PADMINI MAHENDRABHAI GADDA

v.

STATE OF GUJARAT

(Criminal Appeal No. 40 of 2007)

JULY 17, 2017

[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860 – s. 201 – Causing disappearance of evidence of offence, or giving false information to screen offender – Ingredients of s. 201 – Prosecution case that main accused owing to his illicit relationship with the appellant, committed murder of appellant's husband with the help of the absconding accused, and that the appellant remained silent and absconded with the main accused – Conviction of the main accused u/s. 302 and 201, however, appellant convicted only u/s. 201 and sentenced to two years RI – High Court suo motu *enhanced the sentence of the appellant to seven years – On appeal, held:* ***Per N.V. Ramana, J.*** *: While considering the charge u/s. 201, it is mandatory for the prosecution to prove that the accused actively participated in the matter of disappearance of evidence and with an intention to screen the offender – Remaining silent and absconding with the accused and moving from one place to another place will not supply the evidence or fill the gap which is necessary to prove the ingredients u/s.201 – Finding of the courts below that by remaining silent, appellant indirectly abetted the offence of causing disappearance of proof of murder, cannot be accepted – Courts below convicted appellant more on surmises and conjectures, thus, conviction u/s. 201 set aside – Appellant having already undergone the sentence imposed by the trial court, order passed by the High Court set aside –* ***Per P. C. Pant, J.*** *: Appellant gave false information to screen offender, as such, was rightly held guilty by the courts below in respect of charge of offence punishable u/s. 201 – Appellant having already served more than two years' imprisonment during the period of trial/appeal; that she is sixty years old, and twenty three years have passed from the date of incident, sentence awarded by the High Court reduced to two years RI with fine – In view of difference of opinion, matter referred to larger Bench.*

A **Per N. V. Ramana, J.:**

Allowing the appeal, the Court

HELD: 1.1 It is well settled that circumstantial evidence should be strong, convincing and unassailable leading to the only inference that crime should have been committed by the accused B **only and it should not give any other inference. [Para 12] [834-G-H; 835-A]**

1.2 Criminal trial can never be a fanciful flight of imagination. While considering the charge under Section 201 I.P.C, it is mandatory for the prosecution to prove that the accused actively C **participated in the matter of disappearance of evidence and with an intention to screen the offender. To convict the accused for the offence punishable under Section 201, it is necessary that all the ingredients are satisfied pointing out at the guilt of the accused and a mere suspicion is not sufficient. Accused can never be convicted on the basis of probabilities or on assumptions and** D **presumptions. [Para 19] [838-B-D]**

1.3 Looking at the entire findings of the trial court, it is crystal clear that the court gave a clean chit to the appellant saying that she is in no way involved in commission of the crime. The trial court gave a categorical finding that there is no evidence of E **participation of accused No.2 in disappearing the said proof of offence of murder, but by remaining silent, she has indirectly abetted the offence. It was observed that either out of fear or for the best reason known to her, she remained silent and abetted or aided the offence punishable under section 201 IPC. [Para 21] [839-E-G]**

F **1.4 The whole case of the prosecution is based upon circumstantial evidence except for the evidence of sole eye witness 'A', the daughter of the deceased and the appellant. The eye witness, in her statement, clearly stated that the appellant was crying and she was pleading accused No.1 not to kill her** G **husband. She further stated in the cross-examination that accused No.1 told the appellant to keep mum and not to make any trouble as accused No. 1 and the absconding accused would come back. Accused No.2 reiterated the same in her statement under Section 313 CrPC. [Para 22] [839-G-H; 840-A]**

H **1.5 The finding of the courts below, that by remaining silent,**

accused No.2/appellant indirectly abetted the offence of causing disappearance of proof of murder, cannot be accepted. Remaining silent and absconding with accused No.1 and moving from one place to another place will not supply the evidence or fill the gap which is necessary to prove the ingredients u/s 201 IPC. The trial court, having specifically observed that accused No. 2 had nothing to do with the disappearance of evidence and without recording any finding with regard to motive, convicted her under Section 201 IPC. In fact the reasoning given by the trial court makes it clear that court could not give any reasoning with regard to motive which is the crucial aspect to fasten the liability on the accused. With regard to the factum of remaining silent the reason is forthcoming from the evidence of eye witness and the statement of appellant which was not taken into consideration. The prosecution miserably failed to prove the same. [Para 25] [840-F-H; 841-A] A B C

1.6 The trial court went wrong in convicting the appellant without there being any finding with regard to the mens rea of the accused. Particularly, when a specific finding is recorded by the trial court that there is no evidence for convicting the accused under Section 201 IPC, it ought not to have convicted her for the same more on assumptions and presumptions. When the appellant and accused no 1 assailed the order of trial court before the High Court, the High Court issued notice under Section 377 Cr.P.C. for suo motu enhancement of sentence to the appellant. The High Court enhanced the sentence to 7 years. [Para 27] [842-A-C] D E

1.7 There is no dispute with regard to the fact that let punishment fit the crime is one of the main objects of sentencing policy. The sentence should be adequately reasonable, proportionate to the nature of culpability is a key factor. Sentencing is a matter of discretion of the trial court and the appellate court in the normal circumstances will not interfere with such discretion. But will interfere only when it finds that there is miscarriage of justice, flagrant abuse of law and where the discretion is not properly exercised by the sentencing court. The High Court first and foremost has to deal with the conviction appeal on its own merits and once it comes to the conclusion that the trial court was right in imposing conviction, then it has to F G H

A delve into the aspect whether the punishment was proportionate or not. From the finding of the High Court that the appellant is involved actively in committing the murder and the findings with regard to conspiracy and particularly, in observing that as the State has not preferred any appeal against acquittal it is not in a B position to deal with the same, it appears that the High Court in a prejudiced manner enhanced the sentence. Looking at the entire reasoning of the High Court, the findings of the trial court were not disturbed and infact were upheld by the High Court but it only differed with the sentencing aspect. The reasoning given by the appellate court for enhancing the sentence and dismissing C the appeals can be a valid and correct reasoning for convicting the accused under section 302 or 120B when the State has preferred an appeal against acquittal. But basing on such reasoning the appellant cannot be convicted under section 201. The ingredients to attract the offence under section 201 are altogether different. Her mere silence cannot give rise to a D presumption that she has committed the offence. In the instant case both the trial court and the appellate Court, failed to appreciate the case in its proper perspective, relied more on assumptions and based on presumptions has convicted the appellant, which is contrary to the settled law. [Para 28] [843-C-E H; 844-A]

