

Uttarakhand High Court

Balbhadra Singh And Another ... vs State Of Uttarakhand on 23 February, 2022

IN THE HIGH COURT OF UTTARAKHAND  
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

23RD FEBRUARY, 2022

Criminal Appeal No.37 of 2006

Between:

Balbhadra Singh and Another . . . .Appellants

Vs.

State of Uttarakhand . . . . .Respondent

Counsel for the Appellants : Mr. Pankaj Purohit.

Counsel for the Respondent/  
State : Mr. S.S. Adhikari, learned  
Deputy Advocate General  
for the State.

Hon'ble Alok Kumar Verma,J.

The present appeal has been filed by the appellants-accused persons against the judgment and order dated 21.03.2006, passed by the learned District and Sessions Judge, Rudraprayag in Sessions Trial No.5 of 2005, "State vs Balbhadra Singh and Another", by which, the appellants Balbhadra Singh and Smt. Shashi Devi have been convicted under Sections 304B and 498A of I.P.C. and have been sentenced to undergo rigorous imprisonment for the period of seven years in the offence punishable under Section 304B IPC and rigorous imprisonment for a period of one year along with a fine of Rs. 500/- each respectively for the offence punishable under Section 498A IPC and in default of payment of fine, the appellants shall undergo for one month simple imprisonment. Both the sentences are directed to run concurrently.

2. Briefly stated the prosecution story as it emerges from re-appreciation of the evidence on record is that the appellant-Balbhada Singh was the father-in-law and the appellant-Smt. Shashi Devi was the mother-in-law of the deceased Smt. Sumati Devi. Smt. Sumati Devi was married with one Rakesh Singh in the month of October, 2003. After marriage, the appellants-accused persons started harassing her for demand of Rs.50,000/-. On 07.01.2005 at about 1.00 pm, one person,

resident of village Gadmil, came and informed Smt. Pitambari Devi, PW-2, mother of the deceased, and, Sardul Singh (PW-3), brother of Dayal Singh (PW-1), father of the deceased and informant of this matter that Smt. Sumati Devi was missing from the evening of 06.01.2005. The appellants were residing in the said village Gadmil. The informant Dayal Singh (PW1) was in Mussoorie at that time when the information of missing of Smt. Sumati Devi was given. The brother of the informant informed the informant by telephone. On the same day at about 4.00 pm, they reached to the appellants' house with some other persons of his village. On seeing them, the accused persons started abusing them and asked them to consume wine and told them to forget Smt. Sumati Devi. Thereafter, they returned their house. The brother of the accused Balbhadra Singh informed the concerned Patwari that Smt. Sumati Devi was missing. On 28.01.2005 at about 1.00 pm, they received a telephonic message that a dead body of unknown person was lying on the bank of Alaknanda River. They went there and found that the dead body was of Smt. Sumati Devi. The concerned Patwari went on the spot and prepared an inquest report (Ext.Ka-9). The dead body of the deceased was sent to the Government Hospital for post-mortem. The post-mortem of the dead body of the deceased was conducted by Dr. A.K. Rastogi (PW-6), on 29.01.2005.

3. The First Information Report (Ext.Ka-2) was lodged against seven persons including the husband of the deceased. The matter was investigated and after completion of investigation, charge sheet (Ext.Ka-14), was filed only against the appellants-accused persons.

4. The case was committed to the Court of Session. The charges under Sections 304B and 498A of I.P.C. were framed against the appellants-accused persons. They pleaded not guilty and claimed to be tried.

5. The prosecution, in order to establish the charges, examined altogether eight witnesses.

6. The appellants were examined under Section 313 of the Code of Criminal Procedure, 1973.

7. The learned Trial Court heard arguments, appreciated the evidence and held that the prosecution has been successful to prove its case against the accused persons beyond all reasonable doubts.

8. Heard Mr. Pankaj Purohit, the learned counsel for the appellants and Mr. S.S. Adhikari, the learned Deputy Advocate General for the State.

