2026:AHC:130168-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4605 of 2017

Gauri Shankar and another

…..Appellants

Versus

State of U.P.

…..Respondent

Counsel for the Appellants	:	Dinesh Kumar Verma, Raghuraj Singh, Rakesh Pati Tiwari, Sushil Kumar Mishra
Counsel for the Respondent	:	G.A.

Along with :-

1. **Criminal Appeal No. 4606 of 2017**
   Sudhakar
   Versus
   State of U.P.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE SAURABH SRIVASTAVA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. By this judgment, we propose to decide Criminal Appeal No.4605 of 2017 and Criminal Appeal No.4606 of 2017.

2. Whereas Sudhakar, the appellant in Criminal Appeal No.4606 of 2017, and Gauri Shankar, appellant No.1 in Criminal Appeal No.4605 of 2017, stood their trial *vide* Sessions Trial No.194 of 2015 for the offences punishable under Sections 498-A, 304-B, 302, 323 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC') and Section 3/4 of the Dowry Prohibition Act, 1961 (for short, 'DP Act'), appellant No.2 in Criminal Appeal No.4605 of 2017, Smt. Munni Devi stood her trial on the selfsame

charges *vide* Sessions Trial No.291 of 2015. Both the sessions trials arose out of Case Crime No.191 of 2015, under Sections 498-A, 304-B, 302, 323 IPC and Section 3/4 DP Act, Police Station Bakewar, District Etawah, and, were, therefore, consolidated and tried together by Mr. Umesh Chandra Pandey, the then Additional District and Sessions Judge, Fast Track Court No.1, Etawah. The learned Additional Sessions Judge, by means of the impugned judgment and order dated 22.07.2017, has convicted all the three appellants, who have preferred the two appeals aforesaid of the offence punishable under Section 302/34 IPC and sentenced each of them to suffer imprisonment for life, besides imposing a fine of Rs.20,000/- upon each of them.

3. The first informant, Kishan Babu, lodged a written report with the Station House Officer, P.S. Bakewar, District Etawah dated 10.05.2015, saying that he had married his daughter on 28.06.2012 to Sudhakar son of Gauri Shankar, a resident of Village Tadwa Kachhiyan, P.S. Bakewar, District Etawah. In the marriage, he had given away to the newly weds a sum of Rs. 3 lacs in cash, besides movables worth Rs.1.50 lacs. In addition, he had also given his daughter a ring besides earrings and a chain. Shortly after marriage, her daughter's husband Sudhakar, mother-in-law Munni Devi, father-in-law Gauri Shankar, brother-in-law (*jeth*) Pratap Singh and sister-in-law (*nanad*) Neeti and others without rhyme or reason, commenced indulging in physical violence. They would beat up his daughter and demand rupees one lac in cash, besides a Pulsar motorcycle. The informant said that his daughter complained to him in the matter a number of times over and also said that her husband Sudhakar would come back home in the evening drunk. She also said that in that inebriated state, he would beat her up and demand money besides the motorcycle. The informant goes on to say that in this connection, he spoke to the appellant Gauri Shankar on a number of occasions and also convened a *panchayat*. Next, Gauri

Shankar, in retaliation to the *panachayat*, threatened his daughter a number of times. The informant goes on to say that he brought in the mediator, who had settled the marriage, one Virendra Singh, informing him of the matter, but Sudhakar, his parents, brother and sister, would not relent as they had become slaves to their habit. On the 8th of May, 2015 at about 11 o'clock, he received a call on his mobile No. 9897924296 from mobile No. 7409697499, where his daughter Preeti called him to say that he should rush to her place and take her away because her in-laws were beating her up and were going to lock her up in a room in order to do her to death. The informant says that he told her daughter not to loose her nerve and that he would soon be there. While this conversation was going on, the phone was disconnected. The informant, thereupon, along with his brother Lakhan Singh and another Satya Prakash, a total of three men, rode a motorcycle to his daughter's place, reaching there by 2 o'clock. There, he saw that the inmates of the house, upon seeing him, avoided him. The informant entered the house and saw that his daughter was lying dead. She had injuries to her neck and arms and her face had yellowish marks. Upon seeing the informant, all the inmates of the house deserted the place. In the meantime, Nanak @ Sahbeer, Suresh Chandra and Abhay Ram, natives of his village, reached there and it was in their company that he proceeded to Aheripur Police Chowki. The Police there told him to go to Bakewar or Etawah. He called the Police on Number 100 Facility and then made a call to the Superintendent of Police on mobile No. 9454401043. He got a reply from the S.P. that he should proceed to the place of occurrence and the Police would reach there. The Police arrived by 7 o'clock in the evening and took away the dead body. The report requests the registration of a case and necessary proceedings.