1.8 Generally, in an appeal against conviction, where concurrent findings were recorded by both the courts below, this Court would not interfere. But, in the instant case both the courts below, without satisfying the ingredients of Section 201 I.P.C., F convicted the appellant more on surmises and conjectures, which invited interference of this Court. [Para 30] [844-B-C]

1.9 The prosecution has not been able to prove the guilt of the appellant/accused No.2 for the offence punishable under Section 201 IPC beyond reasonable doubt. The appellant/accused No.2 has already undergone the sentence imposed by the trial G court. The order passed by the High Court is set aside. [Para 31] [844-D]

Ananda Dagadu Jadhav & Ors. v. Rukminibai Anand Jadhav & Anr. (1993) Suppl. 3 SCC 68; *Sou. Vijaya alias Baby v. State of Maharashtra* (2003) 8 SCC 296;

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Raghav Prapanna Tripathi v. State of U.P. **AIR 1963 SC 74 : [1963] SCR 239 – referred to.** A

Case Law Reference

(1993) Suppl. 3 SCC 68	**referred to**	**Para 9**
(2003) 8 SCC 296	**referred to**	**Para 18**
[1963] SCR 239	**referred to**	**Para 26** B

Per Prafulla C. Pant, J. (Partly Dissenting):

Partly allowing the appeal, the Court

HELD: 1.1 It is clearly established that by making false statement by appellant to her own brother PW-3 (complainant) as to whereabouts of the deceased, and not allowing PW-34 to C **use the bathroom attached to the bedroom (where dead body was concealed), the appellant gave false information to screen offender (A-1). As such, she was rightly held guilty by the courts below in respect of charge of offence punishable under Section 201 IPC. Some observations of the trial court against its own** D **finding as to guilt of A-2 are not relevant for the decision of this Court, particularly when judgment of the trial court stands merged in the judgment of the High Court and, as such, the appellant cannot be acquitted from the charge of offence punishable under Section 201 IPC. [Para 15] [848-G-H; 849-A]**

1.2 In each case the facts and evidence of that particular E **case are to be seen to come to the conclusion as to whether the ingredients of a particular offence have been made out or not. [Para 15] [849-B]**

1.3 There is no error of law in the orders passed by the courts below in concluding that the appellant is guilty of the charge F **of offence punishable under Section 201 IPC. However, as to the sentence, the High Court awarded the maximum sentence to A-2 (appellant). It has been pointed out from the record that the appellant has already served more than two years' imprisonment during the period of trial/appeal; that she is sixty years old, and** G **twenty three years have passed from the date of incident. In these circumstances, since the sentence under Section 201 IPC awarded to A-1 has attained the finality in respect of the same charge, as such, it would not be justified to award A-2 the enhanced sentence as directed by the High Court, particularly considering her role**

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A **in respect of said charge, compared to that of A-1. The conviction recorded by the courts below against the appellant in respect of offence punishable under Section 201 IPC is upheld but the sentence awarded by the High Court is reduced to two years rigorous imprisonment with fine, as recorded by the trial court. [Para 16, 17] [849-C-E]**

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 40 of 2007.

From the Judgment and Order dated 04.10.2001 of the High Court of Gujarat in Criminal Appeal No. 833 of 1997 and Criminal Misc. C Application No. 1121 of 1998 in Criminal Appeal No. 833 of 1997.

V. Giri, Sr. Adv., Nikhil Goel, Saurin A. Shah, Advs. for the Appellant.

D. N. Ray, Ms. Hemantika Wahi, Ms. Jesal Wahi, Advs. for the Respondent.

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The Judgments and Order of the Court were delivered by

N. V. RAMANA, J. 1. Aggrieved by the judgment and order, dated 4th October, 2006, passed by the High Court of Gujarat at Ahmadabad in Criminal Appeal No. 833 of 1997 and Crl.M.A. No. 1121 of 1998 in Crl.A. No. 833 of 1997, the appellant is before this Court.

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2. The facts of the case in a nutshell as presented by the prosecution, are that the appellant herein and Mahendrabhai (deceased) had love marriage in the year 1981 and they were blessed with two daughters. The deceased was running health clubs in the city of Ahmedabad in the name and style of P.M. Health Club at two different F locations; one at Naranpura and the other at Ambawadi. Accused No.1 i.e. Kishore Thakkar was employed by the deceased to work at Naranpura location. With passage of time, the appellant (A2) developed extramarital relationship with Kishore Thakkar (A1) and in consequence of their pursuit, they planned together to eliminate Mahendrabhai G (deceased). In that context, on 12.12.1994, when the complainant's wife contacted the appellant at about 10:30 AM, appellant informed her that the deceased had gone to Naranpura Health Club. Further, when complainant enquired about the deceased at 3:00 PM, appellant is alleged to have replied that the deceased left for Bombay. Hearing this, complainant became suspicious about the way his sister replied. The

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complainant along with his wife, at about 4 pm on that day, visited the house of the appellant and asked her to go and get her elder child back from the school. After she went out of the house hesitatingly, he searched the house and found his brother-in-law lying dead in a pool of blood in the bathroom and A1 was present there. As soon as he tried to catch hold of A1, he ran away from the spot half naked by pushing him. While that is so, the appellant who went to bring back her elder child from the school, did not return to her home.

