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STATE OF RAJASTHAN

v.

THAKUR SINGH

(Criminal Appeal No.357 of 2005)

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JUNE 30, 2014

[MADAN B. LOKUR AND S.A. BOBDE, JJ.]

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Evidence Act, 1872 – s. 106 – Principle laid down u/s. 106 – Application of – Held: Section 106 provides that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him – Burden of proving the guilt of an accused is on the prosecution – However, certain facts pertaining to a crime which can be known only to the accused, or are virtually impossible for the prosecution to prove, need to be explained by accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts – On facts, wife died an unnatural death in the room occupied by her and her husband, the cause of the unnatural death was known to husband, however, he made no attempts to explain the unusual situation – No evidence that anybody else had entered their room or could have entered their room – Thus, principle u/s.106 applicable to the facts of the case and there is a very strong presumption that 'wife' was murdered by husband – High Court completely overlooked the principle u/s. 106, cursorily dealt with the evidence on record and arrived at a perverse conclusion in law and set aside the order of conviction of the husband – Thus, order passed by the High Court set aside and that of the trial judge restored – Penal Code, 1860 – s. 302.

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According to the prosecution, the respondent-husband confined himself, his wife 'DK' and their daughter inside the room and bolted it from within. He did not open the door for the whole day. The door had to be

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forced open and 'DK' was found dead in a room occupied by her and the respondent. The respondent was caught by his brothers and relatives. An FIR was lodged alleging that the respondent had killed 'DK'. The trial court convicted the respondent for an offence punishable under Section 302 IPC and sentenced him to life imprisonment and fine. However, the High Court acquitted the respondent. Hence, the instant appeal.

Allowing the appeal, the Court

HELD: 1. Section 106 of the Evidence Act, 1872 provides, inter alia, that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him. The burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts. [Paras 14, 22] [26-B-C; 29-C-D]

2.1. Applying the aforesaid principle to the facts of the instant case, since 'DK' died an unnatural death in the room occupied by her and the respondent, the cause of the unnatural death was known to the respondent. There is no evidence that anybody else had entered their room or could have entered their room. The respondent did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of 'DK's death were known only to the respondent, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of

A the case and there is, therefore, a very strong
presumption that 'DK' was murdered by the respondent.
[Para 23] [29-D-G]

B 2.2. It is not that the respondent was obliged to prove
his innocence or prove that he had not committed any
offence. All that was required of the respondent was to
explain the unusual situation, namely of the unnatural
death of his wife in their room, but he made no attempt
to do this. [Para 24] [29-G-H]

C 2.3. The High Court very cursorily dealt with the
evidence on record and upset a finding of guilt by the trial
court in a situation where the respondent failed to give
any explanation whatsoever for the death of his wife by
asphyxia in his room. Moreover, the very fact that all the
D relatives of the respondent turned hostile clearly gives
room for suspicion and an impression that there is much
more to the case than meets the eye. Even the
complainant, who squarely blamed the respondent (in
the FIR) for the murder of his wife, turned hostile to the
E extent of denying his relationship with the respondent.
[Para 26] [30-C-D]

F 2.4. The High Court expressed the view that since the
prosecution did not produce 'GS' as its witness, its case
ought to fail. 'GS' could not have added to the case of the
prosecution. He had arrived on the fateful day after the
respondent had locked himself, 'DK' and their child in
their room. He did not even meet them on the fateful day
and was oblivious of the events that had taken place that
day. Therefore, producing him in the witness box would
G not have been of any consequence. [Para 27] [30-E-F]

2.5. On a consideration of the facts of the case, the
approach arrived at by the trial court was the correct
approach under the law and the High Court was

completely in error in relying primarily on the fact that since most of the material prosecution witnesses (all of whom were relatives of the respondent) had turned hostile, the prosecution was unable to prove its case. The position in law, particularly Section 106 of the Evidence Act was completely overlooked by the High Court making it arrive at a perverse conclusion in law. The judgment and order passed by the High Court is set aside and that of the trial judge restored. The State should take the necessary steps to apprehend the respondent so that he can serve out the sentence awarded to him by the trial court. [Paras 28, 29] [30-G-H; 31-A-C]

