

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 677 of 2005**

Lala Ram Yadav S/o Dhorilal Yadav, aged about 35 years, Occupation Agriculturists, R/o Village Dhaurabhata, P.S. Utai, District Durg, CG

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant : Mr. Praveen Dhurandhar, Advocate
For State : Mr. Himanshu Kumar Sharma, P.L.

Hon'ble Shri Justice P. Sam Koshy**Judgement On Board**

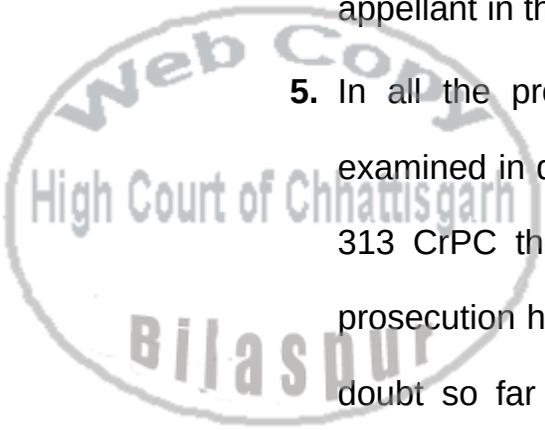
03.03.2023

1. In terms of the previous order of this Court the appellant has entered appearance in person before this Court along his counsel.
2. Considering the fact that the appeal is of the year 2005, with the consent of the parties, the matter was taken up for final hearing itself.
3. The challenge in the present appeal is to the judgement dated 08.08.2005 passed by the Special and Additional Sessions Judge, Durg in Special Case No.97/2004. Vide the impugned judgement, the Court below has found the appellant guilty of the offence under Section 201 of IPC and sentenced him to undergo RI for 5 years with fine of Rs.1,000/- with default stipulation of additional RI for six months.
4. The case of prosecution in brief is that the two accused persons i.e. the present appellant and co-accused Chitrarekha had together committed the murder of one Anirudh @ Arun, the husband of co-



accused Chitrarekha, in between 27.04.2004 to 28.04.2004 at around mid night. It is said that subsequent to the commission of the murder of the husband of co-accused Chitrarekha, the two accused persons had hidden the dead body of deceased Anirudha in the boundary (मेड़) of the agriculture field with an intention of hiding or causing disappearance of evidence. The dead-body of deceased was recovered on 05.05.2004 and suspecting the two accused persons an FIR was lodged and they were prosecuted for the offence punishable under Sections 302/34 & 201/34 of IPC. The primary evidence which was relied upon by the prosecution was the alleged eye witness PW-12 Kanshiram and the memorandum statement given by the present appellant in the course of investigation.

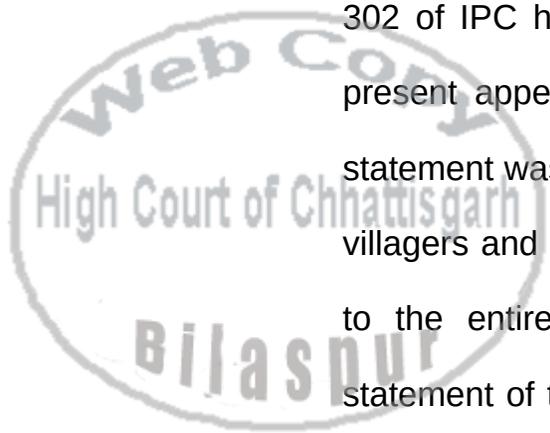
5. In all the prosecution examined 26 witnesses. No witness was examined in defence. After recording of the statement under Section 313 CrPC the Trial Court vide impugned judgment found that the prosecution has failed to prove/establish the case beyond reasonable doubt so far as the offence under Section 302 IPC is concerned. However, the Court below has convicted the two accused persons for the offence punishable under Section 201 of IPC independently and sentenced to undergo RI for 5 years with fine and default stipulation.
6. The appellant has assailed the said judgment of conviction through the present appeal and the appellant has been on bail all along. It was on default of his appearance that the appellant was called upon by the previous order of this Court and the appellant is present before this Court today.
7. Today, when the matter is taken up for hearing, one of the core issues that has been raised by Shri Dhurandhar, learned counsel for





appellant is as to whether the conviction of appellant under Section 201 of IPC independently is justified or not.

