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CHANDRA BHAWAN SINGH

v.

THE STATE OF UTTAR PRADESH

(Criminal Appeal No. 654 of 2018)

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MAY 01, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860:

C *s. 302/34 – Prosecution under – Of four accused – Circumstantial evidence – Acquittal of one accused and conviction of the rest by trial court – High Court confirmed the conviction of appellants-accused while acquitting the third accused – On appeal, held: The circumstances of the case set out by the High Court for holding the appellants-accused guilty, establish chain of events and being directly connected with the incident, establish involvement of the accused beyond reasonable doubt – The story of suicide set up by the accused is unbelievable on the evidence on record – The appellants-accused were required to explain the circumstances in which the deceased died, which they failed – One of the appellants-accused also failed to adduce any evidence to prove his plea of*
D *alibi – Conviction confirmed.*
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Constitution of India:

F *Art. 136 – Jurisdiction under – In criminal case – Held: In exercise of jurisdiction u/Art. 136, courts should be slow in interfering with concurrent findings of facts which are based on due appreciation of evidence – Court not to appreciate the evidence de novo unless prima facie shown that courts below did not consider relevant piece of evidence, or there existed perversity or/and absurdity in their findings.*

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Dismissing the appeals, the Court

HELD: 1. It is a settled principle of law that when the Courts below have recorded concurrent findings against the accused persons which are based on due appreciation of evidence, this Court under Article 136 of the Constitution would be slow to interfere in such concurrent findings and secondly would not

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appreciate the evidence *de novo* unless it is *prima facie* shown that both the Courts below did not either consider the relevant piece of evidence or there exists any perversity or/and absurdity in the findings recorded by both the Courts below etc. [Para 31] [652-C-D] A

2. The Courts below properly appreciated the evidence and came to a right conclusion that the appellants were responsible for commission of the offence of murder. [Para 30] [652-B] B

3. There is evidence to prove the factum of demand of dowry. PW-1, the real brother of the deceased, was the complainant. His evidence was rightly relied on by the two Courts below for holding that the appellants were persistently making a demand of dowry from the deceased and her family members and they used to harass her for such cause. The testimony of PW-1 is natural and consistent having no material contradiction, Therefore, there is no justification to disbelieve it. So far as the story of suicide set up by the appellants is concerned, it is wholly unbelievable on the evidence brought on record. [Paras 33 and 34] [652-F-G] C
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4. The circumstances set out by the High Court for holding the appellants guilty cannot be faulted with. These circumstances do establish the chain of events and being directly connected with the incident in question, establish the involvement of the appellants in commission of the offence beyond reasonable doubt. The test laid down to prove the guilt by circumstantial evidence in the present case is fully satisfied by the circumstances against the appellants. [Para 37] [653-H; 654-A] E
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5. Both the appellants-accused in their statements recorded under Section 313 of the Criminal Procedure Code, 1973 failed to give any explanation when asked about the circumstances in which the incident occurred in their house. When the incident admittedly occurred in their house, the appellants were required to explain the circumstances in which the deceased died. They, however, failed to give any explanation. Appellant-accused 'T' also failed to adduce any evidence to prove his plea of alibi. [Paras 39 and 40] [654-C-D, E] G

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 654 of 2018.

From the Judgment and Order dated 20.05.2014 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1114/1986

WITH

B Criminal Appeal No. 655 of 2018.

Nagendra Rai, Sr. Adv., Shekhar Prit Jha, Akhand Pratap Singh, Ms. Aditi Mittal, Bahul Kalra, Ms. Meghna Sharma, Advs. for the Appellant.

C Ratnakar Dash, Sr. Adv., Ardhendumauli Kumar Prasad, Sameer Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

D 2. These appeals are filed by the accused persons against the final judgment and order dated 20.05.2014 passed by the High Court of Judicature at Allahabad in Criminal Appeal No.1114 of 1986 whereby the High Court dismissed the appeal in respect of the appellants-accused and affirmed the judgment and order dated 07.05.1986 passed by the Additional Sessions Judge, Fatehpur in Sessions Trial No. 291 of 1984.