4. On the basis of the aforesaid report, a case was registered by the Police, being Crime No.191 of 2015, under Sections 498-A,

323, 304-B IPC and Section 3/4 DP Act, Police Station Bakewar, District Etawah. The check FIR, that was drawn up, shows that the crime was registered on 10.05.2015 at 11.30 a.m. The distance of the police station is shown to be nine kilometers from the place of occurrence.

5. A Tehsildar, on the instructions of the Sub-Divisional Officer, held inquest with the assistance of a Sub-Inspector of Police on 09.05.2015 at the mortuary, where the dead body was retained.

6. The dead body of the deceased was subjected to autopsy on 09.05.2015 at 2.00 p.m. The autopsy report is on record as Ex. *Ka*-13. The doctor, on external examination, found the following antemortem injuries:

> (1) Ligature mark present continuously horizontal about 29.0 x 1.0 in neck below the thyroid. The base of the groove soft & reddish. Subcutaneous tissue under the mark ecchymosed.
>
> (2) Contusion 6.0 x 0.5 cm Lt. are just below shoulder joint laterally.
>
> (3) Contusion 6.0 x 4.0 cm on Rt. side of abdomen just lateral to umbilicus.
>
> (4) Multiple contusions Rt. lower limb.
>
> (5) Contusion 5.0 x 4.0 cm Rt. hip.
>
> (6) Contusion 7.0 x 4.0 cm Lt. hip laterally.
>
> (7) Contusion 6.0 x 5.0 cm Lt. thigh just above popliteal fossa.

The cause of death opined by the autopsy doctor in the postmortem report is asphyxia due to strangulation. The hyoid bone was found fractured on the right side.

7. The Investigating Officer investigated the case and submitted two charge-charges, *viz*: one dated 24.06.2015 against Sudhakar and Gauri Shankar and the other dated 20.10.2015 against Pratap Singh, Smt. Munni Devi and Smt. Neeti. The appellants were produced before the learned Magistrate, who took the cognizance and furnished them copies of the relevant prosecution papers as provided under Section 207 Cr.P.C.

Thereafter, the case against the appellants Sudhakar and Gauri Shankar was committed to the Court of Sessions for trial on 22.07.2015 and on 10.11.2015 against the appellant Munni Devi, besides the two co-accused Pratap Singh and Neeti.

8. Mr. Gajendra Singh, the then Additional Sessions Judge, Court No.4, Etawah, proceeded to frame charges against the appellants Sudhakar and Gauri Shankar together *vide* order dated 14.09.2015, numbering four, to wit, firstly, under Section 498-A IPC; secondly, under Section 304-B IPC and alternatively under Section 302 IPC; thirdly, under Section 323 read with Section 34 IPC; and, fourthly, under Section 3/4 DP Act. Charges against the appellant, Munni Devi, were also framed by Mr. Gajendra Singh, the then Additional Sessions Judge, Court No.4, Etawah on 02.01.2016 along with the co-accused Pratap Singh and Neeti jointly on like counts as the appellants Sudhakar and Gauri Shankar.

