CASE NO.:
Appeal (crl.) 267 of 1991

PETITIONER:
V.L. TRESA

Vs.

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 09/02/2001

BENCH:
Umesh C. Banerjee & K.G. Balakrishhnan.

JUDGMENT:

BANERJEE, J.
L...I...T.....T.....T.....T.....T.....T.....T..J

This Appeal by the grant of special leave is against the judgment and order dated 22nd January, 1991 of the High Court of Kerala confirming the conviction for the offence under Section 201 of the Indian Penal Code though however, the sentence has been reduced to simple imprisonment for one year as against rigorous imprisonment for five years by the learned Sessions Judge.

The core issue pertains to impediment, if any, to a conviction under Section 201 IPC on acquittal of the main offence? The Appellate Bench of the High Court answered it in the negative and confirmed conviction and sentenced as noted above.

The contextual facts depict that Vincent, the deceased, was a young advocate and his death was suspected to be a murder. After investigation, his wife was indicted for murder and also for giving false information regarding the incident in order to screen herself from punishment. The learned Sessions Judge however acquitted her of the charge of murder but convicted her for the offence under Section 201 of the Indian Penal Code and thus sentenced her to undergo rigorous imprisonment for five years and it is this conviction and sentence which were challenged in Appeal by the Appellant herein.

Before the High Court, it was contended in support of the appeal; that the offence under Section 201 of the IPC can not form the basis of any conviction without there being any principal offence, and as such by reason of the order of acquittal under Section 302 and there being no appeal against such an order of acquittal, question of there being any conviction for the alleged offence under Section 201, would not arise. Subsequently, however, the revisional jurisdiction of the High Court has been initiated by the learned Single Judge suo moto against the order of acquittal and the matter was placed before the Division Bench for hearing of the appeal as also the revisional petition. At

the hearing before the Bench however, the learned Public Prosecutor very strongly canvassed for the conviction of the appellant under Section 302 of the I.P.C.

Before proceeding with the matter any further the prosecution case be briefly noted hereinbelow: The deceased advocate was residing with his wife and daughter in a separate house from his parents and since the deceased incurred debts he wanted to dispose of the land and the building in which they resided which stood in the name of his wife. As a matter of fact, an agreement for sale was more or less finalised when on the date of occurrence the deceased advocate after consumption of alcohol returned home in the night and informed his wife as regards the factum of execution of the agreement for sale on the following date. On this issue however, there was heated exchange of words between the husband and the wife and she inflicted an injury on the forehead of the deceased with a crowbar. The injury however, resulted damage of skull and brain and almost brought the death instantaneously. The accused wife, however, became very active thereafter and the crowbar was concealed beneath the firewood splinters stacked in the kitchen and it has been made out to all those who reached the house that he committed suicide by hanging. Without knowing however, the real cause of death, the father of the deceased (P.W.1) provided the first information to the Police and the first information report was registered by the Police for unnatural death but when the autopsy was done, the Police sensed it to be a case of murder. The accused wife was subsequently arrested and upon interrogation, the investigation officer recovered the crowbar from the firewood sprinters stacked in the kitchen which was also subjected to chemical analysis and the forensic report revealed that it was stained with human blood of the same group as that of the deceased.

During the course of examination of the accused before the learned Sessions Judge, she denied her complicity and stated that as a matter of fact she was not against the sale of the property but she insisted that the sale proceed should be deposited in her name and since there was such a dispute, hot exchange of words followed and the husband tried to commit suicide on an iron beam above the wash basin in the work area and when she caught hold of his legs to save him, he fell down as the knot got untied and his forehead hit hard surface resulting the fatal injury. This has been the consistent case of the accused wife both to the persons who came to the house immediately after the news spread as also in court.

The learned Sessions Judge however, came to a definite conclusion that the prosecution has not been able to adduce sufficient and reliable evidence that it was the accused and the accused alone who inflicted the fatal injury on Vincent resulting in his death. The Sessions Court reminding itself of the golden principles for having a proof beyond all reasonable doubt recorded: it cannot also be said that the evidence adduced by the prosecution will conclusively show that Vincent was a person of expensive habits or squandering money or was threatening or ill treating the wife and on a consideration of the totality of the evidence, came to the finding as noticed above against the prosecution. Three decisions of this Court namely Kali Ram v. State of Himachal Pradesh [1973 SCC (Crl.) 1048]: Ramdas v. State of Maharashtra [1977 SCC (Crl.) 254] and Prem Thakur v.

State of Punjab [1983 SCC Crl.) 88] were strongly relied upon in arriving at the opinion that the accused cannot be found guilty of murdering her husband.

The judgment under appeal does not run counter to such a finding since the main thrust is on the effect of Section 201 IPC. The order of acquittal under Section 302 though urged by the prosecution as otherwise not in accordance with law was not considered by the High Court worth anything and thus candidly recorded we refrain from distorting 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. In that view of the matter we need not also delve into the issue in any further detail though some attempt has been made before us also, without however there being any cross appeal, on the plea that the entire matter is before the Court.

