

Bhim Singh & Anr vs State Of Uttarakhand on 11 February, 2015

Equivalent citations: 2015 AIR SCW 1118, 2015 (4) SCC 281, AIR 2015 SC (CRI) 666, AIR 2015 SC (SUPP) 797, (2016) 1 MH LJ (CRI) 16, 2015 CRILR(SC MAH GUJ) 223, (2015) 148 ALLINDCAS 106 (SC), (2015) 2 ALLCRILR 171, (2015) 89 ALLCRIC 615, (2015) 2 JLJR 121, (2015) 2 SCALE 280, 2015 ALLMR(CRI) 1270, 2015 CRILR(SC&MP) 223, (2015) 1 CRIMES 228, (2015) 2 RECCRIR 22, (2015) 1 UC 499, (2015) 2 PAT LJ 210, (2015) 1 CRILR(RAJ) 223, (2015) 1 ALLCRIR 1040, (2015) 1 CURCRIR 437, (2015) 2 MARRILJ 224, 2015 (2) SCC (CRI) 580, (2015) 2 KCCR 162, (2015) 60 OCR 984, (2015) 1 MAD LJ(CRI) 614, (2015) 2 ALD(CRL) 1

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Bench: Pinaki Chandra Ghose, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2146 OF 2009

BHIM SINGH & ANR.

... APPELLANTS

:Versus:

STATE OF UTTARAKHAND

...RESPONDENT

J U D G M E N T

Pinaki Chandra Ghose, J.:

This appeal, by special leave, has been filed against the judgment and order dated 23.03.2009 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.1706 of 2001 whereby the High Court while acquitting the two co-accused (appellant Nos.2 & 3 herein), upheld the conviction and sentence of appellant Nos.1 & 2 herein, as awarded by learned Special Judge (CBI)/Additional Sessions Judge, Nainital, and dismissed their appeal. The learned Special Judge (CBI)/Additional Sessions Judge, Nainital, by its judgment and order dated 25.04.2000 passed in Sessions Trial No.36 of 1998 convicted appellant Nos.1 & 2 herein under Section

304-B of IPC and sentenced them to imprisonment for life, and further convicted all the appellants under Section 498-A IPC and sentenced them to rigorous imprisonment for one year and a fine of Rs.500/- to each of them. All the appellants were also convicted under Sections 3 & 4 of the Dowry Prohibition Act, 1961 and sentenced each of them to three months' simple imprisonment and fine.

The facts leading to this appeal are that one Bhim Singh S/o of Govind Singh, resident of Village Naliana in District Nainital got married to Prema Devi (deceased) on 4.5.1997. Appellants Nos.2 & 3, namely Aan Singh and Nain Singh are brothers of Bhim Singh and Appellant No.4, namely Janki Devi is the wife of Aan Singh (appellant No.2 herein). Prema Devi died unnatural death in her in-laws' house on 26.9.1997. Soon after the death of Prema Devi, Pushpa Joshi, Village Pradhan of Jeolikot made a complaint telephonically to Sub-Divisional Magistrate about the unnatural death of Prema Devi. Upon receiving this information, the Magistrate along with Sub-Inspector Shiv Singh Gusain (PW-7) reached the village and took the dead body in their possession and an inquest report was prepared on the same day. Post-mortem examination of the deceased was conducted on the same day at about 4.55 p.m. by Dr. D.K. Joshi (PW-5) and one Dr. H.C. Bhatt who prepared the Autopsy Report. Post-mortem report reveals that there were 90% burn injuries on the body of the deceased. Since the cause of death was not ascertained by the medical officers, therefore, viscera was preserved for chemical examination.

