[2023] 12 S.C.R. 815 : 2023 INSC 879

CASE DETAILS

BALVIR SINGH

v.

STATE OF UTTARAKHAND

(Criminal Appeal No. 301 of 2015)

OCTOBER 06, 2023

[J. B. PARDIWALA AND PRASHANT KUMAR MISHRA, JJ.]

HEADNOTES

Issue for consideration: The High Court affirmed the judgment and order of conviction passed by the Trial Court holding appellant-husband guilty of the offence of murder punishable u/s.302 of the IPC alongwith the offence punishable u/s. 498A of the IPC and appellant-mother-in-law guilty of the offence punishable u/s. 498A of the IPC r/w. 34 of the IPC, whether the High Court committed any error in passing the impugned judgment and order.

Penal Code, 1860 – s.302, s.498A – Prosecution case was that victim died due to poisoning – At the time of death only her appellant-husband was present – Poison was found in the examination of viscera of the deceased – Appellant-husband had not informed family of victim after her death – Earlier, victim-deceased had written letters to her family informing them regarding harassment from her appellant-husband and appellant-mother-in-law for dowry:

Held: The cause of death was due to poisoning – The poison detected in the viscera was aluminium phosphide, which is used a fumigant to control the insects and rodents – Defense of the convicts to say that the presence of aluminium phosphide in the viscera could be due to the medicines which the deceased used to take for her heart ailment cannot be accepted – No evidence led by the appellant-husband that he had taken victim to the hospital in Delhi – The dubious conduct of the convict-husband of not informing the family members about the death of their daughter – In the case on hand it has been established or rather proved to the satisfaction of the court that the deceased was in company of her husband i.e., the appellant-convict at a point

of time when something went wrong with her health and therefore, in such circumstances the appellant-convict alone knew what happened to her until she was with him – Appellant-convict (husband) has not explained in any manner as to what had actually happened to his wife more particularly when it is not in dispute that the appellant-convict was in company of his wife i.e., deceased – Although, the appellant-convict tried to project a picture that no sooner the deceased fell sick than he immediately took her to the Hospital at Delhi – If it is his case, that his wife was declared dead on being brought at the hospital then it is difficult to believe that the hospital authorities allowed the appellant to carry the dead body back home without completing the legal formalities – The circumstances in the instant case constitute more than a prima facie case to enable the prosecution to invoke s.106 of the Evidence Act and shift the burden on the accused husband to explain what had actually happened on the date his wife died – Section 106 does not cast any burden upon an accused in a criminal trial, but that, where the accused throws no light at all upon the facts which ought to be especially within his knowledge, and which could support any theory of hypothesis compatible with his innocence, the Court can also consider his failure to adduce any explanation, in consonance with the principle of the passage in Deonandan Mishra – The courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence – In result, both the appeals fail. [Paras 29,52,53,56,61 and 62]

Evidence Act, 1872 – s.106 – Applicability – Meaning of word "especially":

Held: s.106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him – The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused – The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in s.106 of the Evidence Act – s.106 of the Evidence Act is an exception to s.101 of the Evidence Act. [Para 34]

Evidence Act, 1872 – s.106 does not absolve the prosecution from duty of proving crime:

Held: Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused – This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence – It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden of the accused to show that no crime was committed. [Para 42]

Evidence Act, 1872 – s.106 – Distinction exists between the burden of proof and the burden of going forward with the evidence:

Held: Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony – Thus, if the prosecution has offered evidence which if believed by the court would convince them of the accused's guilt beyond a reasonable doubt, the accused is in a position where he should go forward with counter-vailing evidence if he has such evidence – When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one – He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict – However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might have been rebutted. [Para 46]

Evidence Act, 1872 – s.106 – "Prima facie" in context of s.106:

Held: Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding death. [Para 48]

LIST OF CITATIONS AND OTHER REFERENCES

Shambhu Nath Mehra v. The State of Ajmer AIR 1956 SC 404 : [1956] SCR 199; *Nagendra Sah v. State of Bihar* (2021) 10 SCC 725; *Tulshiram*

Sahadu Suryawanshi and Another v. State of Maharashtra (2012) 10 SCC 373 : [2012] 7 SCR 1083; *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681 : [2006] 7 Suppl. SCR 156; *State of W.B. v. Mir Mohammad Omar and Others* (2000) 8 SCC 382 : [2000] 2 Suppl. SCR 712; *Ram Gulam Chaudhary and Others v. State of Bihar* (2001) 8 SCC 311 : [2001] 3 Suppl. SCR 279; *Deonandan Mishra v. The State of Bihar* AIR 1955 SC 801; *Kalu alias Laxminarayan v. State of Madhya Pradesh* (2019) 10 SCC 211 : [2019] 14 SCR 327; *Sawal Das v. State of Bihar* (1974) 4 SCC 193 : [1974] 3 SCR 74 – relied on.

Leland v. State 343 U.S. 790=96 L.Ed. 1302; *Raffel v. U.S.* 271 U.S. 294=70 L.Ed. 1054 – referred to.

Smith v. R. 1918 A.I.R. Mad. 111 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 301 of 2015.

From the Judgment and Order dated 24.03.2014 of the High Court of Uttarakhand at Nainital in CRLA No.273 of 2013.

With

Criminal Appeal No. 2430 of 2014.

Appearances:

Manisha Bhandari, Omkar Shrivastava, Divyadeep Chaturvedi, Ayush Jain, Dhruv Chandra, Shashwat Sidhant, Advs. for the Appellant.

Jatinder Kumar Bhatia, Krishnam Mishra, Param Kumar Mishra, Rajeev Kumar Dubey, Kamlendra Mishra, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

J. B. PARDIWALA, J.:

1. Since both the captioned appeals arise from a common judgment and order passed by the High Court dismissing two criminal appeals of two

accused persons tried in one sessions case those were heard analogously and are being disposed of by this common judgment and order.

2. These appeals are at the instance of two convicts and are directed against a common judgment and order dated 24.03.2014 passed by the High Court of Uttarakhand at Nainital in the Criminal Appeal No. 273 of 2013 and Criminal Appeal No. 274 of 2013 respectively by which the High Court dismissed both the appeals and thereby affirmed the judgment and order of conviction passed by the Additional District and Sessions Judge Kotdwar, Garhwal in the Sessions Trial No. 48 of 2008 holding Balvir Singh (husband) guilty of the offence of murder punishable under Section 302 of the Indian Penal Code, 1860, (for short, 'the IPC') alongwith the offence punishable under Section 498A of the IPC and Maheshwari Devi (mother-in-law) guilty of the offence punishable under Section 498A of the IPC read with Section 34 of the IPC.