3. Basing on the complaint of the brother-in-law of the deceased, police registered Crime No. I.C.R. 759 of 1994 under Section 302 read with Sections 120B and 201 of Indian Penal Code, 1860 [*hereinafter* '**I.P.C**' *for brevity*]. After conducting panchnama at the scene of offence, body of the deceased was sent for postmortem. Carrying on investigation of the crime, police nabbed and arrested both the accused on 23.01.1995 from S.T. Bus Station, Mehsana. After that, they collected evidences from various places where both the accused had spent their days together after the date of occurrence until their arrest. Upon filing of charge sheet by the police, the trial court took cognizance of the offence and framed charges. Accused pleaded not guilty and claimed to be tried.

4. The trial court framed the following charges for trial:

"(1) On 12-12-1994 before about six o' clock in the evening you all accused together with one another absconding accused who has not been arrested, namely, Piyush Sevantilal Raval hatched a criminal conspiracy to commit murder of the deceased Mahendrabhai at House No.1, Shakuntal Apartment, Opp: C.N.Vidhyalaya situated in Navrangpura area, in Ahmedabad and by doing so you committed an offence under Sec. 120(B) of Indian Penal Code within the jurisdiction of this Court.

(2) Further more, on the aforesaid date, time and at the aforesaid place, with regard to complete your criminal conspiracy, accused No.1 and the absconding accused Piyush by inflicting numerous blows by knife on the body of the deceased Mahendrabhai Gadda, causing grievous injuries intentionally caused his death by committing murder and by doing so you accused have committed the offence U/s.302 r/w sec.120(B) of the Indian Penal Code within the jurisdiction of this Court.

(3) Further, on the aforesaid date, time and place, pursuance to

your aforesaid criminal conspiracy, you accused, by shifting the dead body of the deceased and by cleaning the place of offence destroyed the evidence with an intention to get freedom from the imprisonment of the offence of murder and thereby you accused have committed the offence punishable u/S.201 of the Indian Penal Code within the jurisdiction of this Court.

(4) Further, on the aforesaid date, time and place, pursuant to your criminal conspiracy, to make pieces of the dead body, committed an attempt to destroy the evidence by collecting a needle, jute-thread, plastic bag, iron blade etc., with an intention to destroy the evidence and to see that no evidence regarding the identity of the dead body as also regarding the injuries caused to Mahendrabhai Gadda is available, and by doing so you have committed an offence punishable U/s. 201 r/w sec. 511 of the Indian Penal Code within the jurisdiction of this Court.

(5) Further, on the aforesaid date, time and place, you accused No.1 by possessing a deadly weapon like knife with you, committed a breach of Public Notice of Prohibition of Arms published by the Police Commissioner, Ahmedabad City and by doing so you have committed the offence punishable U/s.135(1) of the Bombay Police Act, within the jurisdiction of this Court."

5. The trial court, after full-fledged trial, came to the conclusion that A1 has committed offences punishable under Sections 302 and 201 of I.P.C. and Section 135(1) of Bombay Police Act and convicted him to undergo life imprisonment for the offences punishable under Section 302 of I.P.C., in default to suffer rigorous imprisonment for 3 months, and for the offence punishable under Section 201 of I.P.C. sentenced him to undergo rigorous imprisonment for two years and imposed fine of Rs.5,000/-, in default to suffer rigorous imprisonment for three months. Appellant herein, who was convicted for the offence punishable under Section 201 of I.P.C alone, was sentenced to undergo rigorous imprisonment for 2 years and imposed fine of Rs. 5,000/-, in default to further suffer rigorous imprisonment for 3 months.

6. Both the accused, being dissatisfied with the judgment of the trial court, approached the High Court by way of separate criminal appeals. The High Court, upon considering the facts and circumstances of the case, initiated *suo motu* proceedings for enhancement of sentence

in respect of accused No.2/appellant herein. The High Court while rejecting the appeals preferred by the accused, passed an order in the criminal miscellaneous application enhancing the sentence imposed by the trial court in respect of accused No.2/appellant herein for the offence punishable under Section 201 of I.P.C to rigorous imprisonment for seven years and imposed fine of Rs.7,000/- failing which she had to further suffer rigorous imprisonment for two years. Assailing the same, the appellant is before this Court by way of this appeal.

7. Mr. V. Giri, learned senior counsel appearing for the appellant, vehemently contended that the Courts below have committed serious error in appreciating the evidences against the appellant and wrongly convicted her under Section 201 of I.P.C, disregarding numerous vital portions of her statements. The appellant/accused No. 2 had never been part of the crime and the reason behind her keeping silence when accused No. 1 made entry into her house and committed the heinous crime of brutally murdering her husband was that as a matter of fact, on the fateful day at the time of occurrence, the appellant was sleeping with her children. Accused No. 1 subjected her to remain under great fear that if she raises any alarm, her children may also be assaulted by the intruder, which drove her to be a silent spectator to the incident.

8. It is further contended that after the occurrence, the appellant has not eloped with accused No.1 willfully but by taking advantage of their relationship, accused No. 1 has forcefully taken her to various places and kept her under fictitious names. It is also worthwhile to point that the appellant remained silent during her stay with accused No. 1 after the incident because of her apprehension that police and family members would first of all find fault with her due to her illicit relationship with the main accused. Even during the period when the appellant was held hostage by accused No. 1 at various places till their arrest, she could not get access to seek help of anyone mainly because, whenever the main accused went out of the room, he used to keep the appellant locked inside. This fact is evident from the deposition of PW19 (Ext. 72). Her behavior at that moment was quite natural and she had not played any role to destroy the evidence, but the Courts below did not appreciate the same in true legal perspective before convicting her under Section 201 IPC. Taking a dig at the order of Courts below, learned senior counsel submitted that the appellant at any rate could not have been held guilty for the offence merely basing upon the circumstantial evidence i.e. needle,

A jute thread, plastic bag, iron blade etc., were found in the house of appellant connecting her to the crime and attributing role by way of aiding the main offender.