Shambhu Nath Mehra v. State of Ajmer 1956 SCR 199; *Trimukh Maroti Kirkan v. State of Maharashtra* 2006 (7) Suppl. SCR 156: (2006) 10 SCC 681; *Ganeshlal v. State of Maharashtra* 1992 (2) SCR 502: (1992) 3 SCC 106 ; *Dnyaneshwar v. State of Maharashtra* 2007 (4) SCR 248: (2007) 10 SCC 445 ; *Jagdish v. State of Madhya Pradesh* 2009 (14) SCR 727: (2009) 9 SCC 495;; *Gian Chand v. State of Haryana* (2013) 14 SCC 420; *State of West Bengal v. Mir Mohammad Omar* 2000 (2) Suppl. SCR 712: (2000) 8 SCC 382 ; *Mahendra Pratap Singh v. State of Uttar Pradesh* 2009 (2) SCR 1033: (2009) 11 SCC 334 – referred to.

Case Law Reference :

1956 SCR 199	Referred to	Para 16
2006 (7) Suppl. SCR.156	Referred to	Para 17
1992 (2) SCR 502	Referred to	Para 18
2007 (4) SCR 248	Referred to	Para 19
(2009) (14) SCR 727	Referred to	Para 20
(2013) 14 SCC 420	Referred to	Para 21
2000 (2) Suppl. SCR 712	Referred to	Para 21

A 2009 (2) SCR 1033 Referred to Para 25

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 357 of 2005.

B From the Judgment & Order dated 04.08.2004 of the High
Court of Rajasthan in D.B. Criminal Jail Appeal No. 500 of
2001.

Ruchi Kohli, Nidhi Jaswal for the Appellant.

C Nidhi for the Respondent.

The Judgment of the Court was delivered by

D **MADAN B. LOKUR, J.** 1. The question for consideration
is whether the facts and circumstances of the case require the
application of Section 106 of the Evidence Act, 1872 and if so,
whether the respondent/accused is guilty of the murder of his
wife Dhapu Kunwar. In our opinion, both questions need to be
answered in the affirmative and the High Court rendered a
decision, perverse in law, in acquitting Thakur Singh and
E reversing the decision of the Trial Court.

The Facts

F 2. According to the first information report (FIR) lodged by
Himmat Singh (PW-2), the respondent/accused Thakur Singh
was married to Dhapu Kunwar and they had a daughter aged
about one year. Thakur Singh was working as a labourer or lorry
driver in Ahmadabad. Since he was not feeling well, he was
brought to the family home in Hingwania in Rajasthan on 25th
February, 1999 where he stayed the whole day.

G 3. On 26th February, 1999 Thakur Singh's brother Bagh
Singh (PW-3) was sent to fetch his brother-in-law Gotu Singh
(brother of Dhapu Kunwar) who then came to Hingwania. He
seems to have stayed overnight and on 27th February, 1999
Gotu Singh and Thakur Singh were together for most of the day.
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In the evening at about 4.30 p.m. on 27th February, 1999 Gotu Singh went to Gundli and stayed there overnight. He came back to Hingwania the next morning (28th February, 1999) at about 7.45 a.m.

4. However, before Gotu Singh arrived in Hingwania on 28th February, 1999 Thakur Singh took his wife Dhapu Kunwar and their daughter inside a room and bolted it from within. Thereafter, Himmat Singh and Gotu Singh went from Hingwania by bus to Chanderiya to meet Thakur Singh's elder brother Shyam Singh (PW-1). While Gotu Singh did not return to Hingwania, Himmat Singh returned along with Shyam Singh. This was at about 4.30 p.m.