9. The prosecution examined the following witnesses in support of their case:

1. PW-1 – Kishan Babu, father of the deceased and the informant of the case,

2. PW-2 – Manoj Kumar, brother of the deceased,

3. PW-3 – Vineet Devi, sister-in-law (bhabhi) of the deceased,

4. PW-4 – Lakhan Singh, uncle of the deceased,

5. PW-5 – Satya Prakash, a native of the informant's village,

6. PW-6 – Virendra Kumar, mediator of the marriage,

7. PW-7 – Suresh Chandra, a native of the informant's village,

8. PW-8 – Abhay Ram, a native of the informant's village,

9. PW-9 – Jitendra Kumar, another brother of the deceased,

10. PW-10 – Lady Constable 526 Kalpana Devi, who scribed of the check FIR and made other relevant entries,

11. PW-11 – Dr. Sanjiv Kumar, who conducted postmortem of the deceased,

12. PW-12 – Shiv Narain Pandey, the then Naib Tehsildar, Bharthana, District Etawa, who got prepared the inquest.

10. The prosecution produced the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report lodged with Police Station Bakewar, District Etawah, proved by PW-1, Kishan Babu
2	Ex. Ka-2	Charge sheet dated 24.06.2015 submitted against Sudhakar and Gauri Shankar
3	Ex. Ka-3	*Check* FIR dated 10.05.2015, proved by PW-10, Lady Constable Kalpana Devi
4	Ex. Ka-4	Site-plan of the place of occurrence dated 10.05.2015
5	Ex. Ka-5	Carbon Copy of GD Entry No.14 Time 09.05 hours dated 14.09.2015
6	Ex. Ka-6	Recovery memo dated 10.05.2015 taking into possession marriage card of the deceased
7	Ex. Ka-7	Report of the Forensic Science Laboratory dated 08.05.2015
8	Ex. Ka-8	Inquest report dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
9	Ex. Ka-9	Letter to the C.M.O. dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
10	Ex. Ka-10	Letter to the R.I. dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
11	Ex. Ka-11	Photo Lash dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
12	Ex. Ka-12	Challan Lash dated 09.05.2015, proved by PW-12, Shiv Narain Pandey
13	Ex. Ka-13	Postmortem Report of the deceased dated 09.05.2015, proved by PW-11, Dr. Sanjiv Kumar
14	Ex. Ka-14	Charge sheet dated 20.10.2015 submitted against Pratap Singh, Smt. Munni Devi and Smt. Neeti
15	Ex. Ka-15	Carbon Copy of GD Entry No.16 Time 11.30 hours dated 10.05.2015, proved by PW-10, Lady Constable Kalpana Devi

11. After the prosecution evidence was over, the statements of the three appellants were recorded under Section 313 Cr.P.C. on 21.07.2016 and their supplementary statements were recorded under Section 313 Cr.P.C. on 06.07.2017.

12. The learned Trial Judge *vide* the judgment and order impugned proceeded to acquit the co-accused Pratap Singh and Smt. Neeti of the offences under Sections 498-A, 304-B, 302, 323/34 IPC and Section 3/4 DP Act, extending to them the benefit of doubt. However, the appellants, Sudhakar, Gauri Shankar and Smt. Munni Devi, were convicted of the offence under Section 302/ 34 IPC on the basis of circumstantial evidence. They were, however, acquitted of the charges under Sections 498-A, 304-B, 323/34 IPC and Section 3/4 DP Act. All the three appellants, as already said, were sentenced to suffer imprisonment for life, besides being imposed with a fine of Rs.20,000/- each.

13. Aggrieved, these appeals have been preferred.

14. Heard Mr. Rakesh Pati Tiwari, learned Counsel for the appellant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of the State and perused the record.

15. Now, this is a case which was reported to the Police by the deceased's father through a written information that was lodged with the Police on 10.05.2015 at 11.30 a.m. Admittedly, the incident had happened on 08.05.2015 at 11.00 a.m. The Police had got information of the crime before the formal registration of the FIR with the deceased's father, PW-1, calling the Dial 100 facility and then reaching the Superintendent of Police over telephone, who detailed the Police to immediately reach the place of occurrence. The inquest in this case was held on 09.05.2015, as would appear from Ex. *Ka*-8, and the autopsy too was done on 09.05.2015, a fact which Ex. *Ka*-3 demonstrates in ample measure. The FIR was lodged after the Police were already in know of the crime and had taken substantial steps by holding the inquest and causing the autopsy to be done. The FIR came to be registered, as already said, on 10.05.2015 at 11.30 a.m., a fact evident from a perusal of Ex. *Ka*-3.

16. During investigation, the statements of a number of witnesses for the prosecution were recorded under Section 161 Cr.P.C. They supported the prosecution case of a dowry demand by the deceased's in-laws and then the case of the in-laws doing her to death by throttling her. It must be remarked that none of the witnesses in this case are eye-witnesses. Some of them, like the first informant, PW-1, or the deceased's brother, PW-2, Manoj Kumar, may be witnesses of some relevant facts, particularly *res gestae*, but none of them have seen the occurrence. Therefore, we do not have an eye-witness account. It is a case that ultimately turns upon circumstantial evidence. The unfortunate part of the case is that nine witnesses of fact have been examined, where a number of them are blood relatives of the deceased, but they have turned hostile in the dock evidence. Therefore, some of the relevant facts, that could have come in evidence of these witnesses, have been lost to hostility.