9. Mr. Pankaj Purohit, the learned counsel for the appellants submitted that the appellants have been falsely implicated; the deceased Smt. Sumati Devi was found missing from her house since the evening of 06.01.2005 and an information to that effect was given by the brother of the appellant Balbhadra Singh to the Patwari concerned and an information was sent to the parental house of the deceased; both the families started searching for deceased but they were unsuccessful; on 10.01.2005, an FIR was lodged by the father of the deceased in which, he expressed suspicion over the family members of the appellants for murdering his daughter; it was alleged in the said FIR that all the seven family members including the husband of the deceased used to harass the deceased in connection with the demand of dowry and threatened her to bring Rs.50,000/- in dowry otherwise Smt. Sumati Devi would be murdered; after investigation, only appellants were charge sheeted and

this fact substantiated the theory of false implication; there is no conclusive and clinching evidence on the record towards the demand of dowry by the appellants and the harassment of the deceased in connection with the demand of dowry; there is no evidence on the record that soon before her death, the deceased was subjected to harassment in connection with the demand of dowry; suspicion, however, strong cannot take place of proof; the dead body was recovered from the distance of 3 to 5 Kilometre from the village of appellants; in the opinion of the doctor, the injuries, reported on the person of the deceased, might have come due to an accidental fall; the learned Sessions Judge had wrongly appreciated the evidence, available on record.

10. On the other hand, learned counsel appearing for the State has supported the impugned judgment.

11. I have carefully assessed the evidence, adduced by the prosecution.

12. PW-1 Dayal Singh, father of the deceased and an informant of the FIR, has deposed that his daughter Smt. Sumati Devi was married with Rakesh Singh, two years prior from this incident. She was subjected to cruelty and harassment by her husband and the appellants in connection with the demand of dowry on several occasions. Smt. Sumati Devi had told him several times, however, he always tried to settle down the matter. He stated that one month prior to the date of the occurrence, his daughter came to his residence and told him that accused persons were demanding Rs.50,000/- as dowry and they were continuously harassing her. He and his wife consoled her. She returned to in-laws' house. On 07.01.2005, he was informed on telephone that his daughter was missing. He returned from Mussoorie on 08.01.2005. He has proved his application (Ext.Ka-1), filed under Section 156(3) of the Code of Criminal Procedure.

13. PW-2 Smt. Pitambari Devi, mother of the deceased, deposed that her daughter was subjected to cruelty and harassment by her husband and both the appellants in connection with the demand of dowry on several occasions. She stated that her daughter came to her residence and told her that accused persons were demanded Rs.50,000/- as dowry. She consoled her. On 07.01.2005, she was informed that her daughter was missing. Her husband was in Mussoorie on that day.

14. PW-3 Sardul Singh, elder brother of the informant, deposed that the accused persons were demanding dowry and harassing and torturing the deceased.

15. PW-4 Jasbir Singh, brother of the deceased, stated that the appellant Balbhadra Singh had threatened his father that if he does not get Rs.50,000/-, then it will not good. He stated that he used to go to his sister's-in-laws' house, there her father-in-law and mother-in-law used to demand dowry.

16. PW-5 Prem Singh, Patwari, is scribe of the Chick FIR (Ext.Ka-2).

17. PW-6 Dr. A.K. Rastogi conducted the post-mortem of the dead body of the deceased and found following anti- mortem injuries on her body:-

(1) Depressed wound on the forehead, measuring 6 x 3 cm. on left side. There was hoematoma. (2) Frontal bone of head was fractured. On opening the skull, there was hoematoma on the anterior part of the brain.

Right lung was congested. Gallbladder was congested, Spleen was congested. Kidneys were congested. Undigested food was found in the stomach. Both eyes were closed. Brain was congested. Anti-mortem injuries were found on the scalp and skull was fractured. Membranes was congested.

The age of the deceased Smt. Sumati was at about 21 years. There was swollen in the buccal cavity and pharynx.

In his cross-examination, the Doctor stated that the said injuries might have come due to an accidental fall on the stones.

