failed to establish the charge under Section 306 of IPC against the accused persons. In other words, the Court below reached to the conclusion that there is not enough material in the evidence of the prosecution to hold that the appellants have committed the offence under Section 306 of IPC and if the main offence under Section 306 of IPC itself is not made out against the accused appellants then the offence under Section 201 of IPC causing disappearance of the evidence of offence or giving false information to screen the offender cannot be said to have been made out.

(12) The Hon'ble Supreme Court in *Palvinder Kaur v. State of Punjab* [AIR 1952 SC 354] had said that in order to establish the charge under Section 201 of IPC, it

is essential to prove that an offence has been committed, that the accused knew or had reason to believe that such offence had been committed, with requisite knowledge and with the intent to screen the offender from legal punishment, caused the evidence thereof to disappear to give false information respecting such offence knowing or having reason to believe the same to be false. It was observed that the Court should safeguard itself against the danger of basing its conclusion on suspicions, however, strong they may be. In 2007, the Hon'ble Supreme Court again in the case of Sukhram v. State of Maharashtra [2007 (7) SCC 502] has reiterated the fact that 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 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 of 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.

(13) The ratio laid down by the Hon'ble Supreme Court in the above referred two judgements clearly suggests the fact that the accused persons for the offence under Section 201 of IPC should have sufficient evidence and knowledge about the fact that the offence has been committed and that by the act of the accused persons they are trying to screen the offender from legal punishment. The ratio laid down by the Hon'ble Supreme Court in the above referred two cases when compared to the facts of the present case what clearly establishes the fact is that the prosecution has failed to establish the fact that the deceased in the instant case, namely, Nirmala Bai, firstly had committed the suicide, secondly the death of the deceased was as a result of suicide and, lastly the fact that the deceased committed suicide on the clear abetment on the part of the accused persons. From

the evidence which have come on record before the Court below it is apparent that there is no evidence whatsoever to substantiate the above referred facts i.e. in respect of the alleged suicide committed by Nirmala Bai, the death arose because of the suicide and lastly the suicide was at the abetment on the part of the accused persons. In the absence of these basic ingredients applying the principles by the Hon'ble Supreme Court in the above cited two cases the offence under Section 201 of IPC is not made out against the accused persons.

(14) The word offence used in the first part of Section 201 of IPC means some real offence which is described in Section 40 of Chapter II of IPC. The language of first part of Section 201 of IPC is self explanatory establishing the fact of commission of offence is *sine quo non* to bring home an offence under this Section and without establishing the fact of commission of offence the person/accused cannot be convicted under this Section which has, however, been done in the present case.

(15) Further, if we see the provisions of Section 201 of IPC it would show that the punishment imposed upon the accused persons for the offence under Section 201 of IPC is proportionate to the punishment of the substantive which has been committed by the accused persons as is reflected from the three paragraphs dealing with the punishment for the offence under Section 201 of IPC. That is to say that the offence under Section 201 of IPC there is no independent prescribed punishment but would always be commensurate to the main offence. However, in the instant case the ingredients of the said main offence itself is missing and therefore also the charges leveled against the accused persons for the offence under Section 201 of IPC cannot be said to have been proved or established so as to convict the accused persons.

(16) The case and the story of the prosecution begins with the charge of 'abetment to commit suicide' and 'causes evidence of the commission of the said offence of abetment to disappear' against the accused and, therefore, if the accused have been acquitted of the charge of Section 306 of IPC then to bring home charge under Section 201 of IPC the fact of 'causes evidence of the commission of the said offence of abetment to disappear' is required to be proved which is lacking in the present case and, therefore, the conviction under Section 201 of IPC would be

without any foundation.

(17) For the foregoing reasons as discussed in the preceding paragraphs, in my considered opinion, the conviction on the part of the accused persons for the offence under Section 201 of IPC independently is not proper, legal or justified and, therefore, the finding of conviction as imposed by the Court below deserves to be and is accordingly set aside and the accused persons are acquitted of the charges leveled against them for the offence under Section 201 of IPC.

(18) The Criminal Appeal stands accordingly allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com