9. Advancing another fervent argument that the High Court passed the impugned order in a mechanical way without application of legal B principles to the case of appellant, learned senior counsel invited our attention to Ext. 4 to show that the appellant was in fact charged for the offence under Section 201 r/w Section 511 of I.P.C. In that situation, if the appellant is, *per se,* convicted for the offence, she would have been awarded the maximum quantum of sentence which comes up to three years and six months only. Placing reliance on a decision of this Court C in ***Ananda Dagadu Jadhav & Ors.*** Vs. ***Rukminibai Anand Jadhav & Anr.*** (1993) Supp. (3) SCC 68, learned senior counsel made a strenuous attempt that the trial court after considering this aspect by tangible legal principle took a right view and accordingly imposed sentence. Even if this Court finds the appellant guilty of the offence, the impugned order D passed by the High Court should be set aside restoring that of the trial court.

10. Learned counsel for the State of Gujarat, however, supported the judgment of the High Court and submitted that the High Court has rendered the impugned judgment following just principles of law and E taking into account the veracity of offence committed by the appellant, the sentence has been reasonably enhanced and the same does not call for interference by this Court.

11. Having heard the learned counsel for both sides and bestowing attention to the voluminous material placed before this Court, following F issues fall for consideration of this Court:

1) Whether the Courts below were right in convicting the appellant under Section 201 of the Indian Penal Code?

2) Whether the High Court was right in *suo motu* enhancing the sentence from two years to seven years?

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12. I have given my anxious consideration to several aspects involved in the case. The entire case of the prosecution rests upon circumstantial evidence except for the direct evidence of Ami, who is the daughter of the deceased and the appellant. It is well settled that circumstantial evidence should be strong, convincing and unassailable

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leading to the only inference that crime should have been committed by the accused only and it should not give any other inference. A

13. A thorough look at the facts of the case put forth by the prosecution reveals that accused Nos.1 and 2 are living in an illicit relationship and in pursuit of the same, they have committed the murder of the deceased and the complainant is none other than the brother of appellant and brother-in-law of the deceased. B

14. Prosecution, to bring home the guilt of the accused, has examined 48 witnesses in addition to voluminous documentary evidence. After a full-fledged trial, the trial court has come to the conclusion that accused No.1 with the help of the absconding accused has committed the murder of the deceased and held him guilty for the offence punishable under Sec.302 of I.P.C. As far as accused No.2/appellant is concerned, the Court has observed that there is no evidence available to show that she is a consenting party or she had a previous meeting of mind with accused No.1 to murder the deceased and as such accused No.2 is not guilty for the offence of murder and for the acts done by accused No.1 of committing the murder of the deceased. The trial court further observed that her silence is due to fear and being in a helpless condition and with an apprehension that her children and herself might be injured by accused No.1 and absconding accused. It is quite natural that accused No.2 could not have asked for help. But the trial court opined that up to 1.00 or 2.00 p.m., accused No.1 was away from the place of offence and during that time, she could have got the help. C D E

15. The trial court further observed that her subsequent conduct can be attributed for her consent or abetment of the offence of destroying the proof of murder. Cutting instrument, its blades, plastic yellow color tags and other articles found at the place of offence and second part of the plastic yellow tag found from the house of relative of accused No.1 would go to show that the preparation for destroying the proof of murder was planned by accused No.1 and accused No.2 by remaining silent. Still the Court felt that she is not a conspirator but after 7.30 a.m. on 12-12-1994, she allowed accused No.2 to enter into her house again and remain with the dead body in the bathroom of the bedroom. That act shows that either out of fear or for reasons best known to her, she abetted or aided the offence punishable under Section 201 I.P.C. Regarding disappearance of the evidence of offence, it is further observed by the trial court that though there is no evidence of participation of F G H

A accused No.2 in causing disappearance of the said proof of offence of murder but by remaining silent, she abetted the offence of causing disappearance of evidence of murder and as such convicted both the accused for the offence under Section 201 I.P.C.

16. The High Court while hearing the appeals as well as the B miscellaneous petition for the *suo motu* enhancement of sentence, has categorically observed that accused No.1 might have entered into the house of the deceased with the consent of A2. Further, she gave all false replies to the complainant and his wife. The High Court observed that when accused No.1 was not present in the house for 6 to 7 hours, at least she should have informed anyone about the incident. All these C clearly involve her actively in the crime along with accused No.1. The evidence also establishes that accused No.2 permitted accused No.1 to enter into the house and allowed him to keep other articles. All the above acts demonstrate her active involvement in the crime in question indicating that conspiracy has been established by prosecution, but as no D appeal is filed by the State, the High Court has not dealt with the issue. The High Court finally held that by way of cogent, reliable and consistent evidence, the prosecution proved that accused No.2, though knowing fully well that her husband was brutally murdered by accused No.1, did not inform anyone nor filed complaint. The High Court held that the trial court was therefore justified in convicting accused No.2 for commission E of offence punishable under Section 201 I.P.C, but the trial court has imposed lesser sentence which is improper, miscarriage of justice and in the result, enhanced the punishment to seven years.

17. At this juncture, I deem it appropriate to extract Section 201 of I.P.C for better appreciation.

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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 offend-er from legal G punishment, or with that intention gives any infor-mation 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 H to seven years, and shall also be liable to fine; if punishable with

imprisonment for life.—and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprison-ment 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 extend-ing 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 pro-vided for the offence, or with fine, or with both.

Illustration A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

18. As laid down by this Court in ***Sou. Vijaya alias Baby Vs. State of Maharashtra,*** (2003) 8 SCC 296, in order to convict a person under Section 201 of I.P.C, following ingredients are necessary-

a. That an offence has been committed;

b. That the accused knew or had reason to believe the commission of such offence;

c. That with such knowledge or belief he/she-

1. caused any evidence of the commission of that offence to disappear; or

2. gave any information respecting that offence which he/she knew or believed to be false;

d. That he did so as aforesaid with the intention of screening the offender from legal punishment.

