2023:DHC:3805

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 12.04.2023***
Pronounced on: 29.05.2023

\+ **CRL.A. 1278/2011**

VIJAY BAHADUR @ MONU ..... Appellant

Through: Mr. Ashutosh Bhardwaj, Advocate

versus

STATE ..... Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State with Inspector Santosh Kumar, P.S. Kashmere Gate

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present appeal has been filed by appellant under Section 374 of the Code of Criminal Procedure, 1973 ('Cr.P.C') challenging the impugned judgment dated 08.09.2011 and order on sentence dated 14.09.2011 passed by learned Additional Sessions Judge 02 (West), Tis Hazari Courts, Delhi ('Trial Court') in Sessions Case No. 04/03/08 arising out of FIR bearing no. 541/2004 registered at Police Station Kashmiri Gate whereby the learned Trial Court has convicted the present appellant for the offences punishable under Sections 120B and 201 of the Indian Penal Code, 1860 ('IPC') read with Section 302 of IPC by virtue of judgment dated 08.09.2011. *Vide* order on sentence dated

14.09.2011, the appellant was sentenced to undergo rigorous imprisonment for one year with fine of Rs. 2000/-, and in default of payment of fine to undergo simple imprisonment for two months.

2. Briefly stated, case of the prosecution is that on 07.11.2004, the complainant i.e. Sh. Shri Bhagwan had lodged a written complaint alleging that his Qualis Car bearing no. HR-38GT-3590 had been missing along with the driver i.e. Sh. Vijay Kumar/deceased. The alleged car was used for the purpose of tourism through Gujarat Travels. It was alleged that on 04.11.2004, one Vinod Kumar had booked the Qualis Car for a trip to Aligarh under the name of one Abhay Kumar, with a scheduled return on 05.11.2004. It was further alleged that when the car did not return, PW-5 i.e. Rajesh Kumar (brother of the complainant), Mohan Kumar i.e. PW-1, Anil Maggoo and Praveen Kumar Tyagi had initiated a search for the car. Thereafter, they had gone to the address given during the car booking where they had met Karan Singh i.e. PW-14 who had stated that Santosh, brother of accused Birender lived in the same area. Upon meeting Santosh, he had disclosed that his brother Birender Singh, Vinod Kumar and few others had gone to Lakmipur Khurkari. The said persons had then taken Santosh along with them to Lakmipur Khurkari but Bijender Singh was not found. However, the owner of the car had identified Bijender Singh and Vinod through photographs. Subsequently, PW-5 had come to know that two unidentified dead bodies were found a few days ago in the area of P.S. Patiali. They visited the police station and identified one of the bodies as the driver, Vijay Kumar, based on photographs and his clothes. On 09.11.2004, a written complaint was lodged, resulting in registration of

FIR against Birender Singh and Vinod @ Abhay. Thereafter, two accused namely Birender and Vinod@ Abhay were arrested from village Nauri, District, Etah. Both of them were interrogated *vide* disclosure statement and they had also pointed out the place of incident where the dead body was thrown. On 13.11.2004, the police officials had taken accused Birender and Vinod to Kanpur where they had discovered that the alleged car had been abandoned and was recovered from a village under the jurisdiction of PS Shivli. On checking the car, it was found that its number plate had been changed. From the car, permit, insurance, fitness, RC and two number plates of front and back bearing no. HR 38GT3590 were recovered. Car along with above articles was seized vide seizure memo Ex. PW16/G. Thereafter, on 15.11.2004 the investigating agency had gone to Roadways bus stand Oraiya U.P. and to Ambika Lodge where they had met one Akhlesh Kumar Dubey who had produced the register from 18.5.2004 to 14.11.2004 and copy of the registers showing entry of Birender, Sanjeev and Vinod were also seized. Akhlesh Dubey had identified accused Vinod in their custody. Then the investigating agency had come back to Delhi and produced the accused before the learned Trial Court. On 16.11.2004, PW-14 i.e., Karan Singh had produced accused Kaushlender @ Sanjeev and Vinod @ Master, both the co-accused persons were arrested and separate arrest and search memos were prepared. Subsequently, accused Vijay Bahadur i.e. the appellant herein was arrested by the I.O. on 26.04.2006 and a supplementary challan was filed before the learned Trial court on 17.05.2006. The disclosure statement of accused Vijay Bahadur @ Monu revealed that he had left the vehicle bearing no. HR38GT3590 at

Shivli and to this affect a pointing out memo was prepared at the instance of accused Vijay Bahadur @ Monu vide Ex.PW17/F, which was taken away by co-accused persons. Hence, charge was directed to be framed against the present petitioner only for the offence punishable under Section 201 of IPC.

