(1991) 01 KL CK 0023

High Court Of Kerala

Case No: Criminal Appeal No. 15 of 1987 and Cri. R.C. No. 24 of 1988

Treesa		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: Jan. 22, 1991

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302

Citation: (1991) CriLJ 1920 : (1991) 2 ILR (Ker) 276

Hon'ble Judges: P.K. Shamsuddin, J; K.T. Thomas, J

Bench: Division Bench

Advocate: M.N. Sukumaran Nayar, for the Appellant; Public Prosecutor and M.M. Mathew, for the Respondent

Judgement

K.T. Thomas, J.

Deceased Vincent was a young advocate whose practice was mainly in the District Centre, Ernakulam. His death was suspected to be a murder. After investigation his wife was indicted for the murder and also for giving false information regarding the incident in order to screen herself from legal punishment. The Sessions Court acquitted her of murder charge, but convicted her for the offence u/s 201 of the Penal Code and sentenced her to undergo rigorous imprisonment for five years. She filed the appeal challenging the conviction and sentence.

2. When the appeal was heard by a learned single Judge of this Court, it was contended for the appellant that the offence u/s 201 of the I.P.C. cannot be found without establishment of the main offence. The State has not filed any appeal against acquittal for the main offence. However, revisional jurisdiction of this Court has been initiated by the learned single Judge against the order of acquittal. We heard arguments in the appeal and also in the suo motu revision. Learned Public Prosecutor argued that the order of acquittal is wrong and he canvassed for conviction of the appellant for the offence u/s 302 of the I.P.C. For the sake of

convenience, the appellant will be referred to as the accused.

3. Deceased was one of the four children of P.W. 1. Deceased and his wife along with their six year old daughter Tesvy were residing in another house at Vennala near Palarivattam in Ernakulam. It appears that the deceased incurred debts. He wanted to dispose of the land and building (in which they resided) which stood in the name of his wife. He succeeded in getting a buyer for those items. Prosecution case is that the proposed sale was to the chagrin of his wife. On the date of occurrence, the deceased, after consuming liquor, returned home in the night and informed his wife that the agreement for sale was to be executed on the following day. There was a hubbub over this dispute between the husband and wife. She inflicted a beat on the forehead of the deceased with a crowbar (M.O. 1). The resultant injury involving his skull and brain brought about his death almost instantaneously. But the accused made it out to all those who reached the house that he committed suicide by hanging. Without knowing the real cause of death, father of the deceased (P.W. 1) gave first information statement to the police. The FIR was registered by the police for unnatural death, but when the body was subjected to autopsy the police sensed that it was a case of murder. Accused was arrested and after interrogation the investigating officer came to know that the crowbar was concealed beneath firewood splinters stacked in the kitchen. When the crowbar was subjected to chemical analysis in the Forensic Laboratory, it was revealed that it was stained with human blood of the same group as that of the deceased.

4. When Sessions Judge examined the accused with reference to the incriminating circumstances against her, she denied her complicity and gave a lengthy and detailed narration which included a brief sketch of her life with the deceased. According to her, she was not against sale of the property and all that she insisted on was that the sale proceeds should be deposited in her name, but as the said suggestion was not acceptable to the decesed, he started pestering and harassing her. According to the accused, her husband tried to commit suicide on an iron beam above the wash basin in the work area. When she caught hold of his legs to save him, he fell down as the knot got united and his forehead hit on the hard place and he sustained the fatal injury. She told all those who came to the house of what happened. This is in substance what she has stated in Court.

5. Learned Sessions Judge did not believe the prosecution story that it was the accused who committed the murder. Nor did the Sessions Judge accept accused''s version regarding deceased''s death. He was of the view that death was not due to accidental hit but was due to a blow inflicted on the deceased with a heavy object. Upon this finding, learned Sessions Judge proceeded to consider whether the accused committed the offence u/s 201 of the I.P.C. He found that the accused misled the persons who reached the house soon after the occurrence by telling them that the deceased committed suicide. Learned Sessions Judge also found that the accused had erased blood from the door step and floor of the room where the

incident happened and that those acts were done to screen the real offender from punishment.