.....Therefore, to make an accessory *ex post facto,* the first requisite is that the accused should know about the crime committed. In the next place, he must receive, relieve, comfort, or assist him and generally any assistance whatever given to an offender to hinder his being apprehended, tried or suffering punishment, makes the assister an accessory. What Section 201 of IPC requires is that the accused must have had the intention

A of screening the offender. To put it differently, the intention to screen the offender, must be the primary and sole object of the accused. The fact that the concealment was likely to have that effect is not sufficient, for Section 201 speaks of intention as distinct from a mere likelihood."

B 19. Criminal trial can never be a fanciful flight of imagination. While considering the charge under Section 201 of I.P.C, it is mandatory for the prosecution to prove that the accused actively participated in the matter of disappearance of evidence and with an intention to screen the offender. To convict the accused for the offence punishable under Section 201 of I.P.C, it is necessary that all the ingredients are satisfied pointing C out at the guilt of the accused and a mere suspicion is not sufficient. Accused can never be convicted on the basis of probabilities or on assumptions and presumptions. In the light of the above, it has to be examined whether the appellant has committed the offence punishable under Section 201 of I.P.C.

D 20. The appellant is before this Court questioning the conviction imposed by the trial court which was confirmed by the High Court on one hand and on the other hand, she is aggrieved by the order passed by the High Court in enhancing the sentence from 2 years to 7 years. Having gone through the judgment passed by the trial court and E specifically the reasoning given by the Court for convicting the appellant/ accused No.2, admittedly, accused No.2/appellant was charged for the offences punishable under Sections 302, 120(B) and 201 of I.P.C. read with Section 511 of I.P.C The trial court has acquitted accused No.2/ appellant on all other charges but convicted for the offence under Section 201 of I.P.C Here, for better appreciation of the issues involved in the F case, I would like to extract the relevant portion of the findings of the trial court, which read as under:

"I am unable to hold accused No.2 guilty for the offence of murder for the act done by accused No.1 of committing the murder of the deceased. It is true that her silence may be due to fear and G one can understand that said fear in the mind of the lady who has seen her husband being attacked with knives as seen in helpless condition and she had a mind to save herself and her children from further attack..... So, I am aware of the fact that this silence on the part of accused No.2 may suggest that accused No.2 is H also one of the conspirators.....

.....she has declared her desire to have a divorce. So, she has no mind to murder her husband at any point of time. So, these two circumstances lead me to not to hold accused No.2 as one of the conspirators of the conspiracy to commit the murder of the deceased.

....subsequent conduct of accused are sufficient to prove her guilt. Accused No.2 can be held for abetting the offence of disappearing the evidence of offence committed by them.

....From the above discussed evidence, I am of the view that prosecution has proved beyond all reasonable doubts that accused No.1 had committed the murder of the deceased by inflicting the multiple injuries to the deceased with the help of absconding accused. I am of the opinion that accused No.2 is not held guilty for the offence of murder of the deceased. Regarding the disappearance of the evidence of offence, though there is no evidence of the participation of accused No.2 in disappearing the said proof of offence of murder, but by remaining silence, she has indirectly abetted the offence of disappearance of evidence of murder. I reply point is held guilty for the offence of murder and accused No.2 is held not guilty for the said offence of murder. I reply point No.4 that both the accused are held guilty for the offence of sec. 201 IPC."

21. Looking at the entire findings of the trial court, it is crystal clear that the court has given a clean chit to the appellant saying that she is in no way involved in commission of the crime. At para 73 of the judgment, at one breath a categorical finding was given by the trial court that there is no evidence of participation of accused No.2 in disappearing the said proof of offence of murder, but by remaining silent, she has indirectly abetted the offence. At another breath the trial court has observed that either out of fear or for the best reason known to her, she remained silent and abetted or aided the offence punishable under section 201 of IPC.

22. Admittedly, the whole case of the prosecution is based upon circumstantial evidence except for the evidence of sole eye witness Ami. The eye witness, in her statement, has clearly stated that the appellant was crying and she was pleading accused No.1 not to kill her husband. She further stated in the cross-examination that accused No.1

told her mother/appellant to keep mum and not to make any trouble as accused No1 and the absconding accused will come back. Accused No.2/appellant reiterated the same in her statement under Section 313 of CrPC.

23. The relevant portion of the evidence of Ami, eye witness, is extracted below:

> "I jumped from the cot towards my mummy. I went there immediately after getting up. My mummy immediately took me to the drawing room. It is not true that my mother was standing there silently with Pooja, she was saying "don't beat.....don't beat..."
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> "Next day morning, when I got up at 7:30 o' clock morning, Kishorbhai, one more person came out from the bedroom, and Kishorbhai tried to adore me but I rejected his gesture. At that time, the person with him did not tell anything. Kishorbhai told my mummy to keep mum and not to make any trouble as they were coming back."

24. The relevant portion of the statement of accused No.2/ appellant under Section 313 CrPC is as under:

> "It is true. While going Kishore had threatened me that the corpse is lying in your house, we are going the entire responsibility will fall on you, therefore till the time we come back till then remain quiet, do not do anything."

25. I am unable to accept the finding of the courts below, that by remaining silent, accused No.2/appellant has indirectly abetted the offence of causing disappearance of proof of murder. Remaining silent and absconding with accused No.1 and moving from one place to another place will not supply the evidence or fill the gap which is necessary to prove the ingredients under Section 201 of I.P.C. The trial court, having specifically observed that accused No.2 has nothing to do with the disappearance of evidence and without recording any finding with regard to motive, has convicted her under Section 201 of I.P.C. In fact the reasoning given by the trial court makes it clear that court could not give any reasoning with regard to motive which is the crucial aspect to fasten the liability on the accused. With regard to the factum of remaining silent the reason is forthcoming from the evidence of eye witness and the 313

statement of appellant which was not taken into consideration. In the present case the prosecution has miserably failed to prove the same.