3. By way of impugned judgment dated 14.07.2006, the learned Trial Court had convicted the present appellant for offence punishable under Sections 120-B/201 read with 302 of IPC only. The relevant portion of the impugned judgment qua the present appellant reads as under:

> "58. So long as accused Vijay Bahadur @ Monu is concerned, no concrete evidence has come on record. But it has come on record in the cross-examination of PW17 Insp. Randhir Singh, I.O. that first he filed a challan against four accused persons but the challan was not filed against Vijay Bahadur @ Monu. Subsequently, on verbal directions of the then predecessor of this court the challan was prepared against Vijay Bahadur @ Monu. After preparation of challan against accused Vijay Bahadur @ Monu in March 2005 he neither made any further investigation nor collected any other evidence against him upto April 2006. He admitted that he has not diluted the investigation thereafter as there was no proof during the investigations found against accused Vijay Bahadur @ Monu. Besides, PW Parmod Kumar who has been cited as witness by the I.O. in respect of accused Vijay Bahadur could not be examined. He could have been the star witness in this case in respect of accused Vijay Bahadur @ Monu since he is an advocate by profession at Orayya to whom accused Vijay Bahadur @ Monu along with co-accused persons approached to sell the vehicle in question but on knowing the facts he asked the accused persons to go away from his house along with the alleged vehicle. A careful perusal of the disclosure statement of accused Vijay Bahadur @ Monu reveals that he left the vehicle bearing no. HR 38 GT -3590 at Shivli and to this affect a pointing out memo was prepared at the instance of accused Vijay Bahadur @ Menu vide Ex.PW17/F, which was taken away by co-accused persons. It is interesting to note that

accused Vijay Bahadur was arrested by the I.O. on 26.04.2006 and a supplementary challan was filed before this court on 17.05.2006 and a charge was directed to be framed against him for the offence u/s 201 IPG vide dated 14.07.2006."

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66. Anyhow if we believe the missing mark of this link in the chain weaving the clean and smooth circumstances leading to afford only the one hypothesis that in all probabilities accused persons have committed the offence of murder, it may impact the rule of prudence and miscarriage of justice. However, it can firmly and reasonably be concluded that the accused persons were in association of each other prior to immediately committing the offence precisely for the reasons that when accused persons were taken on PC on 13.11.2004 they led to Ambika Lauge/Guest House from where I.O. seized the photocopy of register vide Ex.PW22/A wherein names of accused persons Birender, Sajeev(@)Koshiander, Vinod Master and Vinod s/o Lokpal have been found mentioned and signed with regard to their staying in Ambika Lauge on 05.11.2004. They were got stayed there with the help of one Pramod vide deposition of PW17 and EX.PW22/A (copy of register from Ambika Lauge). Accused Vijay Bahadur (@) Monu after his arrest, on the disclosure statements of other co-accused persons namely 1. Vinod s/o Lokpal, 2. Birender, S.Koshlander @ Sanjeev and 3. Vinod Master vide their disclosure statements Ex.PW16/D, PW16/E, PW16/K and PW16/L, got prepared the pointing out memo vide Ex.PW17/F where he had left the vehicle in question in abandoned condition and this vehicle bearing no. HR 38GT-3590 was recovered in the jurisdiction of PS Shivli as unclaimed vide seizure memo Ex. PW16/G and deposition of PW13 HC Ramesh Chand. This part of material and evidence on record hold some water that all the accused persons guilty for the offence of entering into criminal conspiracy within the meaning of section 120B IPC to destroy the evidence u/s 201 IPC as the recovery of vehicle in question directly links with the deceased and this chain of facts clearly and cogently gives only one inference that accused persons if not committed the murder of deceased they have definitely committed the offence to destroy the evidence after a criminal conspiracy u/s 120 B and 201 IPC in view of the deposition of PW17 and pointing out memo Ex.PW17/F and vide Ex.PW16/F."