18. PW-7 Nandu Das, Patwari had prepared site plan (Ext.Ka-7), where the dead body of the deceased was found. He has also proved inquest report (Ext.Ka-9).

19. PW-8 Dwarika Prasad Bhatt, Nayab Tehsildar had submitted the charge sheet (Ext.Ka-14).

20. Section 304B of the I.P.C. lays down that where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before the death of the woman she was subjected to cruelty or harassment by her husband or his relatives for or in connection with, any demand for dowry, such death shall be called "dowry death", and her husband or his relatives shall be deemed to have caused her death.

21. The ingredients for dowry death are :-

(i) There is a married lady;

(ii) She has died unnatural death, including death by burns or by bodily injury or by poisoning etc.;

(iii) Such death has occurred within seven years of the marriage;

(iv) It must be found that soon before her death she was subjected to cruelty or harassment for, or in connection with any demand for dowry by her husband or any of his relatives.

22. The provisions of Section 113B of the Indian Evidence Act, 1872 enjoin upon the court to draw presumption of dowry death on proof of circumstances mentioned therein. The presumption shall be raised only on the proof of the following ingredients :-

(i) The question before the court must be whether the accused has committed the dowry death of a woman;

(ii) The woman was subjected to cruelty or harassment by her husband or his relatives;

(iii) Such cruelty or harassment for, or in connection with, any demand for dowry;

(iv) Such cruelty or harassment was soon before her death.

23. In 'Sandeep Kumar vs. The State of Uttarakhand, 2020 SCC OnLine SC 980, the Hon'ble Supreme Court has held on 02.12.2020 that the ingredients of the offence under Section 304B of I.P.C. are well settled. A marriage performed within seven years before the death of the woman. The death must be unnatural. Soon before the death, the deceased must have been at the receiving end of cruelty or harassment, on account of demand for dowry. It is described as dowry death. Section 113B of the Indian Evidence Act comes to the rescue of the prosecutor by providing for a presumption that a person has caused dowry death if, it is shown that soon before her death, she was subjected by such person for cruelty or harassment for or in connection with demand for dowry.

24. Dayal Singh, (PW1) stated in his cross-examination that he was pulling a cycle-rickshaw at the time of incident and the appellant Balbhadra Singh knew that he used to pull a cycle-rickshaw. The appellant Balbhadra Singh knew that he (Dayal Singh) was not in a position to give dowry, even after that he (Balbhadra Singh) was ready for marriage. Dayal Singh (PW1) further stated in his cross-examination that after marriage, he (Balbhadra Singh) bought a TV and CD player and gave it to the deceased for her entertainment. He stated that when the deceased came to his house a month before the incident, he was at home. But, he did not make any complaint of dowry harassment. Sardal Singh (PW3), brother of the informant Dayal Singh (PW1) stated in his cross-examination that whenever he went to the matrimonial house of the deceased, he was given full hospitality. Jasbir Singh (PW4) stated in his cross-examination that the statements given by him in his examination-in-chief are not found in his earlier statements, given under Section 161 of the Code of Criminal Procedure. Therefore, as regards the demand of dowry, this Court thinks that there is no occasion to even raise a presumption that the deceased was subjected to cruelty or harassment in connection with any demand of dowry.

25. The death of the deceased was otherwise than under natural circumstances and she had died within seven years from the date of marriage are not in dispute. The fact which also has to be ascertained is, whether the deceased was subjected to cruelty soon before her death in respect of demand of dowry. The evidence of PW-1 Dayal Singh, father, and PW-3 Sardal Singh, brother of the deceased had given a clear indication that there was no cruelty met upon the deceased soon before the date of incident. PW-1 Dayal Singh, father of the deceased, referred to an incident that took place one month ago when she visited her parental house, but, there is no allegation made by the prosecution that within that time i.e. within one month, there was any harassment or cruelty against the deceased. Thus, in the opinion of this Court, the necessary ingredients of the offence of the deceased being subjected to cruelty in respect of demand of dowry soon before her death have not been proved beyond all reasonable doubt by the prosecution.