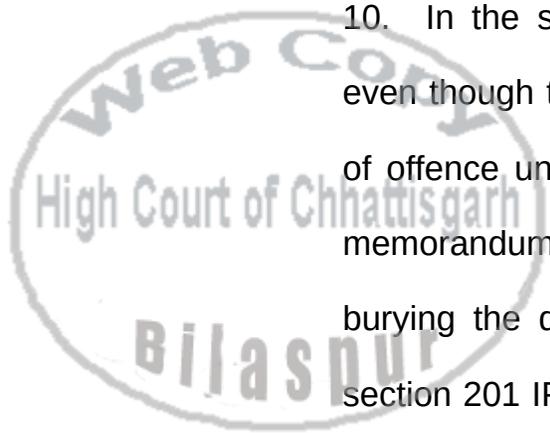
8. According to the counsel for appellant, when the appellant and the co-accused both of them stand acquitted of the substantive and principle charge of section 302 of IPC and there being a categorical finding by the trial Court that the prosecution has failed to establish the commission of offence under Section 302 of IPC by the appellant, under the circumstances could the trial Court have convicted the appellant under Section 201 of IPC alone. It is the further contention of learned counsel for appellant that the trial Court at the first instance while acquitting the appellant from the offence under section 302 of IPC has not relied upon the memorandum statement of the present appellant. He submits that even before the memorandum statement was recorded, the death of the deceased was known to the villagers and the dead-body being buried in the field was also known to the entire village and therefore, a subsequent memorandum statement of the appellant was not reliable. He further submits that if the trial Court has not relied upon the said memorandum statement so far as the offence under Section 302 of IPC is concerned for the same reason, the same could not have been relied upon while convicting the appellant under Section 201 of IPC.
9. It is the further contention of appellant that in the absence of any conviction under the principle offence which in the instant case was Section 302 of IPC, there cannot be any conviction independently under Section 201 of IPC. Learned counsel for appellant lastly as an alternative prayed that in the instant case the appellant has already undergone the jail sentence of more than 1 year 10 months 20 days





and if for any reason this Court is not convinced with the contention that of the offence under Section 201 of IPC not sustainable independently, then the sentence part may be reduced to the period already undergone by the appellant.

- 10.** Learned State counsel, on the other hand, opposing the appeal submits that it is a case where the deceased was the husband of co-accused Chitrarekha. It is alleged that Chitrarekha was having an extra-marital relationship with the appellant and it was the case of prosecution that the present appellant and Chitrarekha had murdered the deceased and buried the dead-body in the field. This fact stands established from the memorandum statement of the appellant Ex. P-10. In the said circumstances, counsel for appellant submits that even though there is no sufficient evidence so far as the commission of offence under Section 302 of IPC is concerned, nonetheless the memorandum statement proves of the appellant's role being played in burying the dead-body in the field, Therefore the conviction under section 201 IPC cannot be said to be a faulty one nor does it warrant any interference. Thus, counsel for State prayed for the rejection of appeal.
- 11.** Having heard the contentions put forth on either side and on perusal of records, what is necessary to be taken note of is CRA No.25/2003 decided by this Court on 26.09.2014.
- 12.** Considered the arguments put forth by the learned counsel for the appellant 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:



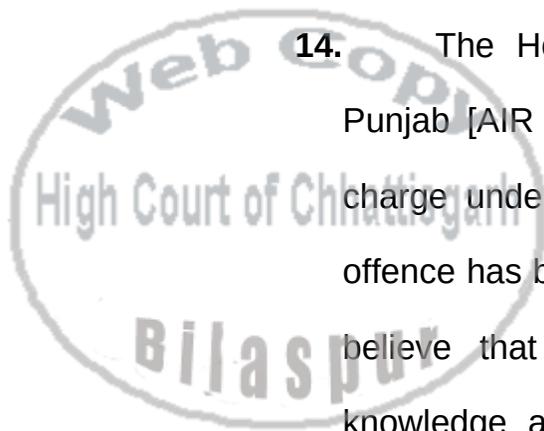


“201. Causing disappearance of evidence of offence or giving false information to screen offender - Whoever, knowing or having reason to believe that an offence has been committed, causes an evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false:.....”

13. A plain reading of Section 201 of IPC itself reflects that the offence under Section 201 would be made firstly when the accused person 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.

14. 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.

15. 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.

16. The ratio laid down by the Hon'ble Supreme Court in the above referred two judgements clearly suggests the fact that the accused person 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 person he is trying to screen the offender from legal punishment.

17. 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.

18. Further, if we see the provisions of Section 201 of IPC, it would



show that the punishment imposed upon the accused person for the offence under Section 201 of IPC is proportionate to the punishment of the substantive which has been committed by the accused person 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 punishment prescribed 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 person for the offence under Section 201 of IPC cannot be said to have been proved or established so as to convict the accused.

19. The Hon'ble Supreme Court in the case of **Duvvur Dasrathammareddy Vs. The State of Andhra Pradesh, 1971 (3) SCC 247** dealing with a similar issue so far as the sustainability of conviction under Section 201 of IPC independently is concerned has held as under:

“If once the case of the prosecution regarding the offence of murder is not accepted, it follows that the appellant cannot be convicted for the offence under Section 201 IPC either because the evidence relating to that offence is common.”