17. The first informant, who is the deceased's father and testified during trial as PW-1, has disowned the FIR by the most unconvincing explanation about his act in lodging the FIR with all its contents, accusing the appellants, as also his conduct in frantically contacting the Police by reaching the Dial 100 facility as well as the Superintendent of Police, all of which ultimately led to the arrival of the Police at the scene of crime. It is rather odd that the Police, upon reaching the scene of crime and finding the dead body of a young daughter-in-law in the matrimonial home, did not take down an oral information or ask for a written report from PW-1 or whoever was willing to report and promptly register an FIR in the gruesome crime before embarking upon their investigation. They commenced investigation by causing the dead body to be removed to the morgue, where they held the inquest and then caused the autopsy to be done, much before the FIR, giving rising to the crime, was registered. Ideally, these steps should have been taken after the registration of a prompt FIR, on

the basis of an oral or written information from the relatives of the deceased, who were present or whoever was willing to report. We say this for the reason that this was not a case where a dead body was found in an unknown place with no clue about the cause of the unnatural death. It is invariably in such cases that an inquest has to be done promptly without awaiting the registration of a crime.

18. The other lapse, which is apparent on the part of the Police, is that they did not hold the inquest at the place where the body was found, that is to say, the deceased's in-laws' house. An inquest should be held wherever the body is found and not in the manner done here, that is to say, by first dispatching the body to the morgue and then holding the inquest there, away from the place of occurrence, where the deceased's body was found lying, that is to say, her matrimonial home. The prosecution witnesses of fact, who are mostly blood relatives of the deceased, as already remarked, and have testified in the dock as PW-1 to PW-9, have not at all supported the prosecution case. Quite apart, the prosecution witnesses of fact, if they had faithfully testified, could have proved some relevant facts, that would add to the chain of circumstances, cited by the prosecution to bring home the charge. There is no manner of doubt that given the state of things in this case, it is a case that primarily rests on circumstantial evidence. The testimony of the prosecution witnesses 1 to 9 could only have added to proof, may be of a few of the circumstances, on which the prosecution wish to rely. Therefore, with the witnesses turning hostile, all that has happened is the failure of proof of some relevant facts or circumstances; nothing more.

19. This being a case of circumstantial evidence, the standard, by which evidence has to be evaluated, is well-known. In a case of circumstantial evidence, the law requires the prosecution to establish circumstances that form so complete a chain that there

is no other inference possible, but one consistent with the guilt of the accused. Anything lesser is not acceptable and would entitle the accused to the benefit of doubt. The five principles, by which a case of circumstantial evidence can alone be established, have been summarized by the Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, where it has been held:

> "**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]
>
> "Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
>
> (*2*) the facts 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,
>
> (*3*) the circumstances should be of a conclusive nature and tendency,
>
> (*4*) they should exclude every possible hypothesis except the one to be proved, and
>
> (*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
>
> **154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

20. There is one feature to this case, which is commonplace in homicides suffered by women in their matrimonial homes. That oft-occurring feature in such cases is that there are hardly eye-

witnesses of the occurrence because in the nature of things, the terminal violence takes place in the four-corners of the husband's place, where more often than not the unfortunate victim has neither a relative nor a friend nor a person of such high moral fiber that he or she would speak out the truth, though related to the accused by blood or unconnected to both of them, say a trusted servant of the victim's in-laws. Therefore, in cases that are not dowry deaths, as defined under Section 304-B IPC, the prosecution is not relieved of their burden by any kind of a reversal thereof upon the establishment of certain facts. If it is a case where the charge to be considered is one of murder, punishable under Section 302 IPC, pure and simple, the prosecution would have to establish the case by circumstances beyond reasonable doubt. Section 106 of the Evidence Act also does not come to the rescue of the prosecution in the matter of discharging their overall burden proving the accused's guilt. All that Section 106 comes in handy in such a situation is that after the prosecution have sufficiently established facts and there are blind spots, that are known to the accused alone, and facts regarding these have to be within their special knowledge, a limited burden to explain those facts, consistent with their innocence in the sense of an evidential burden, would shift to the accused. If the accused can offer a good explanation supported by reasonable evidence, explaining facts especially within their knowledge, consistent with their innocence, that is all that the accused may have to do about it. If, however, the accused fail to offer a cogent explanation for a fact that is inculpatory and especially within their knowledge, it would be added to the chain of circumstances appearing against him. The aforesaid principle is elucidated by the Supreme Court in **Balvir Singh v. State of Uttarakhand, (2023) 16 SCC 575**, where it has been held:

> “**35.** 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".