CASE OF THE PROSECUTION

3. The deceased, namely, Sudha was married to Balvir Singh. The marriage of the deceased with Balvir Singh was solemnised on 12.12.1997. In the wedlock a son was born. On 02.06.2007, father of the deceased, namely, Virendra Singh (PW1) preferred an application in the court of the Judicial Magistrate First Class, Kotdwar, Garhwal under Section 156(3) Code of Criminal Procedure, 1973 (for short, 'the CrPC'), seeking a direction to the Police to register an FIR in connection with the death of his daughter in suspicious circumstances. The Judicial Magistrate First Class, Kotdwar, Garhwal, passed the following order dated 04.06.2006:

"*Order*

04.06.2006

Applicant Virendra Singh had filed application under section 156(3) Cr.P.C. for passing order for registration of First Information Report against accused persons, wherein, applicant has mentioned as under that marriage of daughter of applicant Sudha had been solemnized on 12.12.1997 with Balvir Singh son of late Mahavir Singh, resident of village Ratanpur, Kumbhuchau, Halqa-Saneh, Kotdwar, Garhwal at Uttari Jhandichaur, Police Station Kotdwar and out of their wedlock, one son was born to them. After sometime from solemnization of marriage Balvir Singh and Smt. Maheshwari

Devi mother of Balvir Singh connived together and started harassing my daughter in different ways and started raising demand of Rs. One lakh cash in dowry. Applicant's daughter informed applicant about the same through letters. Balvir Singh has been working in a Private Nursing Home in Delhi and he is very well acquainted with medicines. According to the Applicant, Balvir Singh before committing murder of his daughter managed to arrange fake prescription slips which he has kept with him. Despite reluctance of his daughter, on 09.05.07 Balvir left his son at Kotdwar and forcibly took my daughter Sudha who was in healthy condition to Mangolpuri, Delhi. Before leaving, Applicant's daughter expressed her wish to her uncle over telephone about her reluctance for going to Delhi. On 13.05.07 at about 1.30 o'clock in the night Applicant's younger brother Harender Singh received information from Delhi over phone that his daughter Sudha has all of a sudden left for her heavenly abode in Mangolpuri. Balvir Singh did not give this information to any of the other family member rather some neighbour gave this information to the younger brother of Harender Singh; Shivcharan, who resides in Delhi. Shivcharan visited Mangolpuri in the night itself, where he came to know that she was in good health on that night and Balvir Singh after the death of the deceased, took her dead body to his home at Ratanpur, Kotdwar by private ambulance without giving information to anyone. When the applicant came to know about this fact, he informed the police of Police Station Kotdwar. There were reddish injury marks apparent on the throat of the applicant's daughter, due to which the Police initiated inquest proceedings and arranged postmortem of the dead body.

On calling for the report from Police Station on the application filed by applicant, Police Station has submitted that no First Information Report is lying registered at Police Station on the basis of facts mentioned in the application moved by applicant under section 156(3) Cr.P.C Applicant has filed photocopies of letters written by his daughter and photocopies of applications lodged by him with Inspector Incharge of Police Station Kotdwar and Deputy District Magistrate, Kotdwar in court in support of his application filed under section 156(3) Cr.P.C.

On the basis of documents filed by applicant in support of his application, prima facie offence seems to be made out. Therefore, in such circumstances, registration of First Information Report seems to be essential.

Therefore, S.H.O., Police Station Kotdwar is ordered that hiving registered First Information Report in the light of application filed by applicant under section 156(3) Cr.P.C and to conduct investigation.

Sd/-

Judicial Magistrate"

4. Pursuant to the aforesaid order passed by the learned Judicial Magistrate, the First Information Report came to be registered at the Kotdwar Police Station on 09.06.2007 for the offence punishable under Sections 302, 498A read with Section 34 of the IPC and Sections 3 and 4 respectively of the Dowry Prohibition Act, 1961 (for short, 'the Act 1961'). The First Information Report reads thus:

> *"Sir, Applicant Virendra Singh, son of late Mohan Singh, resident of Village Mawasa, Patti –Ajmer Pall, Tehsil Kotdwar Garhwal respectfully submits as under:-*
>
> *1. That the marriage of my daughter Sudha had been solemnized on 12.12.1997 with Balvir Singh, son of late Mahavir Singh, resident of village Ratanpur, Kumbhuchaur, Halqa-Saneh, Kotdwar, Garhwal, from the house of my younger brother located at Uttari Jhandichaur, Police Station Kotdwar and out of the wedlock, one son was born to them.*
>
> *2. That sometime after marriage, Balvir Singh and Smt. Maheshwari Devi who is the mother of Balvir Singh, in connivance with him, started harassing my daughter in different ways and raising demand of Rupees One lakh cash in dowry. Smt. Maheshwari Devi has been getting pension and also owns landed property. Balvir Singh is a greedy person and under the greed of pension of his mother, he has been harassing my daughter and subjecting her to beatings, not providing food to her, and that the women of the village somehow provided her food by hiding themselves from these people. My daughter wrote letters to us complaining about this fact. When Balvir Singh and his mother came to know about these letters, then they pressurized my daughter for asking back the said letters and we accordingly returned those letters, but letter dated 20.05.04 which has been lodged by us at Police Station, remained with us. In this*

letter also my daughter has put her grievances and harassment that she faced.

3. That on getting knowledge of this incident me, my few relatives, Panch, and Pradhan Ratanpur visited and tried to convince Balvir Singh and his mother not to indulge in such acts so that in future my daughter may stay there properly and I did not lodge any report. However, Maheshwari Devi and Balvir Singh kept on hatching conspiracy for eliminating my daughter Sudha. Once they had made my daughter consumed poison also but my daughter had not told this fact to anyone.

4. That Balvir Singh has been working in a Private Nursing Home in Delhi and he is very well acquainted with medicines. Before committing murder of my daughter, he managed to arrange fake and forged prescription slips, which has been shown to police also, and investigation about these slips & medicines is required. Despite reluctance of my daughter on 09.05.07 Balvir left his son at Kotdwar in healthy condition and took my daughter Sudha at Mangolpuri, Delhi forcibly. Before leaving, my daughter expressed her unwillingness to go to Delhi, to my younger brother Harender over telephone.

