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**Court :** Guwahati

**Decided On :** Jul-22-1974

**Judge :** R.S. Bindra, J.

**Appellant :** In Re Sumitra Sherpani and ors.

**Prior history :** R.S. Bindra, J. 1. This is an appeal by Sumitra Sherpani who has been found guilty of the charge under Section 201, I.P.C. and sentenced to 3 years R. I. and a fine of Rs. 500, or, in default, additional R. I. for 3 months. 2. The first information report to this case was lodged at 5 P.M. on 27-7-1969 at the Police Station, Mekokchung, by Bande Bahadur Gurung, Ex. P-I being the copy thereof. This report was made on behalf of Gorkha Panchayat of Mokok-chung. It was mentioned therein that Sumitr

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had given birth to an illegitimate male baby on 19-7-1969, that Gorkha Panchayat was held on,27-7-1 69 to determine the circumstances relating to the birth of such a child, that Sumitra Sherpani was summoned before the Panchayat where she affirmed that her newly born baby was given bath by Suryaman Pra-dhan, her paramour, on the night of 21-7-1969. that during the course of that bath some quantity of soap water was forcibly poured by Suryaman Pradhan into the mouth of the baby, and that the baby died as a consequence. It was also mentioned in the report that according to the statement of Sumitra Sherpani the dead body of the child was disposed of secretly. Deep suspicion was expressed in the FIR that the newly born baby had been deliberately murdered.

3. A case was registered under Section 302, I.P.C. on the basis of the aforementioned FIR and on conclusion of the investigation three accused were charge-sheeted under Section 302/34, I. P. G, they being Sumitra Sherpani, Deva Siring Sheroa and Mayakumzuk Ao. The trial court discharged the accused Deva Siring Gherpa and Mayukumzuk Ao but charged Sumitra Sherpani under Sections 302 and 318. I.P.C.

4. The accused Sumitra Sherpani entered the plea of not guilty.

5. The prosecution examined nine witnesses in proof of the charges framed against' the accused while the latter rest contented with her plea of not guilty. In her statement under Section 342, Cr. P. C, recorded after the conclusion of prosecution evidence, she denied that she had given birth to a child on- 19-7-1969, or that she had killed that child, or that she had taken any steps to cause the disappearance of evidence relating to the alleged murder' of the child. According to her, she had been falsely implicated at the machination of Senam Lams who wanted to marry her and she having cold-shouldered his proposal.

6. The learned trial court reached the conclusions that the prosecution had succeeded in proving that Sumitra Sherpani had given birth to a male child, that the dead body of the child had been disposed of with her full knowlec&a;, that she had failed to report the death of the child to the police, and that all these facts cumulatively established the charge under Section 201, I.P.C. against Sumitra Sherpani. She had reason to believe, the court held further, that 'an offence was

committed on the child', that she 'caused such evidence of commission of offence to disappear by disposal of the dead body', and that she had done so 'with the intention to screen the offenders from legal punishment by not reporting the offence to the police.

7. The first para of Section 201, LP.C. defines the offence. It says that whoever knowing or having reason to believe that an offence had 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 shall have committed the offence punishable by Section 201. The ingredients of that offence evidently are:

(1) That some offence had been committed;

(2) That the accused either knows the commission of that offence or has reason to believe that such an offence had been committed;

(3) That the accused causes any evidence of the commission of that offence to disappear; and

(4) That the accused had caused the disappearance of the evidence relevant to that offence with the intention of screening the offender from legal punishment or with that intention had given any information respecting the offence which he knows or believes to be false.

8. The primary ingredient of the offence defined in Section 201, I.P.C. is that some offence the evidence relevant to which is said to have been made to disappear had been committed. Therefore, this Court has first to determine whether the prosecution has proved beyond reasonable doubt that the child allegedly given birth to by the appellant on 19-7-69 had been murdered.

9. Indisputably there is no direct evidence bearing on the charge of murder, and that fact alone probably accounted for the discharge of the two accused and acquittal of the appellant herself of the charge of murder. The prosecution case respecting the charge of murder was that some soap or soap water had been

thrust into the mouth of the child with a view to suffocating it with the ultimate object of putting an end to its life.