5. Throughout the day Thakur Singh had locked himself up in a room along with Dhapu Kunwar and their daughter. Other ladies in the house, namely, the wife of Bhag Singh, (Chanda Kunwar PW-18) wife of Pratap Singh (PW-6) and (Pushpa Kunwar PW-20) wife of Ram Singh (PW-7) tried to persuade Thakur Singh to open the door of the room but he did not do so. Later in the evening, after Himmat Singh returned with Shyam Singh, they removed the 'kelu' from above the house and it was then discovered that Thakur Singh had killed Dhapu Kunwar. The door of the house was broken open and Thakur Singh was caught and tied by his brothers and other relatives.

6. At about 6.15 p.m. on the same day, that is 28th February, 1999 Himmat Singh lodged an FIR in the police station giving the facts mentioned above. There is a positive assertion in the FIR that Thakur Singh had killed Dhapu Kunwar. Soon after the FIR was registered, the investigating officer Kuber Singh (PW-23) arrived at the place of the occurrence and took charge of the investigations and arrested Thakur Singh on the basis of the allegations made in the FIR.

Proceedings in the Trial Court

7. On completion of investigations, Kuber Singh filed a

- A charge sheet against Thakur Singh alleging the commission of offences punishable under Sections 302, 326 and 324 of the Indian Penal Code (IPC). The Upper District & Sessions Judge (Fast Track) Chittorgarh who heard the case being Sessions Case No.90/2001 convicted Thakur Singh and found him guilty of an offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life and a fine of Rs.1000/-.

8. The Trial Judge found that the prosecution had examined as many as 25 witnesses. Subsequently, on the request of the Public Prosecutor another witness was called making a total of 26 prosecution witnesses. Of these, 14 were the immediate relatives of Thakur Singh and all of them turned hostile.

9. The Trial Court found that some basic facts were nevertheless brought on record. These basic facts were that Dhapu Kunwar was the wife of Thakur Singh; she was lying dead in the room occupied by her and Thakur Singh, and Dr. Khem Chand Saini (PW-15) deposed that Dhapu Kunwar had some injuries on her person but the cause of her death was asphyxia and strangulation.

10. The Trial Judge held, on the basis of the evidence on record, that no one except Thakur Singh could have caused the death of Dhapu Kunwar. He had confined her and their daughter inside a room and although no one saw him killing his wife, since the room was bolted from inside, he had not opened it for the whole day and the door had to be forced open, no one else could have caused her death. The Trial Judge found that there was nothing to suggest that any other person had entered Thakur Singh's room and there was no possibility of anybody else having caused Dhapu Kunwar's death by strangulation. It was also noted that Thakur Singh gave absolutely no explanation in his statement under Section 313 of the Code of Criminal Procedure as to how Dhapu Kunwar had died of asphyxiation inside their room.

Proceedings in the High Court

11. Feeling aggrieved by the conviction and sentence awarded by the Trial Court, Thakur Singh preferred D.B. Criminal Jail Appeal No. 500 of 2001 in the High Court of Rajasthan. By a judgment and order dated 4th August, 2004 (under appeal), the High Court found no evidence to link Thakur Singh with the death of Dhapu Kunwar. Accordingly, the appeal was allowed and he was acquitted of the charge of an offence punishable under Section 302 of the IPC.

12. After the analysis of the evidence, the High Court came to the following conclusions:-

- (a) There is no evidence that anybody saw Thakur Singh entering his room where Dhapu Kunwar had been murdered. Also, no one saw him coming out from the room after the murder.
- (b) There is no evidence that after allegedly having murdered Dhapu Kunwar, Thakur Singh came out of his room and was caught by his relatives and handed over to the police.
- (c) There is no evidence that when Thakur Singh came out of his room he was in possession of any weapon or that his clothes were stained with blood.

13. The High Court also concluded that the Trial Judge was swayed by the idea that since Thakur Singh was the husband of Dhapu Kunwar, therefore, there was every possibility that he was in the house and he continued to remain in the house when Dhapu Kunwar was murdered. The High Court concluded that though this is a strong circumstance, there must be some evidence in support of this circumstance and the best evidence would be that of Gotu Singh who was not produced by the prosecution. Moreover, the main prosecution witnesses (who happen to be the relatives of Thakur Singh) had turned hostile.