5. That on 13.05.07 at about 1.30 o'clock in the night my younger brother Harender Singh received information from Delhi over phone that my daughter Sudha has left for her heavenly abode all of a sudden in Mangolpuri. Balvir Singh did not give this information to any of our family member rather some neighbour gave this information to the younger brother of Harender Singh; Shivcharan, who resides in Delhi. Shivcharan visited Mangolpuri in the night, where he came to know that my daughter was in good health on that night and Balvir Singh after the death of my daughter, took her dead body to his home at Ratanpur, Kotdwar by private ambulance without giving information to anyone. When we came to know about this fact, then we informed the police of Police Station Kotdwar but we could not provide all details at that time. As reddish injury marks were apparent on the neck of my daughter, Police initiated inquest proceedings and arranged postmortem of her dead body. Sir, I have reason to believe that the said Maheshwari Devi and her son Balvir Singh have killed

my daughter having hatched a conspiracy and have also induced her little child also in their favour.

6. That her mother-in law and her husband Balvir Singh caused inhuman harassment to my daughter which amounts to a heinous crime. Photocopies of her letters are being annexed herewith. I had lodged report at Police Station and Deputy District Magistrate also that she has been killed, but no first information report has not been registered till now. Therefore, it is prayed to please order police of Police Station Kotdwar to register First Information Report and get the offenders punished for the offence committed by them.

Dated : 02.06.07. Applicant - Sd/- Virendra Singh son of late Mohan Singh, resident of Village Mawasa, Patti –Ajmer Palla, Tehsil – Kotdwar, District –Pouri Garhwal.

Note: I, HC 14 Kabool Singh Prajapati do hereby certify that copy of formal report has been recorded word to word which is clearly legible.

Sd/-

HC 14 Kabool Singh

Police Station Kotdwar

Dated : 09.06.07"

5. Upon registration of the FIR, the investigation was carried out. The dead body of the deceased on being brought from Delhi to Kotdwar, was sent for post mortem. The inquest panchnama was drawn in presence of the independent panch witnesses. The statements of various witnesses were recorded by the investigating officer under Section 161 of the CrPC. The viscera collected during the course of the post mortem was sent to the forensic science laboratory. Both the appellants herein were arrested and remanded to judicial custody.

6. Upon conclusion of the investigation, chargesheet was filed for the offences enumerated above. To the charge framed by the trial court vide order dated 21.02.2009, the appellants pleaded not guilty and claimed to be tried.

7. The prosecution led the following oral evidence:

a. PW1 Virendra Singh (Father of the deceased)

b. PW2 Dr. Indra Singh Samant, Govt. Hospital (the Doctor who performed the post mortem)

c. PW3 Harender Singh (Uncle of the deceased)

d. PW4 Balbir Singh (Another uncle of the deceased)

e. PW5 M.M.S. Bisht (Senior Sub Inspector)

f. PW6 Baldev Singh (Panch witness to the inquest proceedings)

h. PW7 Kabool Singh (Head Constable)

8. Prosecution also led documentary evidence as under:

a. Post mortem report Exh.Ka-4

b. Inquest report Exh. Ka-5

c. Two letters written by the deceased to her father i.e., PW1 Exh. Ka-1 and Ka-2.

9. The appellants herein examined Shivam Rawat the son of the deceased as a defence witness (DW-1). The appellants also examined one Anoop Singh cousin brother of the deceased as a defence witness (DW-2).

10. Upon conclusion of the oral evidence, the further statement of both the appellants was recorded by the trial court. Two specific questions were put by the trial court to the convict Balvir Singh and the reply to the two questions were as under:

"Question No. 14:- Do you have anything else to say?

Answer:- I am innocent. Complainant has lodged a false case.

Question No. 15 :- Poison has been found in the examination of viscera of the deceased. What do you have to say in this regard?

Answer:- I do not have knowledge as to how the poison has been found, but the deceased was a heart patient and used to consume medicines."

11. The mother-in-law of the deceased stated in her further statement recorded under Section 313 CrPC that she was innocent and had been falsely implicated.

12. The trial court upon appreciation of the oral as well as documentary evidence on the record held the husband guilty of the offence of murder punishable under Section 302 of the IPC and also for causing harassment punishable under Section 498A of the IPC. The trial court sentenced the husband to undergo rigorous imprisonment with fine of Rs. 10,000/- The mother-in-law, namely, Maheshwari Devi came to be acquitted by the trial court of the offence of murder, however, she stood convicted by the trial court for the offence punishable under Section 498A of the IPC and was sentenced to undergo 2½ years of imprisonment.

13. The trial court while holding the appellants guilty of the offence enumerated above, recorded the following findings:

> *"21. Deceased died of poison. Although prosecution could not bring clear evidence that victim was administered poison by accused, but regarding harassment PW-1 and PW-2 have produced evidence. This is established by Exhibit A1 and Exhibit A2 too. Moreover, after her death poison was found in viscera report. However, nothing has been said by the defence about how it entered the body of the deceased. Accused statement was registered under section 313 of Criminal Procedure Code and he was clearly asked that poison was found in deceased's visceral examination report, what you have to say about it? Regarding this accused Balvir Singh said that "I do not have knowledge how it was found, but deceased was heart patient and was on medication". Regarding this, defence examined DW-1 who is deceased's son and who said in his examination-in-chief that "my mother was undergoing treatment at Delhi, where she died". He further said "my grandmother and father love me a lot and treated my mother nicely". He is a child witness. This witness told that the death of the deceased took place during treatment but, nothing is said about where she was undergoing treatment, or how she died. Defence argued that deceased was a heart patient and because of which death occurred but this argument is negated by viscera report. DW-2 produced by defence said in his examination-in-chief that "accused was getting the deceased continuously treated at Delhi. Deceased Sudha was distressed because of her illness. Accused use to take care of Sudha. Balvir Singh and his mother did not harass her, and that she may have done something*

to herself because of her illness". This witness produced by defence has based his evidence on new facts. During cross-examination, examination of prosecution witness by defence, no question regarding such matter was asked as to whether the deceased was distressed either before her illness or because of her illness. DW-1 who is deceased's son and on whom defence stressed upon, has not stated anything regarding the deceased being distressed due to her illness. DW-1 has only stated that death occurred during treatment, while DW-2 has based his evidence on new facts which are not concurring with the facts of defence because they have said that treatment was given at Escorts Hospital. Regarding this defence has questioned PW-1 that in year 2006 accused paid a bill of rupees 3,82,500/-at Escorts Hospital which was refuted by him. Regarding this defence has produced documents. I have examined those documents. Although defence have not proved those documents but in file page number 48A/2 a document of rupees 3,82,500/-is present which was given by Dr. Nitish Chandra, but said document is not a bill of payment instead it is an estimate required for complete checkup and operation, because in the document it is written that –'Advance payment may please be made at the time of admission by case/demand draft in favour of Escorts Heart Institute and Research Centre Ltd. Payable at New Delhi'. By looking at the document it is clear that accused and others did not pay any money. Apart from this there is no document in the file for payment of rupees 3,82,500/-. regarding this there is no statement from defence.