4. Learned counsel for the appellant vehemently argues that there is no evidence against the appellant except statement given by PW-17 who was the Investigating Officer of the present case. He argued that the appellant was convicted by learned Trial for the offence punishable under Section 201 and 120-B of IPC, however, all accused persons were acquitted under Section 302/364/392 of IPC which is not valid in the eyes of law because it is a settled principle that once any of the accused is discharged under Section 302 of IPC, he cannot be convicted under Section 201 of IPC in same case. It is further argued that no questions in relation to destroying evidence were put to the appellant in his statement recorded under Section 313 Cr.P.C by the learned Trial Court. Nor did any other witness state anything about the fact that the appellant ever tried to destroy any evidence.

5. Learned APP for the State, on the other hand, submitted that there is material on record to show that the appellant had destroyed evidence in the present case, and thus, he has been rightly convicted by the learned Trial Court.

6. This Court has heard arguments and has considered the entire material placed on record.

7. Since present appeal has been filed by accused Vijay Bahadur who has been convicted as per the impugned judgment, this Court is only dealing with the grounds of appeal *qua* Vijay Bahadur.

8. Prior to delving into the merits of the case, it is crucial for this Court to contemplate and reproduce Section 201 of IPC, in order to comprehend the case in a more comprehensive manner. The relevant portion is reproduced as under:

> "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……."

9. In ***Palvinder Kaur v. State of Punjab*** *(1952) 2 SCC 177*, the Hon'ble Supreme Court had observed as under:

> "11. The decision of the appeal, in our view, lies within a very narrow compass and it is not necessary to pronounce all the points that were-argued before us. In our judgment, there is no evidence to establish affirmatively that the death of Jaspal was caused by potassium cyanide and that being so, the charge under Section 201 IPC, must also fail. The High Court in reaching a contrary conclusion not only acted suspicions and conjectures but inadmissible evidence
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> 14. In order to establish the charge under section 201, Indian Penal Code, it is essential to prove that an offence has been committed-mere suspicion that it has been committed is not sufficient,that the accused knew or had reason to believe that such offence had been committed- and with the requisite-knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false..."

10. The Hon'ble Apex Court in the case of ***Sukhram v. State of Maharashtra*** *(2007) 7 SCC 502*, had discussed the ingredients that are necessary to constitute an offence under Section 201 of IPC. The relevant observations are reproduced as under:

> "18. The first paragraph of the section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the

> degree of offence in each situation. To bring home an offence under Section 201 IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence; and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown".

11. This Court notes that the precedents laid down by the Hon'ble Apex Court indicate that to establish the guilt of an accused for offence punishable under Section 201 of IPC, it is essential to demonstrate that the accused had sufficient knowledge and evidence about the crime committed. Furthermore, it must be demonstrated by the prosecution that the actions of accused were intended to shield the offender from legal consequences.

12. Bare perusal of the first part of Section 201 IPC is clear in emphasizing the requirement to establish that commission of an 'offence' is *sine qua non* for charging an accused person under this section. It is evident that the punishment to the accused for the offence under this section is proportionate to the punishment assigned to the underlying substantive offence committed by the said person. It is important to note that there is no independent punishment explicitly

prescribed for the offence under Section 201 of the IPC, as it is always contingent upon the gravity of the primary offence.

13. The Hon'ble Supreme Court in ***Duvvur Dasratharammareddy v. The State of Andhra Pradesh,*** *1971 (3) SCC 247* had dealt with the viability of a standalone conviction under Section 201 of IPC, and the observations in this regard are reproduced 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."

14. Keeping the above-mentioned law and judicial precedents laid down by the Hon'ble Supreme Court in mind, this Court shall now deal with the facts and circumstances of the present case.

15. During the course of trial, the prosecution examined 23 witnesses. After completion of trial, the appellant was convicted as mentioned in the preceding paragraphs. In the present case, learned Trial Court *vide* impugned judgment dated 14.07.2006 had convicted the present appellant on the basis of his own disclosure statement and of the other co-accused persons. Learned Trial Court had also relied upon the testimony of PW-17.

