REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1986 OF 2009

KHIM SINGH … APPELLANT

VERSUS

STATE OF UTTARAKHAND … RESPONDENT

J U D G M E N T

Sudhansu Jyoti Mukhopadhaya, J.

This appeal is directed against the judgment dated 24th August, 2005 passed by the High Court of Uttaranchal(now Uttarakhand) at Nainital in Criminal Appeal No.1388 of 2001 (Old No.-Criminal Appeal No.1165 of 1988). By the impugned judgment the High Court upheld the judgment and order of conviction dated 30th March, 1988, passed by the Sessions Judge, Almora in Sessions Trial No.54 of 1987, State vs. Khim Singh, whereby the accused-appellant was convicted for the offence punishable under Section 302 IPC and was sentenced to undergo imprisonment for life.

2. Brief facts, giving rise to the present appeal as emerging from the material on record, are that the accused Khim Singh was residing with his wife Himuli Devi in his residential house at village Simgari. He has a son, named Mohan Singh, who was also residing with them, but sometimes, he resided with his grandmother, who resides in the adjacent

house of Laccham Singh, brother of accused-Khim singh. Earlier accused-Khim Singh was in service outside his village, but for the last 4-5 years he had come back and was working as labourer. His wife, Himuli Devi, was a short-tempered woman and she often quarrelled with Khim Singh. It was suspected in the village that she was a woman of loose character and on account of this, accused-Khim Singh was also not in good terms with her. Often they used to be quarrelled with each other. On 17th July, 1987, also in the evening, they had a quarrel. Early in the morning of 18th July, 1987, one Bahadur Singh (since deceased), a resident of the village, while passing in front of the house of the accused-Khim Singh found that the door was closed and there was none outside. He opened the door and went inside the house and found Himuli Devi lying dead. He raised an alarm, on which, the mother of the accused also came there. He called the Sabhapati of the village, Bachi Singh also. They all saw that Himuli Devi was lying inside the room, having injuries on her body and she was dead.

3. The Sabhapati of the village, Bachi Singh, prepared a written report, Ext.Ka-1. It was sent to the Patwari of the Kshetra through one Kishan Singh. In the said report, Sabhapati mentioned that it was accused-Khim Singh who killed his wife Himuli Devi and requested the Patwari to come and investigate the matter. The written report was received by the Patwari, Narain Singh, at 11.30 a.m. on 18th July, 1987

and on that basis he prepared the FIR, Ext.Ka-3. He came to the house of Bachi Singh and recorded his statement. Accompanied by Bachi Singh, he went to the house of the accused, where Himuli Devi was found lying dead inside the house. The dead body was taken into custody and the inquest report, Ext.Ka-4, was prepared and the dead body was sealed. The letter with a request for postmortem, Ext.Ka-5, was also prepared. The blood stained clothes were taken into custody from the dead body and Fard, Ext.Ka-6 was prepared. From the place where the dead body was lying, blood stained and plain earth were also taken and sealed and a Fard, Ext.Ka-7, was prepared. The scene of occurrence was also reflected in site plan Ext.Ka-8. The accused-Khim Singh, who was present there, was arrested and a Fard, Ext.Ka-9, was prepared. At the instance of the accused, a blood-stained Kulhari (axe) was found inside the house and a Fard, Ext.Ka-2, was prepared. The sealed articles were handed over to the peon and Fard, Ext.Ka-10 was prepared. The statements of Manuli Devi (PW-1) and Khimuli Devi (PW-2) were recorded. In between 19th and 22th July, 1987 the statements of other witnesses, including Joga Singh (PW-5) were recorded. The sealed articles were sent for chemical examination. The investigation was completed and the chargesheet dated 22nd August, 1988, Ext.Ka-14, was submitted against the accused.