20. The aforesaid view of the Hon'ble Supreme Court has been reiterated in the case of **State of U.P. Vs. Kapil Deo and Another, 1991 Supp (2) SCC 170** wherein it has been held as under:

“We have heard learned counsel for the parties and have perused the evidence and material on the record. The fact staring at us is that the prosecution case collapsed so far as Vidya Sagar, accused is concerned and he stands acquitted of the charge of murder. It is to be borne in mind that he prominently was assigned the offensive part of the crime of murder. It is he who was seen cutting



the throat of the deceased with a big knife. It is he who was seen escaping from the scene of the occurrence carrying a blood-stained knife in his hand. It is he who was sought to be apprehended by the eye-witnesses and others collected there. When the evidence against him, ocular as well as circumstantial, has cautiously been weighed by this Court resulting in his acquittal, we find it difficult to convict the said accused for offence under [section 201](#) read with [section 34](#) I.P.C. This Court though slightly in different circumstances in [Duvvur Dasrathammareddy v. State of Andhra Pradesh](#), [197 1] 3 SCC 247, observed as follows:

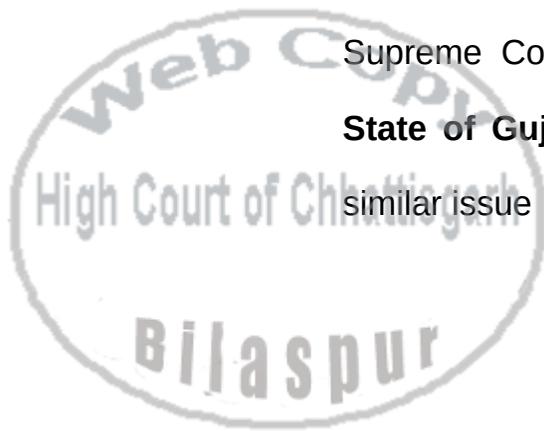
"If the evidence relating to the offence of murder and disappearance of evidence is the same and the case of the prosecution regarding the Offence of murder is not accepted, it follows that the accused cannot be convicted' for the offence under [Section 201](#), I.P.C."

21. The same view has further again been reiterated by the Hon'ble Supreme Court in the case of **Dinesh Kumar Kalidas Patel Vs. State of Gujarat, 2018 (3) SCC 313** wherein again dealing with a similar issue the Hon'ble Supreme Court has held as under:

"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."

22. The High Court of Rajasthan also in **2006 CriLJ 4386** in the case of **Kajju Lal Vs. State of Rajasthan**, in paragraph-11, dealing with the said issue has held as under:

"11. A careful study of the judgment relied upon by learned amicus curiae in Mazahar Ali v. State of 1976 CriLJ 1629, it was in the facts of that case held by Division Bench of the Jammu and Kashmir High Court that since evidence against the appellant in that case for offence under Section 201, IPC was also substantially same as

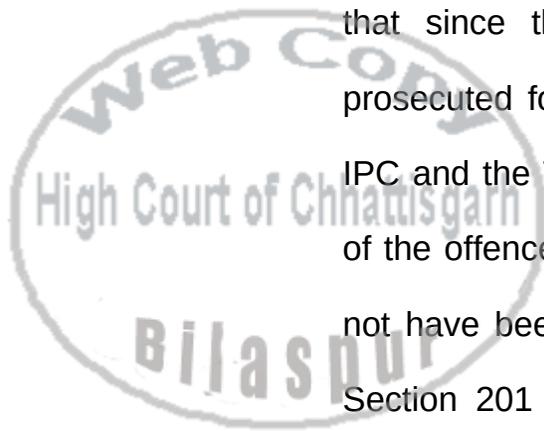




for the offence under section 302, RPC (Ranvir Penal Code), conviction of the appellant for offence under section 201, RPC alone cannot be sustained. The said observations were made by the Court at the conclusion of the judgement having held that offence under section 302, RPC was not proved against the appellant and, therefore, when the same evidence was the basis for their conviction under section 201, such conviction also cannot be sustained. It was in that context observed that “the proof of the commission of an offence is an essential requisite for bringing home the offence under section 201, RPC and in the present case the commission of the principle offence by the accused has not been proved, their conviction for the offence under Section 201 RPC is not sustainable.”

23. Given the aforesaid facts and circumstances of the case and the legal position as has been reflected, this Court is of the opinion that since the two accused persons in the instant case were prosecuted for the offence punishable under Sections 302 & 201 of IPC and the Trial Court not finding appellant and co-accused guilty of the offence under Section 302 of IPC, the present appellant could not have been independently convicted so far as the offence under Section 201 of IPC is concerned for the reason that the principle offence under Section 302 IPC itself has not been established in the instant case against any of the accused persons.

24. 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 appellant is acquitted of the charges levelled against him for the offence under Section 201 of IPC.





25. Accordingly, the impugned judgment dated 08.08.2005 passed by the Special and Additional Sessions Judge, Durg in Special Case No.97/2004 deserves to be and is accordingly set aside/quashed. The Appellant is acquitted of the charge under Section 201 of IPC. He is set at liberty subject to the conditions of Section 437A Cr.P.C.

26. The Appeal is allowed.

**Sd/-
(P. Sam Koshy)
Judge**

Khatai