16. As per the facts of the case, three accused persons had visited the office of PW-1 Mohan on 04.11.2004 to book the alleged vehicle in question, and a booking slip had been issued to the accused persons, and one of them, identified as Abhay, had signed and acknowledged the slip. When the vehicle and driver had not returned as scheduled, the vehicle owner had initiated a search on 05.11.2004. Upon inquiry from PW-1

Mohan i.e. the owner of M/s Gujrat Travels regarding the non-return of the vehicle, he had provided the address that had been provided by the accused persons to him. The owner, along with Rajesh Kumar (PW-5), had visited the given address where they had met PW-14 Karan Singh, who had informed them that Santosh i.e. the brother of accused Birender resided in the same area, but the accused persons could not be found at Santosh's house in Loni. It had also come to his knowledge that the driver of the vehicle had been killed. Thereafter, on 08.11.2004, a complaint (Ex.PW3/A) had been filed. However, the appellant was arrested in the year 2006, and the allegations qua him were that he had destroyed certain evidences.

17. In the present case, this Court has perused the pointing out memo (Ex. PW-17/F) of the place where the alleged vehicle was found abandoned. It is important to note that that the vehicle was neither directly recovered from the accused nor at his instance, rather he had allegedly disclosed the place where he had abandoned the vehicle in the past. This Court takes note of the fact that incriminating evidence against present appellant is his own disclosure statement and the disclosure statements of other co-accused which are not admissible in law. However, what is admissible in law, is any recovery if made pursuant to the disclosure statement of the accused. This implies that the portion of the disclosure statement where an accused reveals a fact, leading to the discovery of an article or another fact, will be pertinent and admissible under the law. Albeit, in the present case, if the recovery of alleged vehicle would have been made pursuant to the disclosure statement of the present accused/appellant, then that portion of his disclosure

statement would have been admissible in law and could have been used against him, that he had left the vehicle at the place which he had allegedly pointed out. In accordance with legal provisions, the disclosure statement must be recorded prior to the discovery in question, and it cannot be the other way around.

18. Interestingly, it is not so in the present case. In the present case, the alleged vehicle had already been discovered and seized on 13.11.2004 i.e. more than one year and five months prior to the recording of alleged disclosure statement dated 26.04.2006 as well as pointing out memo dated 27.04.2006 prepared at the instance of the appellant herein, which was inadmissible in law.

19. In this regard, this Court also notes that the learned Trial Court had observed that there was lack of evidence against the present appellant and that no witness from P.S. Shivli was examined at all, though the car was recovered from the area falling under the said police station. However, learned Trial Court was of the opinion that as stated by PW-17 in his cross examination, he was not aware of the place of recovery of the car in question when he had got the pointing out memo prepared by the appellant. As far as this aspect is concerned, this Court notes that *firstly*, PW-17 in his examination-in-chief had deposed that on 13.11.2004, he along with SI Ramjeet, Ct. Om Parkash, Ct. Ratnagiri had reached at Kanpur, where they had inspected the seized vehicle no. HR38GT3590 vide Seizure Memo Ex.PWI6/G, which had been lying at P.S. Shivli. *Secondly*, he had stated in his cross-examination that he had inquired about the spot from where the alleged car was recovered from police officers of PS Shivli but they had not told him about the same,

however, it can be noted that statement of PW-20 S.I. Rajesh Kumar Mourya (Ex. PW-17/DA) had been recorded by PW-17 on 13.11.2004 and in that statement, the spot from where the car was recovered had been mentioned. Hence, it cannot be held with certainty that recovery of the car was not already known to PW-17 when he had got the pointing out memo prepared by the appellant.

20. Thus, the main reasoning on which the conviction has been based by the learned Trial Court i.e., on the disclosure statement of the appellant and pointing out memo, in the considered opinion of this Court, is based on incorrect appreciation of law and facts.

21. There are few unusual and interesting facts disclosed from the impugned judgment itself and the most glaring is that the supplementary charge-sheet in the present case against present appellant was filed at the oral direction of concerned Trial Court. This is unheard in criminal jurisprudence or the procedure followed in the criminal courts. This fact has been mentioned by learned Trial Court in the impugned judgment itself.

22. It also cannot escape the notice of this Court that initially in the present case, the prosecution itself had found nothing incriminating against the present appellant and had not named him in the FIR or in the initial chargesheet. The FIR in the present case pertains to the year 2004 and while four accused persons had been arrested in 2004, the present appellant was arrested on 26.04.2006 i.e. after 2 years. A perusal of the cross-examination dated 10.03.2010 of PW-17 reveals that he had initially filed chargesheet only against four accused persons and not against the present appellant as there was no evidence against him.