4. The dead body was sent for postmortem which was conducted by Dr. N.D. Punetha, on 19th July, 1987, at 11.30

a.m. at Bagesnwar. He found the following ante mortem injuries on the dead body:

> *"1. Incised wound 5 cm x 2 cm bone deep present on the left side of mastoid region of the head. Margins were lacerated and well defined.*
>
> *2. Contusion 5 cm x 3 cm present on the occipital region of the head. Semi digested food material was coming out from the mouth."*

5. On internal examination, the bone under the two injuries was found to be fractured. Clotted blood was also found beneath these injuries. In the stomach, a small quantity of semi-digested food material was found. There were gases in the small and large intestines. This death, in the opinion of the Medical Officer resulted from shock and haemorrhage, caused by the two injuries, found on the dead body, which were sufficient for death in ordinary course of nature. The postmortem report, Ext.Ka-15, was prepared. The time since death was about one day and in the opinion of the doctor, this death could have occurred in the night of 17th/18th July, 1987. He has also given an opinion that the injuries were caused with some heavy sharp edged weapon like Kulhari.

6. The Patwari-Simgari, after completing necessary formalities, submitted a charge sheet dated 22nd August, 1987, against the accused, Ext.Ka-14, to the Court of CJM, Almora. Since the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Judge, Almora for trial of the accused. The Sessions Judge charged

the accused under Section 302 IPC, who pleaded not guilty to the charge and claimed to be tried.

7. In order to bring home the guilt of the accused, the prosecution, in oral evidence, examined as many as seven witnesses, namely, Manuli Devi (PW-1)-mother-in-law of the deceased; Khimuli Devi (PW-2)-sister-in-law of the deceased(gotani), Mohan Singh(PW-3)-minor son of the deceased with the accused, Bachi Singh(PW-4), Joga Singh(PW-5)- a neighbour; Narain Singh-Patwari (PW-6) and Dr. N.D. Punetha(PW.7) who conducted the postmortem on the dead body of the deceased. Prosecution also tendered in evidence affidavit of Bhagwat Singh, peon of Patwari, dated 5th January, 1988. All the documents referred to above were filed by the prosecution. The Trial Court on appreciation of evidence, both oral and documentary, based on circumstantial evidence held the accused-Khim Singh guilty of the offence punishable under Section 302 IPC.

8. Mr. Feroz Ahmed, amicus curiae appearing on behalf of the accused assailed the judgment mainly on the ground that there is no complete chain of circumstantial evidence to bring home the guilt of the accused. It was contended that the appellant cannot be convicted merely on suspicion in absence of any eye-witness. It was also contended that the relatives like mother-in-law (PW-1), sister-in-law (PW-2) and even the neighbours Bachi Singh (PW-4) and Joga Singh (PW-5)

were declared hostile and hence there was no sufficient evidence to prove the accused guilty.

9. In this case, there was no eye-witness of the occurrence. The case was based on the circumstantial evidence. Manuli Devi (PW-1), the mother of the accused in her testimony, stated that there was quarrel between the accused and his wife, Himuli Devi,in the evening of 17th July, 1987, on the festival of Harela. On the next morning, i.e. 18th July, 1987, one Bahadur Singh found the door of the house of the accused closed and when he pushed the door, he found Himuli Devi lying dead inside the house. Bahadur Singh called Bachi Singh (PW-4), the Sabhapati. Thereafter, the Patwari also came on the spot. However, she stated that after the dispute between accused-Khim Singh and Himuli Devi she had not seen accused-Khim Singh and she was declared hostile. However, she admitted that in the house only Khim Singh and his wife were living. His son Mohan Singh was living with her. Khimuli Devi (PW-2), is the wife of Lachham Singh, brother of the accused, sister-in-law of the deceased Himuli Devi (gotani). According to her, she did not know whether any quarrel took place between the accused and the deceased. She had gone to her field on the day of Harela festival. The next morning also, she had gone to the field, but when she came back, she saw Himuli Devi lying dead. Mohan Singh (PW-3), is the minor son of the accused. He stated that he was inside

the house of his grandmother and he did not know as to what happened in the house of his father.