22. Apart from this prosecution witness PW-4's cross-examination was conducted. In his cross-examination by defence the witness has said "it is true that in the inquest report deceased's husband stated that my wife after delivery of son, used to remain ill. Often, she had episodes of unconsciousness. On the night of 13 May 2007 at 10:00 pm, she had an attack and did not regain consciousness. I took her to Sanjay Gandhi Memorial Hospital, where she was declared dead by the Doctor". This witness gave statement in his cross-examination that deceased died at Sanjay Gandhi Memorial Hospital regarding which no document was filed. Although this witness in his cross-examination also admitted that he was told this by Balvir Singh. This witness is supporting defence, but this witness statement is contrary to

the oral and documentary evidence in the file. If the accused admitted deceased to Sanjay Gandhi Memorial Hospital after she had an attack on 13.5.2007, then there are no documents regarding this in the file and the defence has not given any statement as to this.

23. Defence has argued that deceased Sudha died on 13.5.2007. On 13.5.2007 her last rites were performed and complainant got the case registered under· section 156(3) on 2.6.2007. Application was filed very late and this delay has not been. explained. I am not in agreement with this argument of defence. Victim died on 13.5.2007 and it is said that on 13.5.2007 her last rites were performed, but on receiving the news of death prosecution witness immediately put forward his doubt. In inquest report it is clearly written that deceased Sudha's death is suspicious, and postmortem should be done. In above said inquest report PW-1 is one of the witnesses, he is deceased's father too. and was examined as PW1. During evidence witness has said that "Balvir lives in Mangolpuri at Delhi. Shivcharan was informed by neighbours that Sudha had died and they brought the dead body to Ratanpur. Next day I came to Kotdwar. I gave this information to Police station. Then Police and I came to Ratanpur. There police prepared inquest report. In inquest report I too was made a witness". As soon as witness received this information he raised a suspicion on the incident. Police station was informed. This witness further said "I wrote a letter to Police station to investigate into her death. In this regard I made a written complaint to S.D.M., Kotdwar". This witness further said "then, with my lawyer's help I filed a petition under section156(3) of Criminal Procedure Code on which court ordered to register a case". This witness on receiving information about incident immediately raised suspicion and asked for a postmortem to be carried out. On 14.5.2007 an application was written to Police station to investigate into the death of the Deceased. Police made inquest report and conducted postmortem. In this situation, defence cannot take benefit of the fact that complaint was registered under section 156(3) of Criminal Procedure Code, because this witness had informed Police station and S.D.M. Because of this information given by him to police, police came to spot and made inquest report.

24. In viscera report FSL has detected poison, in such situation the burden was on accused to prove whether deceased herself consumed poison and whether the deceased was under mental stress due to which she might have consumed poison, but defence did not make any statement of such kind during the whole trial. In the end DW-2 has presented this evidence that deceased was distressed because of her illness, but during the whole trial defence argued that deceased was a heart patient and was on treatment for it. Defence has argued that deceased was on medication and that because of chemical reaction medicine can naturally convert into poison, but no evidence was produced by defence regarding this, and no medical opinion was taken that deceased was taking medicine of such nature which due to chemical reaction could convert into poison in the body. As this was brought up by defence, in such situation burden was on them to prove it, but no statement was made about it. According to Indian Evidence Act section 114(g) - that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

25. In the presenting case this is argued by defence that because of chemical reaction medicine can turn into poison in deceased's body, therefore the burden of proof was on defence, but regarding this no evidence was produced by defence. In such situation under section 114(g) it is important to presume that if any evidence was produced by accused then it would have been against him, because of which no evidence was produced by defence. But deceased's death took place at Delhi. Accused Balvir Singh brought dead body from Delhi to Kotdwar. PW-1 in his examination-in-chief has said that "it is true that my daughter was living with accused at Delhi". On the basis of statement given by PW-1, deceased's death took place at Delhi, where she was living with accused Balvir Singh. On the basis of viscera report deceased died of poison. At the time of death only accused Balvir Singh was present. Accused Maheshwari Devi was not in Delhi. Since, deceased died at Delhi, in such situation charge under, section 302 of Indian Penal Code is not found against Maheshwari Devi.

26. As far as the question of dowry is concerned, PW-1 and PW-2 have adduced evidence in this matter against accused Balvir Singh

and Shrimati Maheshwari Devi that they are demanding dowry. This fact is also proved by document letters exhibit A-1 and exhibit A-2 present in the file. Charge under section 498A of Indian Penal Code against accused Balvir Singh and Shrimati Maheshwari Devi is proved beyond doubt.

27. After above arguments I have reached the conclusion that prosecution has proved that accused Balvir Singh and Maheshwari Devi mistreated and harassed deceased for dowry and demanded rupees 1 lakh from deceased. Therefore accused Balvir Singh and Maheshwari Devi are fit to be convicted under section 498A/34 Indian Penal Code. Because in this incident deceased has died and it has come up in the evidence that deceased was living with accused Balvir Singh in Delhi, therefore charge under section 302 of Indian Penal Code against accused is proved and he is fit to be convicted for the said charge. As prosecution could not prove that accused Shrimati Maheshwari Devi was at Delhi with Balvir Singh during the time of deceased's death and no role of Maheshawari Devi is proved in deceased's death, therefore no charge under section 302 of Indian Penal Code is proved against Shrimati Maheshwari Devi and therefore, she is fit to be discharged of the above said charge."