6. One of the main contentions raised by the learned counsel for the accused is that no offence u/s 201 of the I.P.C. can be found unless the Court is able to hold that the main offence was committed by a particular individual. In Kalawati and Another Vs. The State of Himachal Pradesh, it was held that acquittal of the accused is no impediment to convict him for the offence u/s 201 of the I.P.C. That was a case in which a wife was charged for murder of her husband along with another person and the Court acquitted her for murder, but convicted the other person for the main offence and then proceeded to consider whether the wife committed the offence u/s 201 of the IPC. It was in the said background that the Supreme Court held that acquittal of the wife for the main offence is no legal impediment to convict her for the offence u/s 201 of the I.P.C. A Division Bench of this Court has observed in Mohammed v. State of Kerala (1988) 2 KLJ 470 that "where there is cogent evidence that the accused caused evidence to disappear in order to screen another, known or unkonw, the mere fact that he had been suspected or even tried and acquitted of the principal crime would not by itself prevent his conviction u/s 201 of the I.P.C." Learned counsel canvassed for a reconsideration of the aforesaid observation that even without the offender remaining unknown the offence u/s 201 can be found against a known accused charged with the offence. We do not think that there is any need for reconsideration of the aforesaid observation, particularly on the facts of this case. It may be that the identity of the main offender was not established through evidence of the case. It does not mean that the accused was unaware of the identity of the main offender.

7. To attract Section 201 of the I.P.C., the following ingredients have to be established; (1) That an offence has been committed. (2) The person charged with the offence u/s 201 of the I.P.C. must have the knowledge or reason to believe that the main offence had been committed. (3) The person charged with the offence u/s 201 should have caused any evidence of the main offence to disappear or should have given false information regarding the main offence. (4) The act should have been done with the intention of screening the offender from legal punishment. The emphasis of the offence u/s 201 is the intention of the accused to screen the offender from legal punishment. Such intention exists or presumed to exist in the mind of the accused when he has some interest in the person who committed the main offence. Though the identity of the person who committed the main offence is not established in evidence, there must be material to indicate that the accused knew who the main offender was, when the accused did the act of causing disappearance of evidence or giving false information regarding the offence. The intention to screen the offender must be the primary and sole object of the accused. The mere fact that the concealment was likely to have that effect is not sufficient.

8. In Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator), Supreme Court held that in order to establish the charge u/s 201 of the I.P.C. it is essential to prove that an offence has been committed and mere suspicion that, it has been committed is not sufficient and that the accused knew or had reason to believe that such offence had been committed and with the requisite knowledge and with intent to screen the offender from legal punishment causes evidence thereof to disappear or gives false information respecting such offences. The Supreme Court observed further that "it was essential in these circumstances for the prosecution to establish affirmatively that the death of the deceased was caused by the administration of potassium cyanide by some person and that she had reason to believe that it was so caused and with that knowledge she took part in the concealment and disposal of the dead body". Since the Court was in doubt as to whether death of the deceased in that case was due to homicide or suicide, the Court declined to convict the accused for the offence u/s 201 of the I.P.C. Following the said observation, the Supreme Court has held in a later decision that the proof of the commission of an offence is an essential requisite for bringing home the offence u/s 201 of the I.P.C. [vide Suleman Rehiman Mulani and Another Vs. State of Maharashtra,]. The position is made clearer in Roshan Lal and Others Vs. State of Punjab, in which the Supreme Court observed that the word "offence" wherever used in Section 201 means some real offence, which, in fact, has been committed and not some offence which the accused imagines has been committed.

9. The legal position is that the accused charged with the offence u/s 201 of the I.P.C. should have caused evidence of the main offence to disappear or should have given false information regarding the main offence with the intention of screening the person who committed the main offence. Such intention cannot be presumed if the accused did not know the identity of the offender.

10. In this case, if death of the deceased was due to homicide, it must have been done either by the accused herself or by some other person whose identity the accused had reasons to know. Learned Sessions Judge was unable to hold that it was the accused who caused the death of the deceased. Learned Public Prosecutor contended firstly that it was the accused who inflicted the fatal injury on the deceased and alternatively he contended that even if the fatal injury was inflicted by somebody else, the accused is liable to be convicted for the offence u/s 201 since accused told all others that the deceased committed or attempted to commit suicide.