26. The Five Judge Bench of this Court in ***Raghav Prapanna Tripathi v. State of U.P.***, AIR 1963 SC 74, has dealt with Section 201 of I.P.C. and the ingredients to be satisfied for convicting an accused under Section 201 of I.P.C. The relevant portion of the same is as under:

> "Thus these two appellants have been rightly convicted and their appeals are dismissed. In regard to the case of Ramanuj Das and Jai Devi the finding of the High Court is that the dead bodies of Kamla and her son Madbusudan were not found in the house of Ramanuj Das and they must have therefore been removed ; that an attempt was made to wash out the bloodstains from inside the rooms and also outside on the roof ; that the dead bodies could not have been removed without the knowledge and active cooperation of Ramanuj Das and Jai Devi and further that both Ramanuj Das and Jai Devi absconded. On this basis the conviction of these appellants was held by the High Court to be justified. It is true that the murder was committed in the house of Ramanuj Das and that there is the evidence to show that the blood inside and outside the living rooms was washed and an attempt was made to obliterate any sign of it though it was unsuccessful. It also may be that both Ramanuj Das and Jai Devi had knowledge of the removal of the dead-bodies but what s. 201 requires is causing any evidence of the commission of the offence to disappear or for giving any information respecting the offence which a person knows or believes to be false. In this case there is no evidence of either. It is not shown that these two appellants caused any evidence to disappear. There may be a very strong suspicion that if from the house dead bodies are removed or blood was washed, person placed in the position of the appellants must have had a hand in it but still that remains a suspicion even a strong suspicion at that. It is true that they were absconding but merely absconding will not fill the gap or supply the evidence which is necessary to prove the ingredients of section 201 of the Indian Penal Code. In our opinion the case against Ramanuj Das and Jai Devi has not been made out. There appeals must therefore be allowed and they be set at liberty."

A 27. In view of the above discussion, I am of the considered opinion that the trial court went wrong in convicting the appellant without there being any finding with regard to the *mens rea* of the accused as settled by this Court in several cases. Particularly, when a specific finding is recorded by the trial court that there is no evidence for convicting the accused under Section 201 of I.P.C., it ought not to have convicted her for the same more on assumptions and presumptions. When the appellant and accused no 1 assailed the order of trial court before the High Court, the High Court has issued notice under Section 377 of the Criminal Procedure Code for *suo motu* enhancement of sentence to the appellant. The High Court has enhanced the sentence to 7 years by dismissing the appeal preferred by the accused. The reasoning given by the High Court is extracted below:

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> "Evidence shows that accused travelled by public transport i.e. AMTC bus. Therefore, in absence of accused No.1 for nearly 6-7 hours in the house, at least she could have informed somebody. Moreover, when she was moving in various places, she had ample opportunities. However, she did not utilize any of these opportunities. All these clearly involve her actively in the crime in question along with accused No.1."

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> ....Thereafter also, she remained silent, went away with the accused No.1, stayed at different public places on fictitious names as husband and wife and absconded for a period of one and half months. From the aforesaid, her active involvement in the crime in question indicating conspiracy has been established by the prosecution. Court below dealt with the same however disbelieved the theory of conspiracy. Even though we are not satisfied with the said reasonings given by the Court below, we are not dealing with the same as no appeal has been filed in that respect by the State."

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> ....It may be noted that accused No.2 was acquitted by the court below for the charge under Sec. 302 IPC and conviction only under Sec. 201 IPC. As stated earlier, since State did not prefer any appeal against the acquittal for the charge under Sec. 302 IPC, we are not in a position to deal with the said aspect.

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> ....Though she was knowing fully well that her husband was brutally murdered by the original accused No.1, she did not inform

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anyone nor filed the complaint. The trial court was therefore justified in convicting the accused No.2 for commission of offence punishable under Sec. 201 IPC and her conviction is hereby upheld.

....It is required to be noted that trial court has improperly evaluated the evidence on record overlooking not only the object of Sec. 201 but also shocking facts of the case leading to murder of deceased by accused No.1 and commission of offence under Sec. 201 by accused No.2 and has imposed sentence which is improper and is a miscarriage of justice. trial court ought have borne in mind that Sec. 201 is joined with Sec. 302 of IPC and should have awarded sentence accordingly."

28. There is no dispute with regard to the fact that let punishment fit the crime is one of the main objects of sentencing policy. The sentence should be adequately reasonable, proportionate to the nature of culpability is a key factor. Sentencing is a matter of discretion of the trial court and the appellate Court in the normal circumstances will not interfere with such discretion. But will interfere only when it finds that there is miscarriage of justice, flagrant abuse of law and where the discretion is not properly exercised by the sentencing Court. The High Court first and foremost has to deal with the conviction appeal on its own merits and once it comes to the conclusion that the trial court was right in imposing conviction, then it has to delve into the aspect whether the punishment was proportionate or not. From the finding of the High Court that the appellant is involved actively in committing the murder and the findings with regard to conspiracy and particularly, in observing that as the State has not preferred any appeal against acquittal it is not in a position to deal with the same, it appears to us that the High Court in a prejudiced manner has enhanced the sentence. looking at the entire reasoning of the High Court, I find that the findings of the trial court were not disturbed and infact were upheld by the High Court but it only differed with the sentencing aspect. The reasoning given by the appellate court for enhancing the sentence and dismissing the appeals can be a valid and correct reasoning for convicting the accused under section 302 or 120b of I.P.C when the state has preferred an appeal against acquittal. But basing on such reasoning the appellant cannot be convicted under section 201 of I.P.C. The ingredients to attract the offence under section 201 of I.P.C are altogether different. Her mere silence cannot give rise to a presumption that she has committed the offence. In the

A instant case both the trial court and the appellate Court, failed to appreciate the case in its proper perspective, relied more on assumptions and based on presumptions has convicted the appellant, which is contrary to the settled law.

29. In view of the foregoing discussion, I hold both issues in favor B of accused No.2/appellant and against respondent State.

30. Generally, in an appeal against conviction, where concurrent findings were recorded by both the Courts below, this Court will not interfere. But, this is a case where both the Courts below, without satisfying the ingredients of Section 201 of I.P.C., have convicted accused C No.2/appellant more on surmises and conjectures, which invited interference of this court.