First Information Report was lodged on 27.9.1997 at around 1830 Hrs., at Police Station Jyolikot, Police Station Tallital, District Nainital by one Sri. Birbal Singh Sambhal, inter alia, stating that the marriage of his sister Smt. Prema Devi was solemnized with Bhim Singh son of Govind Singh, in the month of May, 1997 in Village Jyolikot, Nainital. The elder brother of Bhim Singh, namely Aan Singh played the role of mediator in finalizing the marriage. Several items were given in the aforesaid marriage. FIR states that Prema Devi, complainant's sister, told him that when she went to the house of her in-laws after marriage, her husband Bhim Singh, Aan Singh, Nain Singh, all sons of Govind Singh and Smt. Janki Devi wife of Aan Singh, used to taunt and torture her by saying that she had brought nothing in dowry. When she narrated these events to her parents they persuaded Prema and told her to adjust with her family and live with them cordially. Father of the complainant however convinced Prema that he would himself talk to her in-laws and settle things. They went to the house of the in-laws of Prema and tried their best to persuade them, but instead of settling matters, they exhorted to taunting. Consequently, Prema was advised to adjust herself to the situation. Thereafter when she came to her parents' house on the occasion of Rakhi, she told them that Bhim Singh, Aan Singh, Nain Singh and Janki Devi are repeatedly taunting and torturing her. She further told that the elder brother, Aan Singh threatened to insult her before the entire village and pressurised her for getting clothes and other items from her parents' house. On 27.9.1997 the complainant received information that his sister had died due to burning. Upon receiving this information, they immediately went to the house of Prema's in-laws and they found her dead. She was completely burnt. They were told that she had set herself on fire.

Investigation was done by Bimla Gunjyal, Deputy Superintendent of Police (PW-6) and after the investigation was complete, charge-sheet against all the four accused persons was filed before the Chief Judicial Magistrate and the case was committed to the Sessions Court for trial.

The Trial Court on finding that the prosecution has succeeded in proving the guilt of the appellants, convicted them for offences under Section 498- A of IPC and sentenced them to undergo rigorous imprisonment for three years each with a fine of Rs.500/-, and in the event of default in payment of fine, further simple imprisonment for fifteen days each. Accused Bhim Singh and Aan Singh (appellants Nos.1 & 2 herein) were also held guilty of offence 304-B of IPC and both of them were sentenced to undergo rigorous imprisonment for life. Appellants were also convicted for the offences under Sections 3 & 4 of the Dowry Prohibition Act, 1961 and sentenced to undergo three months' rigorous imprisonment along with fine of Rs.500/-. In the event of default in payment of fine, they were to undergo further simple imprisonment for fifteen days. However, all these sentences were directed to run concurrently.

An appeal was preferred by the appellants under Section 374 of Code of Criminal Procedure, 1973 ("Cr.P.C." for short) against the judgment and order dated 25.04.2000 passed by the Special Judge (C.B.I)/ Additional Sessions Judge, Nainital in Sessions Trial No.36 of 1998. After hearing the counsel for the parties and perusing the Trial Court's record, the High Court relied, firstly on the finding by the team of two doctors who after post-mortem examination prepared the autopsy report. The said report disclosed that there were 90% burns and all these burns were skin deep. As to the cause of death, the two officers Dr. D.K. Joshi and Dr. H.C. Bhatt opined that the cause of death could not be ascertained, hence the viscera was preserved. The viscera report on the Trial Court record disclosed that pieces of stomach, intestine, liver, kidney and spleen contained Organo Chloro Insecticide and Ethile Alcohol poisons. The Autopsy report and chemical examiner's report with statement of Dr. D.K. Joshi clearly established the fact that the deceased died an unnatural death. Secondly the High Court also relied on the statements of Virbal Singh, brother of the deceased (PW-1), Maan Singh, father of the deceased (PW-2) and Trilok Singh, uncle of the deceased (PW-3) that the deceased got married to Bhim Singh on 07.05.1997 and died an unnatural death on 26.9.1997, within 5 months of marriage. It also noted that the accused had themselves admitted in their replies recorded under Section 313 of Cr.P.C. that the marriage took place on the said date and Prema Devi died an unnatural death. The only question in dispute as framed by the High Court was whether the deceased was subjected to cruelty by the accused appellants before her death or not. The High Court found that firstly the prosecution had sufficiently shown as required under Section 304-B IPC that the deceased was subject to cruelty and harassment by Bhim Singh and Aan Singh by relying on the statements made on oath by PW-1 Virbal Singh, PW-2 Maan Singh and PW-3 Trilok Singh where they specifically stated that in the ceremony of Durgun, Aan Singh complained that expenditure incurred by him in the marriage had not been recovered. Their statements were corroborated by statement of Trilok Singh. Relying on Section 113-B of the Indian Evidence Act 1872 read with prosecution evidence, the High Court opined that the prosecution had successfully proved charge of offence punishable under Section 498-A and 304-B of I.P.C. and one punishable under Sections 3 and 4 of Dowry Prohibition Act, 1961 against Bhim Singh and Aan Singh. Secondly on the point of proving proximity between the taunts and death of the deceased, the High Court decided that five months was proximate enough and that presumption under Section 113B was proved beyond doubt to prove charge. Thirdly, the fact of living separately by showing ration cards was immaterial. On being urged by the accused that the charge framed by Trial Court is defective and alternative charge could not have been framed in the manner it is done by Trial Court, the Court found that there was no error in stating the offence nor in particulars stated in the charge, nor any failure of justice as is