The issue thus pertains to the maintainability of conviction and sentence under Section 201. The law on this score is well settled since the decision in Kalawatis case (Kalawati v. The State of Himachal Pradesh :AIR 1953 SC 131) wherein, Chandrasekhara Aiyar, J. speaking for the Bench observed:

21. But there can scarcely be any doubt that she must have witnessed the murder of her husband lying next to her on a charpai. Shibbi who was at a distance of 18 feet was roused by the sound of a sword attack. Kalawati must have woke up also at least during the course of the assault if not at its commencement, several injuries having been inflicted in succession. When Shibbi woke up, Kalawatis bed was empty, and she was found in a room nearby and not at the place of occurrence. She trotted out an elaborate story of dacoity, which cannot be accepted as true. Even if, in terror she ran away from her bed and stood at a distance, she is almost sure to have known who was the offender, unless he had his face muffled. The first version she gave to the police head constable when he appeared on the scene immediately after the occurrence is, we think, false, and we are of opinion that she knew or believed it to be false. The border line between abetment of the offence and giving false information to screen the offender is rather thin in her case, but it is prudent to err on the safe side, and hold her guilty only of an offence under s.201, Penal Code, as the learned Sessions Judge did.

It has however been contended by Shri Sushil Kumar, the learned Senior Advocate appearing in support of the Appeal, that the decision in Kalawatis case does not, in fact, govern the present situation since in Kalawatis case (supra) the wife was charged of murder of her husband alongwith another person and the court acquitted the wife for murder but convicted the other person and then proceeded to consider as to whether the wife committed the offence under Section 201 of the IPC? It has been contended that on the factual backdrop in Kalawatis case, (supra) this Court thus came to the conclusion that acquittal of the wife for the main offence is no legal impediment to convict her for the offence under Section 201 of the IPC. Reference to the language used in Section 201 in this context may be of some relevance.

Section 201 I.P.C. reads as below: 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 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, [if a capital offence] shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; [if punishable with imprisonment for life] and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; [if punishable with less than ten years imprisonment] and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence , for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Having regard to the language used, the following ingredients emerge:

(I) Committal of an offence;

(II) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed;

(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

(IV) the act should have been done with the intention of screening the offender from legal punishment. The impact of Section 201 thus is the intent to screen the offender from legal punishment. It is on this score that the High Court observed:

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 know 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.

Having regard to the language used, mere suspicion would not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown. The fore-most necessity being that the accused must have the knowledge or have reason to believe that such an offence has been committed. This observation finds support in the oft-cited decision of this Court in Palvinder Kaur v. State of Punjab (AIR 1952 SC 354). Further, in Roshan Lal v. State of Punjab (AIR 1965 SC 1413) this Court in paragraph

12 of the report observed:

(12) Section 201 is somewhat clumsily drafted, but we think that the expression knowing or having reason to believe in the first paragraph and the expression knows or believes in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe than an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under S.201. If it be supposed that the word believes was used in a sense different from the expression having reason to believe, it would be necessary for the purpose of inflicting punishment upon the accused to prove that he believes in addition to having reason to believe. We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved.

In the matter under consideration death of the deceased was due to homicide and it must have been done either by the accused herself or by some other person, accused has reasons to know. On an analysis of evidence, the learned Sessions Judge came to the conclusion that prosecution failed to prove beyond reasonable doubt that the accused caused the death of the deceased and it is on this score that the High Court came to a conclusion that even if the fatal injury was inflicted by somebody else, the accused is liable to be convicted for the offence under Section 201. This observation of the High Court has been made on the wake of the version of the accused that the deceased committed or attempted to commit suicide. Admittedly, the deceased Vincent was living in his house with his wife and minor child and resultantly, therefore, the circumstances under which the deceased died would be within the special knowledge of the inmates viz. wife and the child and the child being asleep by reason of the timing of the incident and the only available option of witnessing the action, would be the wife and it is this wife who has told others that he was trying to commit suicide by putting a rope on his neck and while attempting to do so by reason of an effort to stop the husband from doing so, the latter falls on the blunt object and hits himself which caused his death. There can be no doubt that the deceased died on account of combination of injuries of 6 and 9 as described in the postmortem report. For convenience sake, the same are noted hereinbelow:

6. Lacerated wound 1.6 cm. x 1 cm. x bone deep horizontal on the middle of upper part of forehead 7 cm. About root of nose. The surrounding scalp tissues found contused. The outer table of the frontal bone under the wound found fractured and separated and produced a depression on the bone (1 cm. x 1 cm. Size)

9. 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 subarachinoid haemorrhage on both the cerbral haemisphereas.