10. Bachi Singh (PW-4), is the Pradhan of the village. He stated that Khim Singh and his wife Himuli Devi often quarrelled. It was also talked amongst the villagers that the wife of the accused was of loose character and on that count accused Khim Singh was annoyed with his wife and they frequently quarrelled. He further stated that on 17th July, 1987, in the evening, there was a quarrel between Khim Singh and his wife, deceased Himuli Devi. Early in the morning, at about 6.30 a.m., the mother of the accused came to him and informed that Himuli Devi had not got up and Khim Singh was also not there. When he went to the house of Khim Singh, he found that the door was open and found that Himuli Devi was lying injured and dead. Khim Singh was not found there. Bahadur Singh, Joga Singh(PW-5), Lachham singh, Ram Singh and others also came and by that time, Khim Singh was also found coming towards his house. He also testified that he got prepared the written report,Ext.Ka-1, scribed by Bahadur Singh, and the same was sent to the Patwari concerned. He further stated that when Patwari came, a blood stained Kulhari was recovered from the house at the instance of the accused and the Fard, Ext.Ka-2, was prepared. Joga Singh(PW-5), another resident of the village, in his testimony, very hesitatingly stated that the wife of accused was not of loose character. He stated that he went to the house of Khim Singh

when the Sabhapati called him there. There he found Himuli Devi dead. Accused-Khim Singh was not present there at that time, but after a short-while he was seen coming to his house. Narain Singh (PW-6), Patwari,is the Investigating Officer and Dr. N.D.Punetha(PW-7), conducted postmortem on the dead body. Both of them are formal witnesses and had proved their report. The evidence of Mohan Singh (PW-3), aged about 8 years, minor son of the accused-Khim Singh, is not at all material.

11. The accused-appellant in his statement under Section 313 Cr.P.C. denied the accusations levelled against him. He, denied that his wife did not obey him and he used to quarrel with her. He also denied that she was of loose character and that he was annoyed with her on that count. He asserted that he was not present there at the alleged time of death, therefore, there was no question of quarrel and altercation between him and his wife. The accused did not disclose as to where he was on the relevant date. However, he denied the recovery of blood stained Kulhari at his instance. He claimed that the witnesses were inimical to him hence they have falsely given evidence against him. In reply to question No.11, the accused stated that he cannot claim if his wife was murdered by Kulhari on the relevant date and time. He admitted that Patwari arrested him on 18th July, 1987. He also claimed that he had no reason to kill his wife, who had been living with him for the last about 17 years.

12. Himuli Devi died in the night intervening 17th and 18th July, 1987 and her death was fully proved by the postmortem report prepared by Dr.N.D.Punetha(PW-7). It is not disputed that the deceased suffered from ante mortem injuries, as detailed above. It is also not disputed that two injuries found on the person of the deceased were sufficient in the ordinary course of nature to cause death. It has not been challenged that the ante mortem injuries could be self-inflicted. The prosecution thereby established that the deceased Himuli Devi died as a result of ante mortem injuries sustained by her in the night intervening 17th and 18th July, 1987.

13. From the perusal of the entire evidence on record, we find that the prosecution in order to bring home the guilt of the accused has relied upon the testimony of Manuli Devi(PW-1), Khimuli Devi (PW-2), Bachi Singh(PW-4) and Joga Singh (PW-5). In order to see whether frequent quarrels were there between the accused and his wife, the statements of these witnesses are relevant to be discussed.

14. Manuli Devi(PW-1), is the mother of the accused and mother-in-law of the deceased. That being so, there can be no reason for her to falsely implicate her son in the commission of murder. In her statement she stated that the wife of Khim Singh, Himuli Devi, did not obey Khim Singh, therefore, Khim Singh was unhappy with her. She further stated that on the festival of Harela in the evening, there was a quarrel

between Khim Singh and his wife. The next day in the morning, when Bahadur Singh opened the door of the house of Himuli Devi, she also found Himuli Devi lying dead. In her cross-examination she further testified that in the evening of the alleged mis-happening the accused was present in the house and he had a quarrel with his wife. She also stated that Himuli Devi was s short-tempered woman and had often the accused assaulted her. She also stated that earlier Himuli Devi had gone to jungle to hang herself. The entire testimony of such a natural witness cannot be thrown out merely if the prosecution asked to declare her hostile and on their request she was cross-examined by the prosecution. The first circumstance that Himuli Devi was short-tempered was further corroborated by the statement of Bachi Singh (PW-4) Pradhan of the village. Generally the Pradhan of the village keeps general information regarding the family matters and tries to settle such matter in the village. Pradhan is instrumental to settle family disputes at his level, therefore, as and when any such incident happens, the Pradhan is immediately intimated. In the instant case, Pradhan (PW-4) prepared the written report, got it scribed by Bahadur Singh,who had first seen the deceased lying dead inside her house and called the Pradhan immediately on the spot. In his statement, Bachi Singh, Pradhan, specifically stated that Khim Singh and his wife often used to quarrel and there was a rumour in the village that Himuli Devi was a woman of loose character and

on account of the result accused Khim Singh was unhappy with her.

