

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 357 OF 2005

State of Rajasthan

....Appellant

Thakur Singh

....Respondent

versus

J U D G M E N T

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 reversing the decision of the Trial Court.

The Facts

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.

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. 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 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.

Discussion and conclusion

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

15. We find that the High Court has not at all considered the provisions of Section 106 of the Evidence Act, 1872.¹ 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.

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

(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.

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:

“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 means facts that are *pre-eminent*ly 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.”

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

² 1956 SCR 199

³ (2006) 10 SCC 681

circumstances would indicate that the husband is responsible for the injuries. It was said:

“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.”

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

19. Similarly, in ***Dnyaneshwar v. State of Maharashtra***⁵ this Court observed that since the deceased was murdered in her

⁴ (1992) 3 SCC 106

⁵ (2007) 10 SCC 445

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.

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

"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."

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 in the following words:

6 (2009) 9 SCC 495

7 (2013) 14 SCC 420

8 (2000) 8 SCC 382

“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 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.

25. Learned counsel for Thakur Singh referred to ***Mahendra Pratap Singh v. State of Uttar Pradesh***⁹ 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 the High Court not to disturb the order of acquittal made by the Trial Court. This decision is not at all apposite.

⁹ (2009) 11 SCC 334

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 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.

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 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.

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 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.

Conclusion

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.

30. The appeal is allowed, as above.

.....J
(Madan B. Lokur)

.....J

(S.A. Bobde)

**New Delhi;
June 30, 2014**