shown by the appellants. Relying on Sections 221 and Section 464 of Cr.P.C. the High Court opined that there was no error in the charge nor there was any failure of justice. On going through the entire evidence on record the High Court found that though the names of Nain Singh and Janki Devi are mentioned with Bhim Singh and Aan Singh, no specific role in harassing the deceased is stated against them and as such the possibility of implication of their names, on suspicion, cannot be ruled out. Even in respect of charge of offence punishable under Section 498-A and Sections 3 and 4 of Dowry Prohibition Act, 1961, charge against Nain Singh and Janki Devi had not been proved beyond reasonable doubt. But as far as conviction recorded by the Trial Court in respect of Bhim Singh and Aan Singh is concerned, the Trial Court had committed no error in law in convicting and sentencing them under Section 498-A I.P.C., 304-B I.P.C., and one under Sections 3 and 4 of Dowry prohibition Act, 1961 as the charge against them was proved on the record beyond all reasonable doubt.

The High Court in the present matter convicted appellant Nos.1 & 2, on the basis of circumstantial evidence in the impugned judgment. It has been established in leading judicial precedents that where the prosecution case is based on circumstantial evidence, only the circumstantial evidence of the highest order can satisfy the test of proof in a criminal prosecution. To base a conviction on circumstantial evidence put forth by the prosecution should establish a complete and unbroken chain of events so that only one inference could be drawn out from the same and if more than one inference could be drawn, then the accused should be entitled to the benefit of doubt.

The learned counsel appearing for the State of Uttarakhand contended that PW-1 Birbal Singh had categorically stated on oath that marriage of his sister Smt. Prema Devi was solemnized on 7.5.1997 with Bhim Singh. Elder brother of Bhim Singh, Aan Singh, played role of mediator in finalizing the marriage. Loan was taken for marriage. However no demand for dowry was made. But his sister had complained twice that his family was taunting her and demanding dowry. This statement given by PW-1 is fully corroborated by the father of the deceased also. Prosecution counsel also examined PW-3 Trilok Singh the uncle, who said that Bhim Singh and Aan Singh talked about dowry before him and thereupon he expressed his displeasure. The learned counsel also argued that she died after 4 months and some days of her marriage in an unnatural way. Further, it is argued that since there was no mode of transport in the village at night, they could not go to the house of Prema Devi's in-laws on 26.9.1997 and next day when they reached by walking on foot for about 15 km, they came to know that the dead body had been sent to Nainital for post-mortem. Apart from the above witnesses, Smt. Pushpa Joshi, the Gram Pradhan of the Village was produced as PW-4. She stated that the elder-brother Aan Singh came to her and told her that Prema Devi had set herself on fire and thereafter she along with her neighbor, went to their house and saw Prema Devi lying there badly burnt. PW-4 informed Darogaji Gusai Singh about the incident. The learned counsel further stated that PW-5 Dr. D.K. Joshi examined the dead body on 26.9.1997 and in external examination found 90% burn injuries on the body. The deceased had died 6-8 hours prior to examination. Since no cause of death was visible from external examination, therefore, viscera of the deceased was preserved for internal examination. Post-mortem report was prepared by Dr. H.C. Bhatt in which it was stated that he was of the opinion that the deceased was given some toxic substance before her death due to which she died and later on she was burnt. Because no external reason of death was found, the viscera was sent to the State Laboratory for chemical examination and it was found that toxic material was present in the viscera. The counsel for the State, thus, submitted that the accused

tried to kill Smt. Prema Devi by giving poisonous substance after torturing her for dowry and when they became apprehensive whether she had died or not, they set her on fire to confirm her death. Thereafter, they informed the Gram Pradhan of the Village that Prema Devi had died due to burning so that the deceased is not able to give her dying declaration.