However, he had stated that on verbal directions of the learned Trial Court, he had prepared a draft chargesheet against the present appellant in March 2005, but he had not filed the same due to lack of sufficient evidence, and he had neither made any further investigation nor had he collected any other evidence against the appellant up till April, 2006. The relevant portion of the said cross-examination reads as under:

> "...I have perused the entire police file and did not completed the original mark X. Initially I filed a challan against the 4 accused persons but the challan was not filed against the Monu and later on the verbal directions of the predecessor of this court the challan was prepared against the Monu but could not be filed as there was no sufficient material against him nor the Monu was interrogated as he could not be traced out. After preparation of Challan against the accused Monu in March 2005 I did not made-any further investigation and collected any other evidence against the accused Monu upto April, 2006. It is correct that I have not dilute in The investigation thereafter as there was no prove during the investigations found against the accused Monu. I have prepared the challan against the accused Monu on the directions of the court after due investigation..."

????. However, a perusal of the supplementary charge sheet which was filed against the appellant in 2006 does not mention such facts, and it was only stated that on the oral directions of the learned Trial Court on 12.04.2006 to interrogate the present appellant, PW-17 had obtained Non-Bailable Warrants against the appellant on 26.04.2006 and had arrested him from Kanpur and thereafter, had recorded his disclosure statement as well as pointing out memo and had, accordingly, submitted the chargesheet.

24. This Court also notes that learned Trial Court itself in para no. 58 of impugned judgment had observed that the investigation against the

appellant was insufficient and nothing concrete in evidence was brought on record. The Court concerned had also noted that one Pramod Kumar who could have been the star witness against the appellant in relation to present offense was not examined by the prosecution before the learned Trial Court. In the last para of the impugned judgment, the Court had also observed that investigating officer had not got the Test Identification Parade conducted in respect of appellant nor had he made the witnesses from P.S. Shivli.

25. Therefore, having thoroughly considered the entire evidence brought on record in this case, including various pieces of circumstantial evidence relied upon by the prosecution, this Court concludes that the evidence brought on record by the prosecution was *inherently insufficient* to establish a solid foundation for conviction. The legal principles governing the basis of conviction through circumstantial evidence have been firmly established by the Hon'ble Apex Court in case of ***Sharad Birdichand Sarda v. State of Maharashtra*** *(1984) 4 SCC 116,* wherein the Court had laid down the following golden principles of the proof of case based on circumstantial evidence.

> "(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved". It is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.
> (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
> (3) the circumstances should be of a conclusive nature and tendency,

> (4) they should exclude every possible hypothesis except the one to be proved, and
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

26. Considering the above-mentioned principles this Court notes that the prosecution failed to prove its case beyond reasonable doubts, nor are the circumstances, from which an inference of guilt is sought to be drawn, cogent and firm. This Court notes that in the facts and circumstances of the case, when the appellant and co-accused persons stood acquitted of the substantive and principle charge of Section 302 IPC and there being a categorical finding by the learned Trial Court that the prosecution had failed to establish commission of offence under Section 302 IPC by the appellant and the co-accused persons, under such circumstances, present appellant could not have been independently convicted so far as the offence under Section 201 of IPC is concerned for the reasons that the principal offence under Section 302 IPC itself has not been established in the present case against any of the accused persons, together with the other lacunaes in investigation and the manner of filing of supplementary chargesheet of the present appellant on oral directions of the Court.

27. Based on the aforementioned reasons discussed in the preceding paragraphs, this Court notes in its opinion that the independent conviction of the accused individual for the offence under Section 201 of the IPC is improper, unjustified and unlawful, in the facts and circumstances of the present case.

28. This Court, therefore, holds that the present case is not based on the established principles of law of evidence and Indian Penal Code. The judgment also suffers from the fact that despite there being no incriminating evidence against the present appellant, he has been convicted on the basis of a presumption. This Court notes with a little dismay that the present appellant has faced the trial for many years despite there being no incriminating evidence against him. At this stage, the only recourse available to this Court is to acquit the appellant of all the charges leveled against him.

29. Considering the overall facts and circumstances of the case, the conviction rendered by the learned Additional Sessions Judge 02, (West), Tis Hazari Courts, Delhi in case FIR bearing no. 541/2004 is deemed erroneous qua the present appellant.

30. In view thereof, the present appellant is acquitted of all the charges.

31. Bail bond, if any, stands cancelled. Surety stands discharged.

32. Accordingly, the appeal is allowed in above terms.

33. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 29, 2023/kss