It may be noted in this context that according to the accused version in the statement under Section 313, Vincent

was disappointed to see that he was unable to persuade his wife to sign in the Agreement for Sale of the house. Attempt to commit suicide by hanging himself on the iron beam fixed just below the ceiling in the work area of the house and on the seeing the same, the accused caught hold of his legs and since the rope was not tied to his neck but tied to iron beam, Vincent fell down and it is the accused version that when he fell down, he must have hit his forehead on some hard object and that is how he sustained serious injuries on his forehead. This statement has received the comment of being very clever and attractive but has been totally disbelieved by the learned Sessions Judge on scrutiny of the evidence in its entirety. Significantly, however, it is to be noted that the defence suggestion that injuries No.6 and 9 could have been caused when the accused fell down with the forehead hitting the hard object, was completely negatived by P.W.13 being the doctor who has conducted the autopsy. This part of the evidence of the doctor, thus negates the defence version of the case that it was an accidental fall which has been the factor responsible for the injuries caused to the deceased. The analysis of the evidence in its entirety as has been effected by the learned Sessions Judge, could not be found faulted by the High Court and we also do not intend to record a contra finding disturbing the concurring finding of the learned Sessions Judge as also of the High Court in regard to the failure of the prosecution to prove that it was the accused who caused the death of the deceased.

Mr. Sushil Kumar however, in support of his contentions placed strong reliance on to the decision of this Court in Duvvur Dasratharamareddy v. State of Andhra Pradesh (1971 (3) SCC 247) wherein this Court laid down that 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 (vide paragraph 24 of the report at page 254). In Duvvur Dasratharammareddys case (supra) this Court had the following factual backdrop:

The appellant was charged of the offence of causing the death of his father-in-law Adepareddi by beating him with a battle axe on his head on the night of May 9, 1969 and also for an offence under Section 201, I.P.C. by digging a pit and burying the dead body and thus causing the evidence of murder to disappear. Though he was convicted also for the offence under Section 201, I.P.C., but no separate sentence had been passed as he has been sentenced to death under Section 302 I.P.C. The factual score further disclose that the deceased Adepareddi was aged about 60 years was living in his village with his wife aged 40 years, two daughters P.Ws.4 and 5 and two young sons. One of the cousin brother of the deceased Shri K .Ramireddi was also living with the deceased and had been married to the eldest daughter of the deceased. The appellant as appears used to assist the deceased in his agricultural operations. According to the prosecution, the appellant was in illicit intimacy with his mother-in-law and in consequence there was frequent quarrel between the appellant and his father-in-law, the deceased. On May 9, 1989 after some heated exchange of words, the deceased left to sleep in the field as usual which is about 1Â½ miles from the village. Shortly after the departure of the deceased for the field, the appellant requested P.W.1 to accompany him to the field so that the father-in-law may be

killed but on being refused by P.W.1 being a servant of the family he left the house with the axe alongwith P.W.2 being the other servant available in the house. The appellant after going to the field is stated to have given a blow on the head of the deceased with the axe and when P.W.2 attempted to run away from the scene, he was brought back by the accused with the threat that he will meet the same end. P.W. 2 thereafter came back to the scene and saw the appellant digging a pit and burying the body of the deceased. Both the appellant and P.W. 2 thereafter came back to the house some time in the middle of the night and put the axe inside the house. It is a very next day morning that PW 1 in order to attend to the agricultural operations went to the field and found blood near the cot where the deceased used to sleep and saw a new mound in the field. P.W.3 being the wife of the deceased after a few days, finding that her husband has not come back to the house, asked her daughter to write to her uncle in another village, who came and informed that the deceased has not come to his village. In the meanwhile rumours afloat that appellant had murdered his father-in-law and buried him in the field. Subsequently, the village Munsif contacted the police authorities who took up the investigations and the body of the deceased was exhumed on July 3, 1969, with some injuries. It is on the basis of these facts and having regard to evidence available on record, this Court observed as below:

25. Though normally this Court does not re- appraise the evidence, which has been accepted concurrently by the two courts, in view of the strong suspicious circumstances, pointed out above, regarding the truth of the evidence given by P.W.s1 to 5, we have considered it necessary in the interest of justice to consider their evidence more critically.

26. For the above reasons we are of the opinion that it cannot be said that the prosecution has been proved the guilt of the accused beyond all reasonable doubt. In consequence the appeal is allowed. The conviction of the appellant under Section 302, I.P.C. and the sentence of death imposed for the said offence as well as his conviction for the offence under Section 201, I.P.C., by the Sessions Judge, as confirmed by the High Court, are set aside and the accused is acquitted of those offences. He shall be set at liberty.

In the contextual facts, the situation however, is slightly different and since the wife alone could explain the death of the husband in the manner as it is noted above. The crowbar was not available for few days and it is a subsequent discovery and on a further search, the crowbar contained human blood which has been proved to be that of the deceased. Both the Sessions Judge and the High Court have categorically disbelieved the evidence of the wife and it is in this regard it cannot but be said that the falsity of information given by the accused cannot but warrant a punishment under Section 201, I.P.C. since information regarding the offence was available only with the accused and there was a deliberate attempt to screen the offender from legal punishment by way of providing false information regarding the offence.

On the wake of the aforesaid, we are unable to record our concurrence with the submissions of Mr. Sushil Kumar as

regards the conviction for the offence under Section 201 of the IPC . The High Court has been rather lenient in the matter of reducing the sentence but since there is no cross appeal by the State against the judgment, we do not intend to proceed with the matter any further, excepting confirming in the contextual facts the judgment of the High Court. The Appeal therefore, fails and thus is dismissed. The appellant be taken into custody forthwith to serve out the sentence, if not already served.