14. The appellants feeling dissatisfied with the judgment and order of conviction passed by the trial court went in appeal before the High Court. The High Court dismissed both the appeals and thereby affirmed the judgment and order of the conviction passed by the trial court. The High Court while affirming the judgment and order of conviction passed by the trial court held as under:

"3. In the chargesheet it was clearly held out that the death, in the instant case, was by poisoning. No sooner, the death was reported, PW1, looking at the dead body, insisted for an inquest and the same was done. In course of inquest, he expressed doubt as to the cause of death and demanded post-mortem. Accordingly, post-mortem was done. The doctor, who conducted post-mortem, could not determine the reason for the death. He, accordingly, preserved a part of the heart and the viscera of the deceased for the purpose of analysis. Viscera was sent for analysis and Forensic Science Laboratory, Agra, to whom

the same was sent, reported that the same contained poison known as "Aluminium Phosphide". All these facts were in the charge- sheet. The death, according to the chargesheet, had taken place at Delhi, when A1 alone was present with the victim. It is A1, who caused the dead body of the victim to be brought to Ratanpuri, Kotdwara. It was not the contention of A1 that the victim, at any point of time, had any suicidal tendency or that he suspects that the victim committed suicide. It was the contention of A1, as is evident from the trend of cross-examination of the prosecution witnesses, and, in particular, suggestions given to the prosecution witnesses that the victim was suffering from heart disease, for that, matter required frequent treatment and administration of medicine. It was suggested that such medicine, so administered, turned into the aforementioned poison. That being an assertion on behalf of A1, it was he, who was required to establish the same by tendering adequate evidence, which he miserably failed. A dead person, whose cause of death was by poisoning, was, accordingly, found on the lap of A1. A1 had special knowledge pertaining thereto. He failed to disclose anything in relation thereto. The Court below, in the circumstances, has taken adverse inference against A 1 under Section 114(g) of the Evidence Act. We think that the Court below was entitled to take such inference in the backdrop of the case as depicted above.

4. We, accordingly, find no reason for interference. The Appeal is dismissed. The judgment of the Court below is affirmed. The Application (CRMA No. 1744 of 2013) filed for examining applicant as witness for the defence is not pressed. The same is dismissed. A1 is in Jail. He will serve out the sentence as awarded by the Court below. A2 is on bail. Her bail bond is cancelled. She is directed to surrender forthwith to serve out the sentence awarded against her."

15. In such circumstances referred to above, the appeals are here before this Court with the captioned two appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

16. Ms. Manisha Bhandari, the learned counsel appearing for the appellant vehemently submitted that the trial court as well as the High Court committed a serious error in holding the appellants guilty of the offence as enumerated above. It was argued that the case is one of "No Evidence" so

far as the charge of murder is concerned. According to the learned counsel, the husband was working in Delhi past sometime before the date of incident whereas the deceased along with her son was staying at their native home town in the State of Uttarakhand. It was also sought to be argued that the deceased was not keeping well as she was suffering from a heart ailment. It was pointed out from the post mortem report as well as from the oral evidence of the doctor that the deceased had an enlarged heart and the ailment relating to heart could be the cause of sudden death. The learned counsel in the alternative put forward the theory of suicide. This theory of suicide was put forward by the defence on the basis of the fact that poison was detected in the viscera, in the form of "aluminium phosphide". An attempt was made to argue that the deceased might have consumed poison and committed suicide as she was tired of her ailment.

17. It was also argued that the evidence of the two defence witnesses would suggest that there was no harassment of any nature to the deceased either by the husband nor by the mother-in-law. It was also argued that no sooner the deceased passed away than the husband immediately informed the family members of the deceased about her sudden death. It is the husband who carried the dead body from Delhi to his village at Uttarakhand.

18. It was argued that the entire case hinges on circumstantial evidence. It is a primary principle that the accused **must be** and not merely **may be** guilty.

19. The learned counsel submitted that the facts which, the prosecution has 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 are not of a conclusive nature and tendency. The circumstances do not exclude every possible hypothesis except the one to be proved.

20. In the last, the learned counsel submitted that this Court may set aside the conviction for the offence of murder and substitute the same with the offence of abetting the commission of suicide punishable under Section 306 of the IPC. It was pointed out that the convict-husband is undergoing sentence past more than 9 years.

21. In such circumstances referred to above, the learned counsel prayed that there being merit in both her appeals, those may be allowed.

SUBMISSIONS ON BEHALF OF THE STATE

22. Mr. Jatinder Kumar Bhatia, the learned counsel appearing for the State vehemently submitted that no error not to speak of any error of law could be said to have been committed by the High Court as well as by the trial court in holding the appellants guilty of the respective offences.

23. It was sought to be vehemently argued that the deceased along with her son was residing at their village whereas the husband was doing some job in Delhi. The husband on the pretext of medical treatment of the deceased brought her from the village to Delhi and within three days of their arrival in Delhi, the incident occurred. It was argued that if the case put forward by the husband is to be accepted then it is to be believed that while something went wrong with the deceased, the husband was very much present because according to the husband he had immediately taken the deceased to the Sanjay Gandhi Hospital. On being declared dead at the hospital, he thereafter brought the dead body to the village.

24. In such circumstances referred to above, the learned counsel appearing for the State submitted that in view of Section 106 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act' or 'the Act 1872'), it is for the convict-husband to explain as to what had actually transpired. It is the convict-husband who could be said to be in special knowledge of things that might have transpired at the relevant point of time.

25. It was argued that the presence of poison in the viscera would indicate that the same had been administered to the deceased in some manner and no one except the husband could have administered the poison. It was also argued that there was a strong motive for the husband to commit the crime. The husband has also been held guilty of causing lot of harassment to his wife and the same is evident from the two letters written by the deceased to her father and are exhibited in the evidence.

26. The learned counsel laid much stress on the fact that both the appellants have maintained complete silence especially of the facts which could be said to be within their personal knowledge. The failure to explain, the circumstances in which the death occurred is sufficient to hold the convict-husband guilty of the offence.

27. In such circumstances referred to above, the learned counsel prayed that there being no merit in the appeals those may be dismissed.

ANALYSIS

28. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.

29. We take note of the following circumstances emerging from the facts on record:

a. The cause of death is due to poisoning. The poison detected in the viscera was aluminium phosphide. Aluminium phosphide is used as a fumigant to control the insects and rodents in the foodgrains and fields. It is too much for the convicts to say that the presence of aluminium phosphide in the viscera could be due to the medicines which the deceased used to take for her heart ailment. Such medicines even in high dosage would not lead to formation of aluminium phosphide in the body. This theory which has been put forward could be termed as something very absurd. No particular question in this direction has been put to the expert witness (doctor) while he was in the witness box. In such circumstances, the only inference that can be drawn is that aluminium phosphide either in the liquid form or in the form of tablets was procured by the accused husband and the same was administered to the deceased.

b. We completely rule out the theory of suicide as sought to be put forward on behalf of the appellants

c. If it is the case of the convict-husband that he had taken the deceased to the Sanjay Gandhi Hospital at Delhi then he should have led some evidence to indicate how she was taken to the hospital, in what type of vehicle and who attended the deceased at the hospital? In the case of the

present type, it is very difficult to believe that if the deceased had been taken to the hospital and declared dead on arrival, the hospital authorities would allow the convict-husband to carry the dead body of his wife back home. It would become a medico-legal case and the hospital would definitely inform the police.