E 3. In order to appreciate the issues involved in the appeals, it is necessary to set out the facts of the case.

F 4. Four persons, namely, (1) Tribhuwan Singh (appellant), (2) Chandra Bhawan Singh (appellant) (3) Smt. Makoi Devi and (4) Jwala Singh were prosecuted for committing murder of one lady by name "Satyawati".

G 5. The Additional Sessions Judge, Fatehpur by his judgment dated 07.05.1986 in Sessions Trial No. 291 of 1984 acquitted one accused- Jwala Singh but convicted the remaining three accused. Tribhuwan Singh was convicted under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/- in default of payment of fine, to further undergo rigorous imprisonment for one year. Smt. Makoi Devi was convicted under Section 302/34 IPC and was

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sentenced to undergo imprisonment for life. Chandra Bhawan Singh was convicted under Section 32/34 IPC and was sentenced to undergo imprisonment for life and further convicted under Section 201 IPC and was sentenced to undergo rigorous imprisonment for five years. All the sentences of Chandra Bhawan Singh would run concurrently. A

6. The aforementioned three-convicted accused felt aggrieved of their respective conviction and sentence awarded by the Additional Sessions Judge filed appeal in the High Court. The High Court, by impugned judgment, allowed the appeal in respect of one accused – Smt. Makoi Devi and accordingly acquitted her from the charges leveled against her but dismissed the appeal in respect of remaining two accused persons, namely, (1) Tribhuwan Singh and (2) Chandra Bhawan Singh and accordingly confirmed their conviction and the sentence awarded by the Additional Sessions Judge. B C

7. The remaining two accused felt aggrieved by their respective conviction and award of sentence filed separate special leave petitions in this Court. D

8. So far as SLP(Crl.) No. 7049 of 2014 is concerned, it is filed by Chandra Bhawan Singh whereas SLP(Crl.) No. 7664 of 2014 is concerned, it is filed by Tribhuwan Singh.

9. In both these special leave petitions, the challenge is to the impugned judgment of the High Court, which has confirmed their conviction and sentence. E

10. In short, the case of the prosecution is as under:

11. All the four accused named above are the members of one family. Smt. Makoi Devi is the mother of Tribhuwan Singh and Chandra Bhawan Singh. In other words, Tribhuwan Singh and Chandra Bhawan Singh are real brothers being the two sons of Smt. Makoi Devi. F

12. The deceased-Satyawati was the wife of Tribhuwan Singh. Their marriage was performed in the year 1981. Satyawati stayed in her matrimonial home with her husband for 8 days and then returned to her parents' house. G

13. It is the case of the prosecution that the members of Satyawati in-laws family, which included the four accused named above, were harassing her while she was staying in her in-laws house for not bringing H

A any dowry in her marriage. The family members had been demanding “motor cycle” in dowry. Due to constant harassment given to her by the aforementioned four accused persons, it had become unbearable for her to stay in the house and, therefore, she returned to her parents’ house and started living with her parents.

B 14. On 15.03.1984, Jwala Singh and Chandra Bhawan Singh went to Satyawati’s parents’ house and brought Satyawati back to her in-laws house. On 18.03.1984 (after 3 days), Satyawati was found dead in her in-laws house. She died due to gun shot injuries.

C 15. Chandra Bhawan Singh-the elder brother of Tribhuwan Singh lodged a FIR in the Police Station, Kishanpur on the same day, i.e., 18.03.1984, informing therein that Satyawati committed suicide in the house by gun shot injuries and that her dead body was lying in the courtyard of the house. One FIR was also lodged by village Pradhan. It was registered as FIR No. 30/1984 (GD No. 14/84) at PS Kishanpur. D The brother of the deceased-Rajender (PW-1) lodged the FIR on the same day stating therein that all the four accused named above have killed his sister because of non-fulfillment of their demand for dowry.