10. Admittedly there is no direct evidence to show that either the appellant or her paramour, or, for that matter, anybody else, had forced' some soap water or soap itself into the mouth of the child with the object of causing its death. Some witnesses were examined by the prosecution to prove a statement allegedly made by the appellant before the Gorkha Pan-chayat held on 27-7-69 to the effect that her paramour had thrust some soap water into the mouth of the baby while giving bath to it. That statement of Sumitra Sherpani, however, was not brought on the file of the trial court, although admittedly that statement was reduced to writing. I have gone through the court statements of the witnesses who had participated in the Panchayat enquiry but neither of them makes a convincing reading, and the trial court does not appear to have placed any reliance thereon. However, Shri H. K. Sema, the learned Government Advocate, has invited this Court 's attention to the testimony of Dr. B. K. Murry who held the autopsy on the cadaver of the child after it had been disinterred. Dr. Murry deposed that lie had done the autopsy on 28-7-69 on the dead body of a newly born male child, that he found two bruises on the face of the child, one on each cheek, and that he did not notice any internal injury. Dr. Murry gave the opinion that the child had died due to suffocation, and this opinion he rested on the fact that the mouth of the child was wide open when he did the post-mortem examination. This is all that the doctor had to say on the main features of the post-mortem examination held by him and the cause of the death. None of the two bruises on the cheeks, it is evident, could have brought about suffocation which could cause death. According to Dr. Murry, he reached the conclusion that the death had been caused by suffocation only on the basis that he found the mouth of the child wide open when the autopsy was undertaken, The mere factum of the mouth being wide open, I feel satisfied, cannot yield conclusive evidence of the, fact that death had been caused by suffocation, Dr. Murry, I would like to emphasise, did not state that on opening the body of the child he had found any soapy material inside. Nor did he collect some material from the mouth of the child or from its stomach to get the same analysed to confirm or dispel the theory that death of the child I had been caused by forcing some soapy material into its mouth. Therefore, I see no escape from the

conclusion that the allegation about the unnatural death of the child, which alone could have sustained the charge of murder, remains unproved, and on that finding alone the conviction of the appellant under Section 201, I.P.C. cannot be maintained.

11. However, I am inclined to examine, albeit briefly, the argument vigorously urged by Shri Soma that the charge under Section 201, I.P.C. will be sufficiently brought home to the convict in case the Court agrees with his contention that the child had been done to death. I have set out above the four essential ingredients of the offence described in Section 201, I.P.C, and the second of those ingredients is that the accused had caused disappearance of some evidence bearing on the commission of the offence. The expression 'causes' used in the section is not defined anywhere and so it must be interpreted according to its dictionary meaning. According to Chambers's 20th Century Dictionary, the word 'causes' as a verb, means 'to produce, to make to exist, to bring about, to give excuses for', and the word is always used as transitive verb. This dictionary meaning of the expression 'cause' clearly envisages some active step on the part of the doer of the act, and so in the matter of causing disappearance of evidence relevant to a particular offence the person charged must be proved to have actively participated in the matter of disappearance of the evidence and not mere sufferance by him or her of the removal of such evidence by others. The Supreme Court held in the case of *Raghav Prapanna Tripathi v. State of Uttar Pradesh*. : [1963]3SCR239 that mere knowledge on the part of the accused of the removal of the dead bodies did not bring the case within the ambit of Section 201, I.P.C, and that section's essential requirement is causing any evidence of commission of offence to disappear. The Supreme Court held further that unless the prosecution could establish that the accused had caused any evidence to disappear the charge under Section 201, I.P.C. would be not sustainable. That court observed in the context of the facts of the case in hand that there may be a very strong suspicion that if from the house dead bodies are removed or blood was washed, persons placed in position of the convicts must have had a hand in it but still there remains the suspicion, even a strong suspicion at that. In other words, the Supreme Court expressed the opinion that strong suspicion against the accused about his or her culpability would be not substitute for legal evidence, and this opinion exactly

corresponds with the proposition enunciated by the Supreme Court in another case reported in : 1971 CriLJ1139 , D. Dasaradharamareddy v. State of Andhra Pradesh. That proposition was that strongest suspicion against an accused person will not amount to legal proof.

12. Let us now examine if there is any material on the record to sustain the finding that the appellant had caused disappearance of the body of the deceased child from her house.

13. The first five witnesses of the prosecution referred to the statement allegedly made by the convict before the Gorkha Panchayat held on 27-7-69. According to their testimony, all that the appellant said on that day was that her paramour had given bath to the child, that during the course of the bath he had forced some soapy material into the mouth of the child and that the child had died as a consequence, None of this set of witnesses affirmed that the appellant had stated that, she had any hand in the; disposal of the dead body., P.W. 6 Deva Siring is the uncle of the appellant. H.- had also been hauled up by the Police to-; the murder of the child but he was discharged by the trial court. Obviously, he was not a competent witness in a case against, his co-accused, Anyway, all that he said relevant to the point under discussion was that he along with Mayakum-zuk Ao (another accused who was charge-sheeted but was discharged by the trial court) and Surman Pradhan (who was also named as an accused by the Police in this case but could not be brought to trial because he had absconded) had buried the dead body of the child at about 5 A.M. and that he did not know how the child had died. This statement does not constitute any evidence against the convict respecting the charge under Section 201, I.P.C. P.W. 7 is Mayangkumzuk Ao and he too like P.W. 6 was not a competent witness in the present case. He also did not affirm that the convict had any hand in the matter of disposal of the body of the child. It must, therefore, follow that there is no legal evidence establishing that the convict had participated in any manner, directly or indirectly, in the matter of disposal of the dead body. As such another essential ingredient of Section 201, I.P.C. remains unproved.

14. In view of the conclusions reached above, I hold that the prosecution has miserably failed in bringing home the charge under Section 201, I.P.C. to the convict, Consequently on allowing this appeal and setting aside the conviction of the appellant and sentence imposed on her, I order her acquittal. She need not surrender to the bail bond furnished by her.

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