On the other hand, the learned counsel for the appellants submitted that PW- 1 Birbal has admitted in his statement that no demand for dowry was made by accused before the marriage and if at all they wanted dowry, they would demand it before marriage itself. None of them were in a position to demand and give dowry. Birbal admitted in his statement that the marriage was settled voluntarily by Birbal and his father on their own accord. He stated that "marriage of his sister was settled by his father and his marriage was solemnized with the consent of both me and my father. My sister came back to our house after some days of marriage. But I cannot tell after how many days she came back. Because I was in Haldwani that time." Further, it was urged that PW-1 and PW-2 have admitted that no reports were lodged by them prior to death of Prema, with respect to torture on demand of dowry. The Counsel further said that, the conduct of the accused was of great importance, as the information of the death was given by Aan Singh himself to the Gram Pradhan of the Village. If they had killed her, they would not have informed her family members and instead would have cremated her immediately after her death. Counsel urged that, it appears that the deceased herself committed suicide, by first consuming poisonous substance and thereafter she thought she might not die due to its consumption, therefore she burnt herself. Learned Counsel further argued that Bhim Singh, husband of the deceased has two brothers. Aan Singh, elder brother of Bhim Singh is a Chowkidar in P.W.D. and living separately with his wife. Bhim Singh was a vehicle driver and his younger brother Nain Singh was running a shop. Thus, there was no correlation of Aan Singh, Nain Singh and Janki Devi with Bhim Singh. All three were doing their separate avocations. The voter lists and ration cards of all the three brothers, which are on record, are separate. Thus, it is not proved that all three brothers were involved in the offence. On the other hand, they have helped the police in this case by informing them.

Thus, the present appeal requires an evaluation and analysis of the circumstantial evidence on record and the statements made in the course of investigation and produced against the accused appellants.

The first ground of defense taken by the appellants in this appeal is that there is no specific incident of abuse or torture for dowry and no prior report of dowry demand was filed by the family of the deceased. It is also stated that there was no demand of dowry made by them before marriage as is evident from the statements of PW-1 Birbal Singh and PW-2 Man Singh. However, as held by this Court in the State of Himachal Pradesh v. Nikku Ram & Ors., (1995) 6 SCC 219, the demand for dowry can be made at any time, and not necessarily before marriage. The demand can be made on three occasions; before marriage, at the time of marriage and after marriage. The relevant extract of the said judgment is reproduced hereunder:

"Dowry, dowry and dowry. This is the painful repetition which confronts, and at times haunts, many parents of a girl child in this holy land of ours where, in good old days the belief was: "Yatra Naryastu Pujyante ramente tetra dewatah" (where woman

is worshipped, there is abode of God). We have mentioned about dowry thrice, because this demand is made on three occasions: (i) before marriage; (ii) at the time of marriage; and (iii) after the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some."

The accused have taken the defense that the PWs. have also stated in their statements that no demand for dowry was made before marriage and that the marriage was concluded by the consent of the two parties. They also took the defense that no prior police complaint of dowry demand was made by the family of the deceased. However, in light of the decision of this Court in *State of Himachal Pradesh v. Nikku Ram & Ors.* (supra) and the social evil of dowry that is prevalent in the Indian society, this defense does not hold water. The demand for dowry can be made at any time and not necessarily before marriage. The appellants have also taken the plea that no specific incidents of abuse or torture were there. But in the present case, PW-3 Trilok Singh has categorically stated in his statement that the accused Aan Singh had come in the ceremony of durgud, which is celebrated after marriage in which he had stated in the presence of all the persons that he had not recovered the money he had spent in the marriage and became angry. The PWs. have also stated that, the deceased, Smt. Prema Devi had also complained to her family members twice, regarding taunts and demand for dowry by the four accused persons. These incidents occurred "soon before her death" as she died within 5 months of her marriage. This raises a presumption, under Section 113-B of the Evidence Act, as to dowry death punishable under Section 304-B of I.P.C. A conjoint reading of Section 113B of the Evidence Act and Section 304-B of I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment for or in connection with the demand for dowry. In other words, only when the prosecution proves that soon before her death, the lady was subjected to cruelty or harassment for or in connection with any demand for dowry as laid down by this Court in *Kaliyaperumal and Anr. Vs. State of Tamil Nadu* (2004) 9 SCC 157. The prosecution has proved by producing cogent evidence that soon before her death the lady was subjected to cruelty or harassment in connection with the demand for dowry. Thus, it becomes obligatory for the Court to raise a presumption that the death is a dowry death.