E 16. On 19/20.04.1984, all the four accused persons were arrested. In the investigation, the police recovered the Gun at the instance of Tribhuwan Singh from his house, which was alleged to be used in commission of the offence. The post mortem of the dead body was performed which disclosed that Satyawati was murdered. The police then made further investigation, collected evidence, obtained ballistic report from the experts and recorded the statements of the accused persons and other witnesses.

F 17. On 09.06.1984 the police filed Challan. The case was committed to the Additional Sessions Judge, Fatehpur for trial. The Additional Sessions Judge framed charges against the four accused persons for commission of the offences punishable under Sections 302/34 and 201 of IPC read with Section 4 of the DP Act. The prosecution G examined six witnesses to prove their case.

H 18. By order dated 07.05.1986, the Additional Sessions Judge acquitted Jwala Singh finding no evidence against him but convicted Tribhuwan Singh (husband), Smt. Makoi Devi (mother-in-law) and Chandra Bhawan Singh (brother-in-law) and sentenced them to undergo life imprisonment for killing Satyawati.

19. Thribhuwan Singh, Smt Makoi Devi and Chandra Bhawan Singh felt aggrieved and filed appeal in the High Court at Allahabad against their conviction and sentence awarded by the Additional Sessions Judge. A

20. By impugned judgment, the High Court dismissed the appeal filed by Tribhuwan Singh and Chandra Bhawan Singh and accordingly upheld their conviction and sentence. However, the High Court acquitted Smt. Makoi Devi (mother-in-law) from all the charges finding no evidence against her. B

21. It is against this judgment, the accused Tribhuwan Singh and Chandra Bhawan Singh have filed the present two appeals by way of special leave in this Court. C

22. So far as acquittal of Jwala Singh and Smt. Makoi Devi is concerned, it has attained finality because the State did not file any appeal in the High Court and nor in this Court.

23. Heard Mr. Nagendra Rai, learned senior counsel for the appellants(accused) and Mr. Ratnakar Dash, learned senior counsel for the respondent(State). D

24. Mr. Nagendra Rai, learned senior counsel for the appellants(accused) while assailing the legality and correctness of the impugned judgment contended that firstly, the conviction of both the appellants, though concurrent in nature, is neither factually and nor legally sustainable. E

25. In the Second place, he contended that since the entire case of prosecution is founded on circumstantial evidence, it was necessary for the prosecution to have adduced evidence to prove the complete chain of events. Learned counsel contended that there is no evidence much less sufficient evidence adduced by the prosecution to prove the chain of events leading to the guilt of committing the murder of Satyawati by the appellants and hence the conviction is bad in law. F

26. In the third place, learned counsel to support his second submission took us through the evidence with a view to show that chain of events to prove the guilt *qua* the appellants is not established. G

27. In the fourth place, learned counsel contended that the circumstances appearing in the case from the evidence would show that Satyawati committed suicide.

A 28. In reply, learned counsel for the respondent (State) supported the reasoning and the conclusion arrived at by both the Courts below and prayed for dismissal of the appeals calling for no interference in the concurrent findings of both the Courts below.

B 29. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeals.

 30. In our opinion, both the Courts below properly appreciated the evidence and came to a right conclusion that the appellants were responsible for commission of the offence of murder of Satyawati.

C 31. It is a settled principle of law that when the Courts below have recorded concurrent findings against the accused persons which are based on due appreciation of evidence, this Court under Article 136 of the Constitution of India would be slow to interfere in such concurrent findings and secondly would not appreciate the evidence *de novo* unless it is *prima facie* shown that both the Courts below did not either consider
D the relevant piece of evidence or there exists any perversity or/and absurdity in the findings recorded by both the Courts below etc.

E 32. We, however, made endeavour to peruse the evidence with a view to find out as to whether the concurrent findings of both the Courts below have any kind of infirmity or/and whether the concurrent findings are capable of being legally and factually sustainable in law or need to be reversed. Having gone through the evidence, we are of the view that the findings are legally and factually sustainable.

