REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 265-266 OF 2018
(Arising out of S.L.P.(Criminal) Nos. 1815-1816 of 2016)

DINESH KUMAR KALIDAS PATEL ... APPELLANT (S)

VERSUS

THE STATE OF GUJARAT ... RESPONDENT (S)

J U D G M E N T

KURIAN, J.:

Leave granted.

2. The appellant was convicted by the Sessions Judge, Mehsana (State of Gujarat) for offences under Sections 498A and 201 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC"). A sentence of one year rigorous imprisonment and a penalty of Rs.1,000/- with a default sentence of three months was awarded under Section 498A and six months and

Rs.500/- with a default sentence of one month for the offence under Section 201 of the IPC.

3. This is a case where the appellant's wife committed suicide by hanging. The incident took place on 26.12.1990. The information was conveyed to the family of the deceased. The father and brother of the deceased, who is a doctor by profession, attended the last rites. After more than three months, the father of the deceased filed a complaint before the Judicial Magistrate at Kadi on 01.04.1991. The same was investigated, and the appellant was charged under Sections 304B, 306, 498A and 201 read with Section 120B of the IPC and Section 4 of the Dowry Prohibition Act, 1961. Along with the appellant, seven other persons also faced the trial. By judgment dated 12.09.1995, the Sessions Judge convicted the appellant under Sections 498A and 201 of the IPC but acquitted the seven others.

4. The appeals filed in 1995 were heard in the year 2015 and, as per the impugned judgment, the appellant was acquitted of the offence under Section 498A of the IPC but conviction under Section 201 of the IPC was maintained. Thus aggrieved, the appellant is before this Court.

5. Heard learned Counsel appearing for the appellant and learned Counsel appearing for the State.

6. Several contentions have been raised on merits. That apart, the appellant has also raised a question of law as to whether the conviction under Section 201 of the IPC could have been maintained while acquitting him of the main offence under Section 498A of the IPC.

7. Learned Counsel have placed reliance on the decisions of this Court in **Palvinder Kaur v. State of Punjab**[1], **Smt. Kalawati and Ranjit Singh v. State of Himachal Pradesh**[2], and **Suleman Rehiman Mulani and another v. State of Maharashtra**[3].

8. In **Palvinder Kaur** (supra)**,** this Court held as follows:

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

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[1] AIR 1952 SC 354
[2] AIR 1953 SC 131
[3] AIR 1968 SC 829

The conviction in this case was ultimately set aside on the aforementioned legal position and the facts.

9. The Constitution Bench decision in **Kalawati** (supra) may not be of much assistance in this case since the facts are completely different. The co-accused was convicted under Section 302 of the IPC for the main offence, and in the peculiar facts and circumstances of that case, this Court deemed it fit to convict Kalawati only under Section 201 of the IPC.

10. Relying on **Palvinder Kaur** (supra), this Court in **Suleman Rehiman** (supra), made the following observation:

> **"6.** The conviction of 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.”*

It is necessary to note that the reason for acquittal under Section 201 in the above case was that there was no evidence to show that the rash and negligent act of appellant No.1 caused the death of the deceased. Hence, the court acquitted appellant No. 2 under Section 201. The observation at paragraph 6 has to be viewed and analysed in that background.

11. In **Ram Saran Mahto and another** v. **State of Bihar**[4], this Court discussed **Kalawati** (supra) and **Palvinder Kaur** (supra). It has been held at paragraphs-13 to 15 that conviction under the main offence is not necessary to convict the offender under Section 201 of the IPC. To quote:

> “**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. The 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.

[4] (1999) 9 SCC 486

14. The above position has been well stated by a three-Judge Bench of this Court way back in 1952, in *Palvinder Kaur* v. *State of Punjab*:

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

15. It is well to remind that the Bench gave a note of caution that the court should safeguard itself against the danger of basing its conclusion on suspicions however strong they may be. In *Kalawati* v. *State of H.P* a Constitution Bench of this Court has, no doubt, convicted an accused under Section 201 IPC even though he was acquitted of the offence under Section 302. But the said course was adopted by this Court after entering the finding that another accused had committed the murder and the appellant destroyed the evidence of it with full knowledge thereof. In a later decision in *Nathu* v. *State of U.P.* this Court has repeated the caution in the following words: (SCC p. 575, para 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 of the dead body."

12. In **V.L. Tresa** v. **State of Kerala**[5], this Court has discussed the essential ingredients of the offence under Section 201 of the IPC at paragraph 12:

> "**12.** Having regard to the language used, the following ingredients emerge:
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> (*I*) committal of an offence;
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> (*II*) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed;
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> (*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
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> (*IV*) the act should have been done with the intention of screening the offender from legal punishment."

13. In **Sukhram** v. **State of Maharashtra**[6], this Court discussed **Kalawati** (supra), **Palvinder Kaur** (supra), **Suleman Rehiman** (supra) and **V.L. Tresa** (supra) among others. The essential ingredients for conviction under Section 201 of the IPC have been discussed at paragraph 18:

> "**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

[5] (2001) 3 SCC 549
[6] (2007) 7 SCC 502

> bring home an offence under Section 201 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."

In **Sou Vijaya @ Baby** v. **State of Maharashtra**[7], though this Court held that the decision in **V.L. Tresa** (supra) was of no assistance to the State in the particular facts, it re-iterated that "*there is no quarrel with 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*."