31. Pondering over the ongoing discussion, I hold that prosecution has not been able to prove the guilt of the appellant/accused No.2 for the offence punishable under Section 201 of I.P.C beyond reasonable D doubt. It is brought to the notice of this Court that the appellant/accused No.2 has already undergone the sentence imposed by the trial court. I set aside the order passed by the High Court in Criminal Appeal No. 833 of 1997 and Crl.M.A. No. 1121 of 1998 in Crl.A. No. 833 of 1997 and accordingly the appeal stands allowed.

E **PRAFULLA C. PANT, J.** 1. I have benefit of reading draft judgment dictated by My Lord Hon'ble Mr. Justice N.V. Ramana whereby His Lordship has held that the charge of offence punishable under Section 201 of Indian Penal Code (IPC) against the appellant stood not proved, and conviction recorded against her is liable to be set aside. With great respect, I humbly differ with the said view for the reasons recorded F hereunder: -

2. Briefly stated the prosecution story is that the appellant got married to Mahendrabhai (deceased) in the year 1981 and two daughters born from the wedlock. The family used to live in Shakuntal Apartments, Ahmedabad. The deceased was running a Health Club one in Chitranjan G Society, Naranpura and another in Shakuntal Apartments. PW-3 Pradip Kamdar (complainant) is the brother of the appellant. Earlier the appellant along with her family used to live with the complainant, before they shifted to Shakuntal Apartments. Kishore Thakker (A-1) was employee in the Health Club run by the deceased. He developed illicit relationship H with the appellant. When appellant told the complainant that she wanted

to sever her relations with the deceased, the complainant and his wife advised her not to take such step as she had two children from the wedlock. On this she responded by saying that Kishorebhai (A-1) also looks after them well. Thereafter, when Mahendrabhai was advised by the complainant not to allow A-1 in his house, he removed A-1 from service. On 11.12.1994, the appellant along with her husband (deceased) and children came to the house of the complainant for lunch and returned at about 2.30 p.m. The daughters were aged eight years and four years. The two families used to keep in touch regularly on phone. In the morning of 12.12.1994, wife of the complainant tried to enquire about the health of younger daughter of the appellant. But the phone was continuously engaged. At about 11.30 a.m. when she rang the appellant and enquired about her husband (deceased), she (appellant) told her that he had gone to Naranpura Health Club. Thereafter, the complainant (PW-3) gave a ring at 3.00 p.m. The appellant informed that Mahendrabhai (deceased) had gone to Bombay. This made the complainant suspicious as Mahendrabhai, whenever went out from Ahmedabad, used to inform him. At about 4.00 p.m., the complainant along with his wife came to the house of his sister (appellant) and rang the door bell. When they entered in the house, they saw that younger daughter Pooja was lying near the dining table in fever. When the complainant asked the appellant as to the reason for Mahendrabhai to go to Bombay, the appellant gave explanation that Mahendrabhai had asked her not to disclose his visit to Bombay. Since it was 4.00 p.m. and Ami (PW-34), elder daughter of the appellant was to be brought back from the school, PW-3 asked the appellant to go and bring the child. Meanwhile, PW-3 found that bath room of the appellant was locked from inside. Suddenly the door of the bath room was opened from inside and Kishore (A-1), who had illicit relations with the appellant, came out, and tried to run away. His shirt was not buttoned. When he was attempted to be stopped, his shirt dropped and he ran away with pants only. Thereafter, the complainant entered inside the bathroom and saw the dead body of Mahendrabhai was in the pool of blood. The appellant, who was sent to bring Ami (PW-34) did not return. As such, the complainant leaving his wife in the house of the appellant, went to the school and brought Ami.

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3. Thereafter, the complainant went to Ellisbridge Police Station, then to Navrangpura Police Station, and gave the First Information Report (Exh. 22), which was registered as ICR No. 759 of 1994. The police

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A came to the house of the appellant, took the dead body into their possession, prepared the inquest report and the dead body was sent for post mortem examination. PW-1 Dr. Dilip Manubhai Desai conducted post mortem examination and prepared the autopsy report (Exh.-17/18). On completion of investigation, charge sheet was filed against Kishorebhai (A-1) and the appellant (A-2) for their trial in respect of offences punishable under Sections 302, 120B and 201 IPC. The trial court, on conclusion of trial, convicted A-1 under Sections 302 and 201 IPC. However, the appellant (A-2) was acquitted of the charge under Section 302 IPC, but convicted under Section 201 IPC. A-1 was awarded imprisonment for life and fine of Rs.5000/- under Section 302 IPC, and each one of A-1 and A-2 was sentenced to rigorous imprisonment for two years and to pay fine of Rs.5000/-, in default of which to undergo further three months rigorous imprisonment under Section 201 IPC.

4. The two convicts filed separate appeals (Criminal Appeal No. 831 of 1997 by A-1 and Criminal Appeal No. 833 of 1997 by A-2) before the High Court. The High Court issued notice for enhancement of sentence as against A-2 only in respect of offence punishable under Section 201 IPC. It is relevant to mention here that the State did not file any appeal against acquittal of A-2 in respect of offence punishable under Section 302 IPC. After hearing the parties, the appeals of A-1 as well as of A-2 were dismissed by the High Court, and the sentence of A-2 was enhanced to rigorous imprisonment for seven years and to pay fine of Rs.7,000/-, in default she was directed to undergo rigorous imprisonment for two years. Aggrieved by said order dated 04.10.2006 passed by the High Court, A-2 is before us in this appeal.

5. Contentions of learned counsel for the parties are already mentioned in the judgment by my Lord Hon'ble Mr. Justice N.V. Ramana and need not be repeated.