d. The dubious conduct of the convict-husband of not informing the family members about the death of their daughter. Though in his further statement, the convict-husband has said that he had informed the family members of the deceased yet the evidence of PW3 Harender Singh (uncle of the deceased) is otherwise. In his oral evidence, he has deposed as under:

> *"My niece Sudha had died on 13.5.2007. Information thereof was given to me by my brother Shivcharan over the telephone. Shivcharan was living in Delhi. Then I told Shivcharan to inquire into the matter. Shivcharan went to the house of Balvir but he was not there. Then I gave this information in the Police Station, Kotdwar at 2 o'clock in the night over the telephone and also informed my brother Virendra. Thereafter, my brother came to the Police Station, Kotdwar in the morning. I also went to the police station. Then I had gone to the village of Balvir. There I saw the dead body of Sudha. I do not know as to whether Sudha died in Delhi or in the village."*

30. In the aforesaid context, the oral evidence of the PW1 Virendra Singh (father of the deceased) is also relevant. In his oral evidence, PW1 has stated as under:

> *"Balvir Singh took my daughter to Delhi in the year 2007 and left his son here in the village itself. At the time of going, she telephoned my brother Harender, who lives in Jhandi Chaur, and had told him that she does not want to go to Delhi. She unwillingly went, but I cannot tell how she had gone.*
>
> *Two days after going to Delhi, my brother received information that Sudha had died. My brother Shivcharan informed about it. Balvir was living in Mangolpuri in Delhi. The neighbours told Shivcharan that Sudha had died. Then, Balvir came to Ratanpur with the dead body of Sudha. Then, I came to Kotdwar the next day and gave this information in the police station. Then the police came with me to*

Ratanpur. There the police prepared the inquest report and I was the panch in the inquest proceedings.

There was a mark of injury on the neck of my daughter. I was suspicious of her death and so, I asked for a post-mortem. The witness was shown the inquest report Paper No. 9Ka, upon which he admitted his signature at the opinion of the Panches. Thereafter the dead body was sent for the post-mortem."

31. We shall now look into the two letters addressed by the deceased to her father (PW1). Both these letters have been proved through the oral evidence of the PW1 and have been exhibited. The letter dated 20.05.2004, Exh. Ka-1 reads thus:

"Dated : 20.05.04

Respected mother and father, please accept my pranam with folded hands. At the moment I am alive and pray before the Almighty for wellbeing of your whole family. Father Saheb, the reason behind writing this letter is that I am feeling quite harassed here. There is no faith of life as to when it may come to an end, any untoward incident may happen with me at any time. Father Saheb, since the time my marriage was solemnized, I have been feeling extremely harassed from the acts of my mother-in-law and husband but I have not told you about this till date thinking that good sense will prevail with passage of time but, both of these intend to eliminate me. They say that your father has not given anything in dowry. They told me that if you bring Rs.1 lakh cash from your father then only you can stay here, otherwise you go to your parents' home, or else we will eliminate you. I told them that my father is a labourer, and he cannot arrange Rs. 1 lakh. On account of this, my mother-in-law and husband have been beating me. They did not provide me food for several weeks. I remained hungry & thirsty and the women of village somehow provided me food by hiding themselves from these people. My mother-in-law even forbade me from giving milk to my 9-month-old son and forced me to bring firewood from jungle. Even after that, food was not provided to me. I have been staying at my matrimonial home throughout. You invited us several times for various functions and ceremonies but they neither allowed me to go nor they went themselves. They say that if you wish

to go then bring Rs. One lakh otherwise you will not be allowed to return here. They say that your parents and family members should not come here, if they do then it would not be good for me. My father, I do not have any support, I am surviving here at mercy of God. I have been staying here hungry & thirsty. On account of the beatings being given by them, I have not been keeping good health. Till date I have concealed all these facts. My father if you can arrange Rs. One lakh then my life can be saved, otherwise I do not know as to what will happen with me, any untoward incident may happen with me. Please do not tell anyone about this letter otherwise they will eliminate me.

Yours daughter

Village Mangolpuri"

32. The second letter, Exh. Ka-2 reads thus:

"Respected mother and father, accept Pranam from your daughter Sudha with folded hands. Love to Krishna, Manoj, Mukesh from their sister. I am well here and pray before Almighty for your well-being. I need my previous letter which I had written to you. I am not asking for the letter under pressure from anyone. I am happy at my home. I heard that uncle Anil is coming here and so I request you to send that letter through him. My father, if you wish to see me happy then please send the letter through Anil uncle. I have to stay here only. I am not asking for it under pressure from anyone, I want that letter. If you do not send that letter through Anil uncle then treat that your daughter is no more. I am very well here. Don't think more, just send the letter only, I will wait for the same. Your son-in-law has been behaving properly with me. If he behaves with me properly, then everything is alright and you should not be concerned. You just send the letter through uncle, as I need that letter and there is no benefit in keeping that letter with you. I am alright here; you should feel happy about it. Sonu is fine.

Your daughter Sudha."

PRINCIPLES OF LAW GOVERNING THE APPLICABILITY OF SECTION 106 OF THE EVIDENCE ACT

33. Section 106 of the Evidence Act, states as under:

"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.*

Illustration

(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."

34. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" means facts that are pre-eminently or exceptionally within the knowledge of the accused. The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act. Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its illustration (a) 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 the facts which are, "especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience".

35. In ***Shambhu Nath Mehra v. The State of Ajmer*** reported in AIR 1956 SC 404, this Court while considering the word "especially" employed in Section 106 of the Evidence Act speaking through Vivian Bose, J., observed as under:

"11. ... The word "especially" stresses that. It 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.

It is evident that that cannot be the intention & the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. The King, 1936 PC 169 (AIR V 23) (A) and Seneviratne v. R, 1936-3 All ER 36 at p. 49 (B)."