[7] (2003) 8 SCC 296

14. The decisions in **Sou Vijaya** (supra) and **V.L. Tresa** (supra) were noticed in **State of Karnataka** v. **Madesha**[8]**.** While the appeal of the State was dismissed, this Court in unmistakeable terms held that:

> **"9.** It is to be noted that there can be no dispute that Section 201 would have application even if the main offence is not established in view of what has been stated in *V.L. Tresa* and *Sou. Vijaya* cases..."

15. Thus, the law is well-settled that a charge under Section 201 of the 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 had been committed, the said person has caused disappearance of 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.

[8] (2007) 7 SCC 35

16. Having thus analysed the legal position, we shall revert to the factual matrix and see whether the conviction in the facts and circumstances of the case under Section 201 of the IPC could be sustained.

17. An analysis of the judgment of the Sessions Judge in this context would be quite relevant. At paragraph-16, having analysed the facts and having referred to the minute details of the alleged commission of the offence, the court has entered the following finding:

> "**16**....In this manner this entire case suggest that the behaviour of the accused no. 1 was very suspicious. He has not undertaken the process for the PM of the dead body. He has not declared the facts before the police and the last rites of the dead body have been performed before the maternal family reaches from Ahmedabad. In this manner, while considering the facts on record I come at a conclusion that the accused no. 1 has failed in his duty as a husband. The husband has kept the wife in a bungalow and has most of the time remained away from her. This is very torturing and harassing for a wife. Thus as per my opinion it is proved by the prosecution on the basis of the facts on record and especially the chit at 0-1 that there was mental harassment upon the deceased Lila, from the side of the accused no.1. The fact remains that the accused no.1 has not informed the police even though an unnatural death has occurred and the last rites have also been performed without performing the post-mortem and without informing the police. Thus as per my opinion the accused no. 1 is prima

> facie guilty of the crime under section 498(a) and 201 of the IPC and therefore the prosecution has proved the case partly in affirmation."

18. The High Court, in appeal, however, took the view that the appellant was not liable to be convicted under Section 498A of the IPC. However, his conviction under Section 201 of the IPC was liable to be maintained. To quote:

> "5... We have re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon'ble Apex Court. Taking into consideration the fact that the complaint was lodged almost after a period of four months of the incident in question, the fact remains is that no *post mortem* was performed of the deceased. Even if the case of defence is accepted, it was a premature and unnatural death and therefore the mandatory requirements under the law, at least to inform the police of the death and to get the *post mortem* of the deceased done, were not fulfilled. Admittedly, nothing has come on record to show that the *post mortem* was carried out and/or the police complaint was immediately filed. Considering the said aspect, we have all reasons to believe that the offence is made out under section 201 of the IPC. However, so far as offence punishable under Section 498A of the IPC is concerned, we believe the contention of Mr. Anandjiwala, learned senior advocate for the accused No.1, that almost after a period of four months, the complaint was lodged and there is nothing on record to substantiate the case of the prosecution *qua* cruelty being perpetrated to the deceased for want of dowry and on the contrary, the accused No.1 had helped the father of the deceased and gave Rs.1 lakh. Under the circumstances, we are of the opinion that the learned trial judge has rightly convicted the

> accused No.1 for the offence punishable under Section 201 of the IPC, however, has committed an error in holding conviction of the accused No.1 for the offence punishable under Section 498A of the IPC and same is not sustainable."

19. Thus, the only ground for maintaining the conviction under Section 201 of the IPC is that the appellant did not give intimation to the police of the unnatural death and that no post-mortem was conducted.

20. We are afraid, the High Court is not justified in maintaining the conviction under Section 201 only on the ground that no communication was given to the police and that the post-mortem had not been performed. The Trial Court has taken note of the fact that the father of the deceased and her brother (who is a doctor) had attended the last rites of the deceased and neither of them had any complaint or suspicion at that time of the commission of any offence. The Sessions Court has also taken note of the suicide note left by the deceased wherein she had taken the entire blame on herself. Yet the court has taken the view, from the consideration we have extracted from paragraph-16 of the Sessions court judgment, that the deceased might have been in a state of depression having remained alone for most of the time and it amounted to torture.

The appellant has been acquitted of the offence under Section 498A by the High Court, and rightly so. The prosecution has also not been able to satisfy the ingredients under Section 201 of the IPC. Neither the Sessions Court nor the High Court has any case that there is any intentional omission to give information by the appellant to the police. It is also to be noted that prosecution has no case under Section 202 of the IPC against the appellant.

21. As held by this Court in **Hanuman and others v. State of Rajasthan**[9]**,** the mere fact that the deceased allegedly died an unnatural death could not be sufficient to bring home a charge under Section 201 of the IPC. Unless the prosecution was able to establish that the accused person knew or had reason to believe that an offence has been committed and had done something causing the offence of commission of evidence to disappear, he cannot be convicted.

22. There is no such allegation against the appellant. The last rites of the deceased were performed in the presence of the members of her family. They had no suspicion at that time of the commission of any offence. The private complaint was lodged after more than three months. There is no charge under

[9] 1994 Supp (2) SCC 39

Section 202 of the IPC of intentionally omitting to give information of the unnatural death to the police. It is also not the case of the complainant that he had requested for post-mortem of the body and that intimation should have been given to the police before the last rites were performed.

23. In the above facts and circumstances, we are of the view that the Sessions Court is not justified in convicting the appellant under Section 201 of the IPC and the High Court maintaining the same. Accordingly, the appeals are allowed. The conviction of the appellant under Section 201 of the IPC is set aside.

.....J.
(KURIAN JOSEPH)

.....J.
(AMITAVA ROY)

NEW DELHI;
FEBRUARY 12, 2018.