6. Perusal of the record shows that in all 48 witnesses were examined by the prosecution.

7. PW-1 Dr. Dilip Manubhai Desai, who conducted post mortem examination on the dead body of the deceased on 13.12.1994, has proved homicidal death of the deceased (Mahendrabhai). He has deposed that there were fifty ante mortem external injuries on the dead body out of which external injury Nos. 13, 14, 16, 18, 20, 21, 28 and 30 were sufficient to cause death in the ordinary course of nature. He further told that the

injuries were possibly caused by knife. The cause of death reported by him was shock and hemorrhage as a result of stab injuries sustained by the deceased. He has proved his reports Exh. 17/18. A

8. PW-3 Pradip Kamdar (complainant), who is brother of the appellant, has narrated the entire prosecution story, as mentioned above. For brevity, the same is not being repeated. B

9. PW-34 Ami is the elder (minor) daughter of the appellant. She has stated that her father used to run Health Clubs in Naranpura and Shakuntal Apartments. Kishore (A-1) used to work in the Health Club, who was removed from service before Diwali. She further told that in the fateful night (11th and 12th December, 1994) she woke up when the bed was pushed. She saw two persons – Kishore and one lean person beating her father. (The said lean person is still reported to be absconding) She further told that her mother was standing near the door with Pooja (younger daughter of the appellant). She further stated that when she started crying, she was taken by her mother to drawing room. She further told that thereafter she did not know as to what had happened, and when in the morning she got up, she saw Kishore (A-1) and his associate leaving the room. She further stated that next morning her mother told her to take bath in the bathroom attached to another room. She stated that she was studying in Vandana School. She has also corroborated the fact in the cross-examination that her maternal uncle (complainant) came to receive her in the school. C D E

10. The statement of PW-3 Pradip Kamdar gets corroborated not only from the statement of PW-34 Ami, but also from the statement of PW-23 Minaben Deepakbhai Desai. This witness has stated that on 12.12.1994 when she was bringing her son from Vandana School to her home, she met the appellant near Vandana School. She also saw that Kishore (A-1) came in an autorikshaw. There was no clothe on his upper part of the body and he was only in pants. He asked her (PW-23) to call Padmini (appellant). She called her and Padmini went in autorikshaw with Kishore (A-1). F

11. PW-7 Yogesh Pannalal has deposed that on 12.12.1994 between 4.00 and 5.00 p.m. a man barefooted and without any clothe on the upper part of the body came in his shop with a lady. They asked for a T-shirt and purchased a jersey. The lady paid for it. This witness has identified A-1 as the man who came barefoot and without clothe on the G H

A upper part of the body and A-2 as the lady who paid the money.

12. PW-6 Navabahamad Rafiyuddin Shaikh further corroborates the story by deposing that he was running a shoe shop and on 12.12.1994 at about 6.00 p.m. a person barefoot came to his shop along with a lady and purchased chappal for Rs.45/- and the lady paid the money.

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13. Subsequent to the incident as to how A-1 and A-2 absconded and lived together that too has come on record in the testimony of PW-19, PW-28, PW-32, PW-39 and PW-40. PW-19 Kanubhai Somabhai Valand has stated that he is Manager of Nayisamaj Dharamshala and he told that A-1 and A-2 lived in the Dharamshala (with fictitious names).
C PW-28 Ibrahimbhai Nasirbhai who is owner of Dreamland Hotel, PW-32 Suryakant Chamanlal, PW-39 Ramaji Rupsing, Manager of Dadavadi Gurumandir Dharamshala, PW-40 Jagdishkumar Amrutlal Soni, Manager of Shree Parshwanath Bhaktivihar Jain Trust Dharamshala, have also given the similar statements regarding above fact for different dates as to how A-1 and A-2 lived in Dharamshalas and Hotel with fictitious
D names. They identified both the accused in the court. The two accused lived together in the above manner from 12.12.1994 till 23.01.1995, before they were arrested.

14. It has also come on record in the evidence of police witnesses that after commission of murder the bed room was found cleaned and
E body of the deceased was found concealed in the bathroom in an attempt to cut and dispose of the same in pieces for which needle, jute thread, plastic bags, iron blade, etc. were collected from the house. It has also come on record that around noon A-1 was allowed by A-2 to go out to get his hand bandaged. In this connection PW-4 Dr. Rajendra Hiralal
F Shah has adduced the evidence relating to bandaging and proved the relevant entries.

15. In the light of the circumstances, from the evidence on record, in my opinion it is clearly established that by making false statement by appellant to her own brother PW-3 (complainant) as to whereabouts of
G the deceased, and not allowing PW-34 Ami to use the bathroom attached to the bedroom (where dead body was concealed), the appellant has given false information to screen offender (A-1). As such, she was rightly held guilty by the courts below in respect of charge of offence punishable under Section 201 IPC. Some observations of the trial court against its own finding as to guilt of A-2 are not relevant for the decision

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of this court, particularly when judgment of the trial court stands merged in the judgment of the High Court which is impugned before us and, as such, the appellant cannot be acquitted from the charge of offence punishable under Section 201 IPC. I agree with the principle of law laid down by this Court, as referred to by my Lord Hon'ble Mr. Justice N.V. Ramana, but finally in each case the facts and evidence of that particular case are to be seen to come to the conclusion as to whether the ingredients of a particular offence have been made out or not.

16. For the reasons, as discussed above, I find no error of law in the orders passed by the courts below in concluding that the appellant Padmini is guilty of the charge of offence punishable under Section 201 IPC. However, as to the sentence, the High Court has awarded the maximum sentence to A-2 (appellant). Learned counsel for the appellant pointed out from the record that the appellant has already served more than two years' imprisonment during the period of trial/appeal. She is sixty years old, and twenty three years have passed from the date of incident. In these circumstances, I am of the view that since the sentence under Section 201 IPC awarded to A-1 has attained the finality in respect of the same charge, as such, it would not be justified to award A-2 the enhanced sentence as directed by the High Court, particularly considering her role in respect of said charge, compared to that of A-1.

17. Therefore, the appeal is partly allowed. The conviction recorded by the courts below against the appellant in respect of offence punishable under Section 201 IPC is upheld but the sentence awarded by the High Court is reduced to two years rigorous imprisonment with fine, as recorded by the trial court.

ORDER

1. In view of the disagreement between us, the Registry is directed to place this matter before the Hon'ble Chief Justice of India to constitute an appropriate bench for disposal of the matter.

Nidhi Jain

Matter referred to larger bench.