15. Joga Singh (PW-5), is also a resident of the same village. Though hesitatingly, this witness stated that so far as he knew the character of Himuli Devi was good. The learned Sessions Judge observed that such statement of Joga Singh(PW-5) is indicative of fact that probably Himuli Devi was a woman on whom Joga Singh (PW-5) never intended to make any specific remark. However, Joga Singh (PW-5) stated that accused and his wife sometimes used to have amicable relation and sometimes they used to quarrel.

16. From the above narration of the testimony of the witnesses, it can be concluded that for the reason aforesaid, the accused was unhappy with his wife Himuli Devi and this resulted in quarrels between them off and on. The quarrel took place even in the evening preceding the date of the death.

17. In the night intervening 17th and 18th July, 1987 Himuli Devi was killed by means of a Kulhari. Except accused Khim Singh nobody was residing in the said house. Therefore, Himuli Devi could not be killed as a result of assault by anybody else other than the accused. The conduct of the accused in the morning of 18th July, 1987 was unnatural. He failed to explain as to where he remained on the fateful night. In the background of the aforesaid circumstances, it has to be examined whether the circumstances relied upon by

the prosecution formed a series of events and whether the chain of circumstantial evidence was complete, which could be sufficient to show involvement of the accused in the commission of murder.

18. Manuli Devi (PW-1), clearly stated that in the evening of 17th July, 1987, Khim Singh and his wife had a quarrel. She, however, added that it was before the sunset. Manuli Devi being the mother of the accused is a very natural witness and the credibility of her testimony cannot be discarded. It is in her statement that she lived with her another son Lachham Singh in a separate house, which is adjacent to the house of the accused. She stated in unequivocal terms that Khim Singh and his wife lived together and she(Himuli Devi) did not obey the accused. Bachi Singh (PW-4), who is also a close neighbor, also stated that on the festival of Harela, i.e., on 17th July, 1987 at about 6.30 p.m., a quarrel took place between the accused and his wife and the shouts were heard by him. This part of his statement has not been challenged in the corss-examination. Bachi Singh (PW-4), being Pradhan of the village is an independent witness and, therefore, there was no reason for him to falsely implicate the accused for the offence of murder. Therefore, the prosecution successfully proved that there was a quarrel between the accused and his wife in the preceding evening.

19. The accused in his statement under Section 313 Cr.P.C. in reply to the question Nos. 3 and 4 stated that on 17th July, 1987 he was not at his house. Such statement cannot be believed in absence of any explanation given by the accused as where he was in the night between 17th and 18th July, 1987. The accused could not explain as to where he was in the night of 17th July, 1987. The conduct of the accused was unnatural in not disclosing the place where he remained in the fateful night, making it clear that his statement under Section 313 Cr.P.C. was not believable. From the testimony of the real mother of the accused, Manuli Devi (PW-1) as well as Bachi Singh (PW-4), Pradhan of the village, it is fully established that the accused was very much present in the house on the fateful night and there was a quarrel between the accused and his wife. In the absence of any reason for leaving his house, it can be held that the accused remained in his house in that night.

20. Joga Singh(PW-5), in his testimony stated that when Khim Singh was found in the morning, he was asked about his whereabouts, in the night, which he could not explain.

21. Learned Sessions Judge for the said reason in the judgment observed that “this conduct of the accused in not explaining the alleged absence from the house would go to show the case taken by him that he was absent from the house is not believable. Obviously, the prosecution has been able to establish beyond doubt that this accused was present at

his house in the night between 17th and 18th July, 1987. Having considered the material on record, the High Court was unable to disagree with the finding arrived at by the learned Sessions Judge on the point that the accused Khim Singh, was very much present in his house on the fateful day and we do not find any reason to disagree with such finding. Thus, the third circumstance is fully proved by the prosecution.