26. PW-1 Dayal Singh stated in his cross-examination that on 06.01.2005, the deceased went to put cow dung in the field and she had gone to cut grass from that place. The case of the appellants is that while cutting the grass, she slipped and fell from the hill slope, and that's why she received only one injury and due to that injury, she had died. The case of the appellants is corroborated by the prosecution witness Dr. A.K. Rastogi (PW6). Dr. A.K. Rastogi stated in his cross-examination that the injuries, as mentioned in the post-mortem report, might have come due to an accidental fall on the stones. He further stated in his cross examination that as a result of falling from a high place with mouth facing downwards, injury no.1 could possibly be caused. Therefore, in the facts and circumstances of this case, possibilities cannot be ruled out that the deceased fell down from the height on the stones due to which she sustained the said injuries and due to the said anti-mortem injuries, she had died.

27. There should be a perceptible nexus between the death of the deceased and the dowry related harassment or cruelty inflicted on her. It is also well established that if the interval elapsed between the infliction of such harassment or cruelty and her death was wide, the Court would be in a position to gauge that in all probabilities the death would not have been immediate cause of her death.

28. Mr. S.S. Adhikari, the learned counsel appearing for the State, submitted that the appellants had harassed the deceased and they, with their cruel behaviour, abated the deceased to commit suicide.

29. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, yet a reasonable certainty to incite the consequence must be capable of being spelt out.

30. Abatement involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. It requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that she committed suicide.

31. In this instant appeal, no positive evidence is on record that the appellants had by their acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide.

32. In *Bhagwan Singh and others vs. State of M.P.*, (2002) 4 SCC 85, the Hon'ble Supreme Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other of his innocence, the view which is favorable to the accused should be adopted.

33. It is also a basic rule of the criminal jurisprudence that suspicion, however, strong cannot take place of proof. In *Sujit Biswas vs. State of Assam*, AIR 2013 SC 3817, the Hon'ble Supreme Court held that suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved." In a

criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof.

The large distance between "may be true" and "must be true", must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied.

34. In a criminal case, the onus is on the prosecution to prove that the circumstances from which the conclusion of guilt is to be drawn, are fully established. Something more than mere suspicion is needed to convict the accused. The prosecution has to prove beyond all reasonable doubt that the deceased was subjected to cruelty or harassed by the appellants for or in connection with any demand of dowry. In order to presume the dowry death, it is a condition precedent that there must be unimpeachable evidence in relation to dowry demand. But, the evidence on record do not support the prosecution story. The circumstances of this case are not sufficient to connect the appellants with alleged offence. No offence under Section 304B or Section 498A of IPC is made out as there is no material on record to show that the appellants had subjected the deceased to cruelty. As per evidence on record, there is no positive and cogent evidence about demand of dowry and nexus between demand of dowry and harassment could not be established.

35. On a detailed examination and scrutiny of the evidence of the prosecution, it is considered view of this Court that the prosecution has failed to establish the commission of alleged offence by the appellants beyond all the reasonable doubt. They deserve benefit of doubt.

36. As a result, this Court accepts the case of the appellants. Accordingly, the appeal is allowed.

37. The impugned judgment and order dated 21.03.2006, passed by the learned District and Sessions Judge, Rudraprayag in Sessions Trial No.5 of 2005, "State vs. Balbhadra Singh and Smt. Shashi Devi", are set aside. The appellants are acquitted of the charge under Sections 304 B and 498 A of IPC. Their bails are cancelled and sureties are discharged. The appeal is, accordingly, allowed.

38. The appellants, Balbhadra Singh and Smt. Shashi Devi, are directed to make compliance of Section 437A of the Code of Criminal Procedure, 1973 within three weeks from the date of this judgment by appearing before the court concerned and execute a personal bond and two reliable sureties, each in the like amount, to the satisfaction of the court concerned, which shall be enforce for a period of six months.

(Alok Kumar Verma, J.) 23.02.2022 JKJ/Neha