36. The aforesaid decision of ***Shambhu Nath*** (supra) has been referred to and relied upon in ***Nagendra Sah v. State of Bihar*** reported in (2021) 10 SCC 725, wherein this Court observed as under:

"22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

23. When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused."

(Emphasis supplied)

37. In ***Tulshiram Sahadu Suryawanshi and Another v. State of Maharashtra*** reported in (2012) 10 SCC 373, this Court observed as under:

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act,

1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in State of W.B. v. Mir Mohammad Omar [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516]: (SCC p. 393, para 38)

> *"38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambu Nath Mehra v. State of Ajmer [AIR 1956 SC 404 : 1956 Cri LJ 794] the learned Judge has stated the legal principle thus: (AIR p. 406, para 11)*
>
> > *'11. This 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 means facts that are pre-eminently or exceptionally within his knowledge.'""*
>
> (Emphasis supplied)

38. In Trimukh Maroti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681, this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case:

> *"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions [1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh [(2003) 11 SCC 271 : 2004 SCC (Cri) 135].) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:*
>
> > *"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."*
>
> *15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a 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 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.

xxx *xxx* *xxx*

22. 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. ...''

(Emphasis supplied)

39. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in the case of ***State of W.B. v. Mir Mohammad Omar and Others*** reported in (2000) 8 SCC 382. In this case, the assailants forcibly dragged the deceased from the house where he was taking shelter on account of the fear of the accused, and took him away at about 2:30 in the night. The next day in the morning, his mangled body was found lying in the hospital. The trial court convicted the accused under Section 364, read with Section 34 of the IPC, and sentenced them to ten years rigorous imprisonment. The accused preferred an appeal against their conviction before the High Court and the State also filed an appeal challenging the acquittal of the accused for the charge of murder. The accused had not given any explanation as to what happened to the deceased after he was abducted by them. The Sessions Judge, after referring to the law on circumstantial evidence, had observed that there was a missing link in the chain of evidence after the deceased was last seen together with the accused persons, and the discovery of the dead body in the hospital, and concluded that the prosecution had failed to establish the charge of murder against the accused persons beyond any reasonable doubt. This Court took note of the provisions of Section 106 of the Evidence Act, and laid down the following principles in paras 31 to 34 of the report:

"31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody."

(Emphasis supplied)

40. Applying the aforesaid principles, this Court while maintaining the conviction under Section 364 read with Section 34 of the IPC, reversed the order of acquittal under Section 302 read with Section 34 of the IPC, and convicted the accused under the said provision and sentenced them to imprisonment for life.

41. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

42. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden of the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

43. Section 106 obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the accused gives an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may

well turn the scale against him. In the language of Prof. Glanville Williams:

> *"All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence."*

44. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the *evidential burden* or burden of introducing evidence in proof of one's case as opposed to the *persuasive burden* or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para 527 negative averments and para 528—"require affirmative counter-evidence" at page 438 and foil, of Kenny's outlines of Criminal Law, 17th Edn. 1958.

45. But Section 106 has no application to cases where the fact in question having regard to its nature is such as to be capable of being known not only by the accused but also by others if they happened to be present when it took place. From the illustrations appended to the section, it is clear that an intention not apparent from the character and circumstances of the act must be established as especially within the knowledge of the person whose act is in question and the fact that a person found travelling without a ticket was possessed of a ticket at a stage prior in point of time to his being found without one, must be especially within the knowledge of the traveller himself : see Section 106 of the Indian Evidence Act, illustrations (a) and (b).

46. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence which if believed by the court would convince them of the accused's guilt beyond a reasonable doubt, the accused is in a position where he should go forward with countervailing evidence if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a *prima facie* case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might have been rebutted. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution (Wharton's Criminal Evidence, 12th Edn. 1955, Vol. 1, Ch. 2 p. 37 and foil). ***Leland v. State*** reported in 343 U.S. 790=96 L.Ed. 1302, ***Raffel v. U.S.*** reported in 271 U.S. 294=70 L.Ed. 1054.

WHAT IS "PRIMA FACIE CASE" IN THE CONTEXT OF SECTION 106 OF THE EVIDENCE ACT?

47. The Latin expression prima facie means "at first sight", "at first view", or "based on first impression". According, to Webster's Third International Dictionary (1961 Edn.), "prima facie case" means a case established by "prima facie evidence" which in turn means "evi-Ideuce sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted". In both civil and criminal law, the term is used to denote that, upon initial examination, a legal claim has sufficient evidence to proceed to trial or judgment. In most legal proceedings, one party (typically, the plaintiff or the prosecutor) has a burden of proof, which requires them to present prima facie evidence for each element of the charges against the defendant. If they cannot present prima facie evidence, or if an opposing

party introduces contradictory evidence, the initial claim may be dismissed without any need for a response by other parties.

48. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding death.

49. The presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved.

50. To explain what constitutes a prima facie case to make Section 106 of the Evidence Act applicable, we should refer to the decision of this Court in ***Mir Mohammad*** (supra), wherein this Court has observed in paras 36 and 37 respectively as under:

> *"36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*
>
> *37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."*
>
> (Emphasis supplied)

51. We should also look into the decision of this Court in the case of ***Ram Gulam Chaudhary and Others v. State of Bihar*** reported in (2001) 8 SCC 311, wherein this Court made the following observations in para 24 as under:

> *"24. Even otherwise, in our view, this is a case where Section 106 of the Evidence Act would apply. Krishnanand Chaudhary was brutally assaulted and then a chhura-blow was given on the chest. Thus chhura-blow was given after Bijoy Chaudhary had said "he is still alive and should be killed". The appellants then carried away*

the body. What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the appellants. The appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary has not been since seen alive. In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. We, therefore, see no substance in this submission of Mr Mishra."

(Emphasis supplied)

52. In the case on hand it has been established or rather proved to the satisfaction of the court that the deceased was in company of her husband i.e., the appellant-convict at a point of time when something went wrong with her health and therefore, in such circumstances the appellant-convict alone knew what happened to her until she was with him.

FAILURE ON THE PART OF THE APPELLANT-CONVICT IN OFFERING ANY PLAUSIBLE EXPLANATION IN HIS FURTHER STATEMENT RECORDED UNDER SECTION 313 OF THE CRPC

53. We take notice of the fact that the appellant-convict (husband) has not explained in any manner as to what had actually happened to his wife more particularly when it is not in dispute that the appellant-convict was in company of his wife i.e., deceased. It is important to bear in mind that the deceased died on account of poisoning. The poison which was detected in the viscera was found to be "aluminium phosphide". Although, the appellant-convict tried to project a picture that no sooner the deceased fell sick than

he immediately took her to the Sanjay Gandhi Hospital at Delhi, yet, there is no evidence worth the name in this regard. The appellant-convict was expected to lead some evidence as to what had transpired at the Sanjay Gandhi Hospital. He has maintained a complete silence. It is only the appellant-convict who could have explained in what circumstances and in what manner he had taken his wife to the Sanjay Gandhi Hospital and who attended his wife at the hospital. If it is his case, that his wife was declared dead on being brought at the hospital then it is difficult to believe that the hospital authorities allowed the appellant to carry the dead body back home without completing the legal formalities.