It is the case of the defense that the deceased would have tried to commit suicide by consuming poison and when she was apprehensive whether she would die or not, she set fire to herself. Assuming, without conceding, that Smt. Prema had committed suicide, then under Section 113A of the Indian evidence Act, onus is shifted on the accused to dislodge the presumption of having committed abetment of suicide by a married woman. Unlike as in Section 304- B where the court "shall presume" dowry death, when the prosecution has established the ingredients, under Section 113A of the Evidence Act, discretion has been conferred upon the Court wherein it has been provided that the Court may presume abetment of suicide. Therefore the onus lies on the accused to rebut the presumption, and in case of Section 113-B of the Evidence Act relatable to Section 304B of IPC, the onus to prove shifts exclusively and heavily on the accused as held in *Bansilal v. State of Haryana* (2011) 11 SCC 359. Thus, where the death of the wife was concurrently found to be

unnatural, viz., by strangulation, and there was demand for dowry and also cruelty on the part of the husband the presumption under Section 113B has been rightly drawn, as held in *Hemchand v. State of Haryana* AIR 1995 SC 120, 121. Even then the presumption against the accused persons as in Section 113A of the Evidence Act is rightly presumed as if we assume that she committed suicide, as the circumstantial evidence shows that she might be compelled to take the extreme steps as the alleged suicide was committed within 7 years of marriage, as held in *Gurbachan Singh v. Satpal Singh* 1990 Cri. LJ 562,571 (SC). The circumstantial evidence leads to the guilt of the accused persons, as the prosecution has proved that the accused had the opportunity to administer the poison and the doctors in the medical examination have also reported that the deceased was a healthy woman who, along with her family, was trying to reconcile matters with the accused persons. The fact that the death occurred in the house of the accused persons, leads to their guilt. They have not discharged the onus of disproving the presumptions under Sections 113A and 113B. Thus, the question of suicide is ruled out. The Court in this case is obliged to take the presumption raised under Section 113B of the Evidence Act.

The accused persons have taken the defense that they themselves had informed the Gram Panchayat after she had died upon which the Gram Pradhan along with other persons went to the accused persons house, where they found the dead body of Smt. Prema. A prudent man, trying to save a person from dying would have taken the deceased person to the nearest hospital, and would not have waited for her to die. The argument put forward by the learned counsel for the accused that the deceased first consumed poison and then on being apprehensive of her death, she set herself on fire, is further proved wrong, as any reasonable man would try to save his wife if such a situation arise. When facts are clear, it is immaterial whether motive was proved. Absence of motive does not break the link in the chain of circumstances connecting the accused with the crime as held by this Court in *Mulakh Raj v. Staish Kumar*, (1992) 3 SCC 43 = AIR 1992 SC 1175. Further, proof of motive or ill-will is unnecessary to sustain conviction where there is clear evidence.

In the present case, the guilt or innocence of the accused has to be adduced from the circumstantial evidence. The law regarding circumstantial evidence is more or less well settled. This Court in a plethora of judgments has held that when the conviction is based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. *Gurpreet Singh v. State of Haryana* (2002) 8 SCC 18 is one of such cases. On the question of any reasonable hypothesis, this Court has held that if some of the circumstances in the chain can be explained by any other reasonable hypothesis, then the accused is entitled to benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The Court considers ordinary human probabilities.

On circumstantial evidence, this Court has laid down the following principles in *Sharad Birdhichand Sardar v. State of Maharashtra*, (1984) 4 SCC 116:

The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established.

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.

The circumstances should be of conclusive nature and tendency.

They should exclude every possible hypothesis except the one to be proved and, 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.

Whenever there is a break in the chain of circumstances, the accused is entitled to the benefit of doubt; State of Maharashtra v. Annappa Bandu Kavatage (1979) 4 SCC 715.

Following the decision in Sharad Birdhichand (supra), this Court in the case of Liyakat v. State of Uttaranchal, (2008) 16 SCC 148, and in the case of Kusuma Ankama Rao v. State of Andhra Pradesh, (2008) 13 SCC 256, upheld the conviction as awarded by the Trial Court and affirmed by the High Court.

Thus, in light of the above, there is no missing link in the circumstantial evidence put forth by the prosecution, and hence the accused are not entitled to benefit of doubt. The guilt of the accused persons i.e. the appellant Nos.1 & 2 herein, under Section 304-B IPC has been successfully established. We, therefore, find no infirmity in the impugned judgment passed by the High Court. This appeal is accordingly dismissed. There shall be no order as to costs.

.....J (M.Y. Eqbal)J (Pinaki Chandra Ghose) New Delhi;

February 11, 2015.