F 33. We find that there is evidence to prove the factum of demand of dowry. Rajender(PW-1) is the real brother of the deceased. He was the complainant. His evidence was rightly relied on by the two Courts below for holding that the appellants were persistently making a demand of dowry (motor cycle) from Satyawati and her family members and they used to harass her for such cause. The testimony of PW-1 is natural and consistent having no material contradiction, we, therefore, find no justification to disbelieve it. The same deserves to be accepted.

G 34. So far as the story of suicide set up by the appellants is concerned, it is, in our view, wholly unbelievable on the evidence brought on record.

H 35. First, it is not possible rather difficult for a person to commit suicide by using DBBL Gun; Second, it has come in evidence that there

were as many as 7 gun shot injuries noticed on the body of Satyawati. A
In our view, It is not possible for a person to commit suicide by firing
seven gun shots one after the other on his/her body with the use of
DBBL Gun in hands. However, one can commit suicide by firing one
shot with a pistol. Such was, however, not the case of the appellants.

36. Coming to the involvement of the appellants in commission of B
the offence, we find that the High Court relied on the following
circumstances appearing against the appellants for holding them guilty
of commission of the offence of murder of Satyawati. These
circumstances are extracted hereinbelow:

**“Here prosecution has discharged its part of the burden C
by leading evidence of which it was capable by substantiating
the fact (i) that there has been demand of dowry (ii) deceased
has been taken to her in laws house (iii) at the time of death,
deceased has been staying with her in laws and appellants
are the inmates of the house (iv) death in question has taken D
place inside the house (v) injuries caused clearly reflects
that it is case of murder (vi) story of suicide set up by
appellant No.3 was not at all supported by medical evidence
(vii) DBBL gun has been used in the commission of offence
and once chain of events are clearly linked up then in view E
of Section 106 of Evidence Act, as young bride in question
has been killed inside the house, then there is
corresponding burden on the inmates of the house to give
cogent explanation as to how the crime was committed. The
inmates of the house cannot get away by simply keeping
quiet and offering no explanation on the supposed premise F
that the burden to establish its case lies entirely upon the
prosecution and there is no duty at all on an accused to
offer any explanation. The principle is that when an
incriminating circumstance is put to the accused and said
accused does not offer any explanation which on the face of G
it is found false or untrue, then the same becomes additional
link in the chain of circumstances to make it complete.”**

37. In our considered opinion, the aforementioned seven
circumstances set out by the High Court for holding the appellants guilty
cannot be faulted with. These seven circumstances do establish the chain
of events and being directly connected with the incident in question, H

A establish the involvement of the appellants in commission of the offence beyond reasonable doubt. In our opinion, the test laid down to prove the guilt by circumstantial evidence in this case is fully satisfied by the aforementioned seven circumstances against the appellants.

38. That apart, we also find from the evidence that Chandra
B Bhawan Singh-the appellant herein was the first to lodge the FIR about the incident wherein he stated that Satyawati has committed suicide. Apparently, this fact proves that first, he was present in the house where Satyawati was found dead and second, he falsely stated that Satyawati committed suicide because he wanted to divert the attention of the police from the reality. As held above, no evidence was led to prove that it was
C a case of suicide.

39. We also find that both the accused (appellants herein) in their statements recorded under Section 313 of the Criminal Procedure Code, 1973 failed to give any explanation when asked about the circumstances in which the incident occurred in their house. When the incident admittedly
D occurred in their house, the appellants were required to explain the circumstances in which Satyawati died. They, however, failed to give any explanation.

40. We also find that Tribuhuwan Singh said that he was not present in the house at the time of the occurrence and on that day he was in
E Allahabad. He also failed to adduce any evidence to prove this fact.

41. We are, therefore, of the considered view that both the Courts below rightly held the appellants guilty for commission of the offence in question and, therefore, we find no good ground to take a different view than what is taken by the two Courts below.

F 42. In view of the foregoing discussion, the appeals fail and are accordingly dismissed.