54. In the aforesaid context, we must look into the decision of this Court in the case of ***Deonandan Mishra v. The State of Bihar*** reported in AIR 1955 SC 801. In the said decision, there is a very important passage in which, the learned Judges deal with the effect of failure of the accused to offer any explanation for circumstances appearing in evidence against him in a prosecution based upon circumstantial evidence. At the cost of repetition, the law is very clear that the accused is not bound to offer any explanation, that there is no burden cast upon him to do so and that the onus of proof does not shift in respect of the vital matter of guilt at any stage of a criminal trial. But as stated by this Court:

> *"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which, if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain."*
>
> (Emphasis supplied)

55. In our view, the aforesaid passage applies with great force to the facts and circumstances of the present case.

56. Even where there are facts especially within the knowledge of the accused, which could throw a light upon his guilt or innocence, as the case may be, the accused is not bound to allege them or to prove them. But it is not as if the section is automatically inapplicable to the criminal trials, for, if that had been the case, the Legislature would certainly have so enacted. We consider the true rule to be that Section 106 does not cast any burden upon an accused in a criminal trial, but that, where the accused throws no light at all upon the facts which ought to be especially within his knowledge, and which could support any theory of hypothesis compatible with his innocence, the Court can also consider his failure to adduce any explanation, in consonance with the principle of the passage in ***Deonandan Mishra*** (supra), which we have already set forth. The matter has been put in this form, with reference to Section 106 of the Evidence Act, in ***Smith v. R.*** reported in 1918 A.I.R. Mad. 111, namely, that if the accused is in a position to explain the only alternative theory to his guilt, the absence of explanation could be taken into account. In the present case, taking the proved facts together, we are unable even to speculate about any alternative theory which is compatible with the innocence of the accused.

57. In the aforesaid context, we may also refer to and rely on a decision of this Court in ***Kalu alias Laxminarayan v. State of Madhya Pradesh*** reported in (2019) 10 SCC 211, wherein this Court after referring to its various other decisions on the applicability of Section 106 of the Evidence Act observed as under:

> *"16. In view of our conclusion that the prosecution has clearly established a prima facie case, the precedents cited on behalf of the appellant are not considered relevant in the facts of the present case. Once the prosecution established a prima facie case, the appellant was obliged to furnish some explanation under Section 313 CrPC with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased."*
>
> (Emphasis supplied)

58. We should also look into the decision of this Court in the case of ***Sawal Das v. State of Bihar*** reported in (1974) 4 SCC 193. In the said

case the trial court had come to the conclusion that, upon the established circumstances listed above, no other inference was left open to the Court except that the appellant and his father and stepmother had conjointly committed the murder of the deceased Smt. Chanda Devi on the morning of 28.05.1965 and that the appellant and his father had then hastily and stealthily disposed off the body in order to conceal the commission of the offence. It had also taken into account, in coming to this conclusion, the fact that the appellant had unsuccessfully set up a plea, in his written statement, that, Smt. Chanda Devi, who was alleged by him to be wearing a nylon Saree said to have caught fire accidentally while she was using a kerosene stove in her room, died of extensive burns on her body and collapsed. The appellant had alleged that Smt. Chanda Devi was debilitated and kept bad health due to frequent pregnancies and was also suffering from asthma, a weak heart, and abdominal complaints. She had given birth to six children.

59. In view of the aforesaid facts, this Court held as under:

"8. We think that the burden of proving the plea that Smt. Chanda Devi died in the manner alleged by the appellant lay upon the appellant. This is clear from the provisions of Sections 103 and 106 of the Indian Evidence Act. Both the trial Court and the High Court had rightly pointed out that the appellant had miserably failed to give credible or substantial evidence of any facts or circumstances which could support the pleas that Smt. Chanda Devi met her death because her Nylon Saree had accidentally caught fire from a kerosene stove. The trial Court had rightly observed that the mere fact that some witnesses had seen some smoke emerging from the room, with a kitchen nearby at a time when food was likely to be cooked, could not indicate that Smt. Chanda Devi's saree had caught fire. Neither the murdered woman nor the appellant nor any member of his family was shown to have run about or called for help against a fire.

9. Learned Counsel for the appellant contended that Section 106 of the Evidence Act could not be called in aid by the prosecution because that section applies only where a fact relating to the actual commission of the offence is within the special knowledge of the accused, such as the circumstances in which or the intention with which an accused did a particular act alleged to constitute an offence. The language of Section

106 of the Evidence Act does not, in our opinion, warrant putting such a narrow construction upon it. This Court held in Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : (1956) Cri LJ 827] that the burden of proving a plea specifically set up by an accused, which may absolve him from criminal liability, certainly lies upon him. It is a different matter that the quantum of evidence by which he may succeed in discharging his burden of creating a reasonable belief, that circumstance, absolving him from criminal liability may have existed, is lower than the burden resting upon the prosecution to establish the guilt of an accused beyond reasonable doubt.

10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused. The crucial question in the case before us is : Has the prosecution discharged its initial or general and primary burden of proving the guilt of the appellant beyond reasonable doubt?"

(Emphasis supplied)

60. We also pose the very same question like the one posed in ***Sawal Das*** (supra) referred to above, "has the prosecution discharged its initial or general and primary burden of proving the guilt of the appellants beyond reasonable doubt?"

61. We are of the view that the circumstances narrated by us in para 28 of this judgment constitute more than a prima facie case to enable the prosecution to invoke Section 106 of the Evidence Act and shift the burden on the accused husband to explain what had actually happened on the date his wife died.

62. These appeals remind us of what this Court observed in the case of ***Dharam Das Wadhwani v. State of Uttar Pradesh:*** *"The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view*

of legitimate inferences flowing from evidence, circumstantial or direct." The role of courts in such circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women.

63. In the result, both the appeals fail and are hereby dismissed.

64. However, as Maheshwari Devi (mother-in-law) appellant of Criminal Appeal No. 2430 of 2014 has been convicted only for the offence punishable under Section 498A of the IPC, we reduce her sentence to the period already undergone. Even otherwise, she is on bail. Maheshwari Devi need not now surrender. Her bail bonds stand discharged.

65. Pending applications if any shall stand disposed of.

Headnotes prepared by:
Ankit Gyan

Appeals dismissed.