22. The statement of Bachi Singh (PW-4), who clearly stated that none of the residents of the village had any enmity with the deceased Himuli Devi is very relevant. It is evident from the record that the accused failed to assign any reason for the alleged enmity of the villagers and he could not utter a single word to that effect in his statement under Section 313 Cr.P.C. Therefore, there is no reason to infer that anybody else from the village could have committed the murder of Himuli Devi who was in the house along with the accused-husband on the fateful night. The Investigation Officer, Narain Singh (PW-6), Patwari, was examined by the prosecution. He clearly stated that at the instance of the accused, Kulhari used in the crime was recovered. He was cross-examined by the defence. In cross-examination, he clearly denied the suggestion that the Kulhari (weapon of assault) was not recovered at the instance of the accused. The Medical Officer, Dr. N.D. Punetha (PW-7) in his examination in chief stated that ante mortem injury No.1 on the person of the deceased could have been caused by heavy

sharp-edged weapon such as Kulhari and injury No.2 could have been caused by the blunt/rear side blow of Kulhari or by fall on the stony surface. This part of his statement was not questioned in his cross-examination. It has come in the statement of Investigation Officer (PW.6) that Kulhari recovered on the pointing of the accused was blood-stained and hair was stuck on it. He was cross-examined regarding the blood-stained portion of the Kulhari and the weight of the Kulhari, etc. It is established that blood-stained Kulhari-Ext.Ka-2 was seized by the Investigating Officer at the house of the accused.

23. Homicidal death of Himuli Devi is corroborated by the conduct of the accused in the morning of 18th July, 1987. Joga Singh (PW-5) stated that when the accused was found in the morning, he was asked about his whereabouts in the night and he was not able to explain it. Even Khimuli Devi (PW-2) wife of the brother of the accused, Lachham Singh, stated that accused was outside the house in the morning wandering here and there. Although accused was raising hue and cry that his wife was killed, he never bothered to contact the Pradhan or the Patwari concerned to lodge a report in the matter. However, statement of the accused that he was not present at the house in the night seems to be unbelievable considering the positive and credible testimony of Manuli Devi (PW-1) and other witnesses referred to above.

24. Bachi Singh (PW-4), stated that door of the house of the accused was not bolted from inside. This is one of the incriminating circumstances which can be taken into consideration to conclude that the accused after committing offence opened the door and went out.

25. The statements of Manuli Devi (PW-1)-mother of accused, Bachi Singh (Pw-4)- Pradhan and Khimuli Devi (PW-2)- sister-in-law also suggest that the accused was last seen with the deceased.

26. The above narration of chain of circumstantial evidence relied upon by the prosecution in the present case lead to the inference that the accused is guilty for the offence of murder of Himuli Devi as all the circumstances taken together lead to only hypothesis of the guilt of the accused-appellant. The chain of circumstantial evidence relied upon by the prosecution is complete to hold the accused guilty of the offence punishable under Section 302 IPC. We hold that the accused-appellant Khim Singh was rightly convicted and sentenced under Section 302 IPC for life imprisonment by the learned Sessions Judge as affirmed by the High Court.

27. As a result, the appeal preferred by the accused-appellant has no force and the same is liable to be dismissed. The appeal is, accordingly, dismissed. The impugned judgment under appeal is upheld. We appreciate the endeavour made by the learned amicus curiae, Mr. Feroze Ahmed

in assisting the Court in the matter and direct to pay a sum of Rs.7,000/- as fee to the amicus curiae.

……J.
(SUDHANSU JYOTI MUKHOPADHAYA)

……J.
(V. GOPALA GOWDA)

NEW DELHI,
JULY 8, 2014.

ITEM NO.IB (For Judgment) COURT NO.6 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1986/2009

KHIM SINGH **Appellant(s)**

VERSUS

STATE OF UTTRAKHAND **Respondent(s)**

Date :08/07/2014 This appeal was called on for judgment today.

For Appellant(s)
Mr. Feroz Ahmed (A.C.)

For Respondent(s)
Mr. Jatinder Kumar Bhatia, Adv.

Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice V. Gopala Gowda.

The appeal is dismissed in terms of the signed judgment.

(Sukhbir Paul Kaur)
Court Master

(Usha Sharma)
Court Master

(Signed reportable judgment is placed on the file)