A Discussion and conclusion

14. Questioning the decision of the High Court acquitting Thakur Singh, the State of Rajasthan has preferred this appeal.

B 15. We find that the High Court has not at all considered the provisions of Section 106 of the Evidence Act, 1872¹. This section provides, inter alia, that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

C 16. Way back in *Shambhu Nath Mehra v. State of Ajmer*² this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it is well nigh impossible or extremely difficult for the prosecution to prove that fact. It was said:

E "This [Section 101] lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It

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1. 106. Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him

Illustrations

- G (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
- (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.
- H 2. 1956 SCR 199.

means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

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17. In a specific instance in *Trimukh Maroti Kirkan v. State of Maharashtra*³ this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said:

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"Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

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18. Reliance was placed by this Court on *Ganeshlal v. State of Maharashtra*⁴ in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent

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3. (2006) 10 SCC 681.

4. (1992) 3 SCC 106.

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A with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

B 19. Similarly, in *Dnyaneshwar v. State of Maharashtra*⁵ this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

C 20. In *Jagdish v. State of Madhya Pradesh*⁶ this Court observed as follows:

D "It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

E 21. More recently, in *Gian Chand v. State of Haryana*⁷ a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in *Shambhu Nath Mehra* was reiterated. One of the decisions cited in *Gian Chand* is that of *State of West Bengal v. Mir Mohammad Omar*⁸ which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act

F in the following words:

G "During arguments we put a question to learned Senior Counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the

5. (2007) 10 SCC 445.

6. (2009) 9 SCC 495.

7. (2013) 14 SCC 420.

H 8. (2000) 8 SCC 382.

normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise."

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.

A 25. Learned counsel for Thakur Singh referred to
Mahendra Pratap Singh v. State of Uttar Pradesh⁹ to contend
that where two views are possible, one held by the Trial Court
for acquitting the accused and the other held by the High Court
for convicting the accused, the rule of prudence should guide
B the High Court not to disturb the order of acquittal made by the
Trial Court. This decision is not at all apposite.

C 26. In our opinion, the High Court has very cursorily dealt
with the evidence on record and has upset a finding of guilt by
the Trial Court in a situation where Thakur Singh failed to give
any explanation whatsoever for the death of his wife by asphyxia
in his room. Moreover, the very fact that all the relatives of
Thakur Singh turned hostile clearly gives room for suspicion
and an impression that there is much more to the case than
meets the eye. Even the complainant, Himmat Singh who
D squarely blamed Thakur Singh (in the FIR) for the murder of his
wife, turned hostile to the extent of denying his relationship with
Thakur Singh.

E 27. The High Court expressed the view that since the
prosecution did not produce Gotu Singh as its witness, its case
ought to fail. In our opinion, Gotu Singh could not have added
to the case of the prosecution. He had arrived on the fateful day
after Thakur Singh had locked himself, Dhapu Kunwar and their
child in their room. He did not even meet them on the fateful
F day and was oblivious of the events that had taken place that
day. Therefore, producing him in the witness box would not have
been of any consequence.

G 28. On a consideration of the facts of the case we are of
the opinion that the approach arrived at by the Trial Court was
the correct approach under the law and the High Court was
completely in error in relying primarily on the fact that since most
of the material prosecution witnesses (all of whom were
relatives of Thakur Singh) had turned hostile, the prosecution

H 9. (2009) 11 SCC 334.

was unable to prove its case. The position in law, particularly A
Section 106 of the Evidence Act was completely overlooked
by the High Court making it arrive at a perverse conclusion in
law.

Conclusion

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29. The judgment and order passed by the High Court is
set aside and that of the Trial Judge restored. The State should
take the necessary steps to apprehend Thakur Singh so that
he can serve out the sentence awarded to him by the Trial
Court.

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30. The appeal is allowed, as above.

Nidhi Jain

Appeal allowed.