11. There can be no doubt that deceased died on account of combination of injuries Nos. 6 and 9 described in the post-mortem certificate. Both can be the consequence of one single strike. Injury No. 6 has been described as a lacerated wound 1.6 cm x 1 cm x bone deep horizontal on the middle of upper part of forehead 7 cm above root of nose. The surrounding scalp tissues were found contused. The outer table of the frontal bone under the wound was found fractured and separated and produced a

depression on the bone (1 cm x 1 cm size). Injury No. has been described thus : "The front aspect of both the frontal lobes of brain showed a laceration of 1 cm x 1 cm x 1 cm size. There was sub-arachnoid haemorrhage on both the cerebral haemisphereas". The deceased had five small abrasions on the neck about which the accused had an explanation that she caught hold of the neck of the deceased while resisting the assaults made on her. (Such abrasions on the neck might or might not have been caused like that). Neither the prosecution nor the defence has any suggestion when the doctor (P. W. 13) who conducted autopsy was examined in Court that such abrasions could at all have been caused when the cloth ligature was used to hang himself. We will assume that the defence suggestion about the oossibility of causing such abrasions on the neck is correct. But the defence suggestion that injuries No. 6 and 9 could have been caused when the deceased fell down with the forehead hitting on a hard object was ruled out by P.W. 13 It is, therefore, quite reasonable to conclude that a heavy blow on the forehead would have been inflicted by a human hand with a heavy object. The death of the deceased, in all probabilities, was homicidal

12. Learned Public Prosecutor enumerated the following circumstances to support his contention that it was the accused who inflicted the fatal injury: (1) The relationship between the accused and the deceased was very much strained particularly after deceased decided to sell off her land and building. (2) The attitude of the wife towards her husband on earlier occasion is a clue to presume that she would stoop to do anything against him. (P. W. 6 has deposed that on one occasion she took out her slippers and slapped the deceased in the presence of other people), (3) The crowbar was concealed by her which contained human blood of "A" group. (The blood of the deceased was also "A"). (4) The accused gave false information to others that it was a case of suicide.

13. The relationship between the accused and the deceased earlier was not so strained as to persuade her to murder her husband. Even the propsed sale of the land and buiilding was not such an issue between them as would provide the animus to kill him. But the accused herself narrated the events which took place in the night. The couple fell out in the night as she insisted that the sale proceeds should be deposited in her name. This was followed, according to the accused, by many unpleasant developments including attacks hurled at her by the deceased. Though this sudden development of events could have injected enough animus into her mind against the deceased, that alone is not sufficient to turn her into a murderer. What P.W. 6 said about the outrageous act (when the accused slapped the deceased with slipper) cannot be relied on since the said fact was revealed for the first time only in cross-examination. Learned Sessions Judge had two broad reasons to reject the prosecution case regarding concealment of crowbar. First is that the house from which the crowbar was recovered remained in the custody of police for three days preceding the recovery of the said object. The investigating officer conceded that on the first arrival itself the police made hectic search to find

out the weapon of the offence and found none. Second is that the manner in which the blood was seen on the crow-bar (blood was detected on the entire length and breadth of the crow bar from one end to the other) did not instil confidence in the mind of the court.

14. We are not inclined to say that those reasons advanced by the learned Sessions Judge are faulty. We have yet another reason to hesitate to interfere with the finding that the accused might not have inflicted the fatal injury P.W. 4, a retired company officer, who resides close to the house in question, has deposed that the accused frantically requested him around mid night (the same night when the incident happened) to accompany her and when the witness intially hesitated, she ran back to her house. But within 3 or 4 minutes he reached her house and saw the accused weeping loudly, keeping the deceased on her lap. She was found sprinkling water on his face and shaking him in an attempt to wake him up. P.W. 4 was not treated as hostile. His evidence is inconsistent with the conduct of a person who would have murdered her husband.

15. For the aforesaid reasons, we refrain from disturbing the finding of the learned Sessions Judge that the prosecution has failed to prove that it was the accused who caused the death of the deceased.

16. However, we are in agreement with the learned Sessions Judge on the finding that the accused has given false information regarding the offence, knowing it to be false with the intention of screening the offender from legal punishment. We, therefore, confirm the conviction for the offence u/s 201 of the Indian Penal Code.

17. Regarding sentence, we take into account the fact that the accused is a lady -- a mother, whose only daughter is not staying with her now as the daughter believes, perhaps under the influence of other, that her father was murdered by her mother. We are told that the accused lost her teaching job as a consequence of the present conviction. In these circumstances, we feel that the sentence of simple imprisonment for one year is sufficient to meet the ends of justice. We, therefore, reduce the sentence to simple imprisonment for one year.