36. In *Shambu Nath Mehra* v. *State of Ajmer* [*Shambu Nath Mehra* v. *State of Ajmer*, 1956 SCC OnLine SC 27 : 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 : (SCC OnLine SC para 9)

> "*9*. … 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 and 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. *R.* [*Attygalle* v. *R.*, 1936 SCC OnLine PC 20 : AIR 1936 PC 169 (AIR V 23)] and *Stephen Seneviratne* v. *R.* [*Stephen Seneviratne* v. *R.*, 1936 SCC OnLine PC 57 : (1936) 3 All ER 36 at 49] "
>
> (emphasis in original)

37. The aforesaid decision of *Shambu Nath* [*Shambu Nath Mehra* v. *State of Ajmer*, 1956 SCC OnLine SC 27 : AIR 1956 SC 404] has been referred to and relied upon in *Nagendra Sah* v. *State of Bihar* [*Nagendra Sah* v. *State of Bihar*, (2021) 10 SCC 725 : (2022) 1 SCC (Cri) 127] , wherein this Court observed as under : (SCC pp. 734-35, paras 22-23)

> "*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)

38. In *Tulshiram Sahadu Suryawanshi* v. *State of Maharashtra* [*Tulshiram Sahadu Suryawanshi* v. *State of Maharashtra*, (2012) 10 SCC 373 : (2013) 1 SCC (Cri) 193] , this Court observed as under : (SCC pp. 381-82, para 23)

"*23* [**Ed.** : Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./58/2012 dated 9-10-2012.]. 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* [*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 [*Shambu Nath Mehra* v. *State of Ajmer*, 1956 SCC OnLine SC 27 : AIR 1956 SC 404] 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* [*Shambu Nath Mehra* v. *State of Ajmer*, 1956 SCC OnLine SC 27 : AIR 1956 SC 404] the learned Judge has stated the legal principle thus : (SCC OnLine SC para 9)

> *"9*. 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 in original and supplied)

39. In *Trimukh Maroti Kirkan* v. *State of Maharashtra* [*Trimukh Maroti Kirkan* v. *State of Maharashtra*, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] , 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 : (SCC pp. 690-91 & 694, paras 14-15 & 22)

> *"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* [*Stirland* v. *Director of Public Prosecutions*, 1944 AC 315 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab* v. *Karnail Singh* [*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.

***

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)

40. The question of burden of proof, where some facts are within the personal knowledge of the accused, was examined by this Court in *State of W.B.* v. *Mir Mohammad Omar* [*State of W.B.* v. *Mir Mohammad Omar*, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] . 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 34IPC, 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 : (*Mir Mohammad Omar case* [*State of W.B.* v. *Mir Mohammad Omar*, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] , SCC p. 392)

"*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)

41. Applying the aforesaid principles, this Court in *Mir Mohammad Omar case* [*State of W.B.* v. *Mir Mohammad Omar*, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] while maintaining the conviction under Section 364 read with Section 34IPC, reversed the order of acquittal under Section 302 read with Section 34IPC, and convicted the accused under the said provision and sentenced them to imprisonment for life.

42. 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.

> **43.** 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.
>
> **44.** 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.""

21. The foremost circumstance that appears in this case is the disowned FIR. Though PW-1 has said that he did sign the written information, on the basis of which the FIR was registered, he has disowned its contents by saying that some men from his village got an application typed out, whereon they had his signatures affixed. They did not read out its contents to him. The FIR was lodged two days after the occurrence on 10.05.2015. It is not a case where at the contact point with tragedy when the first informant, PW-1, was out of his senses, somebody wrote out a script and made him sign it. In the space of 48 hours, it is difficult to believe that the contents of the FIR were ones where the informant's mind did not accompany his signatures. Apparently, the FIR was lodged after the inquest and autopsy were all over.

Therefore, the FIR, though one which can be castigated as the product of afterthought and premeditation, is certainly not a document that may be disowned for its contents by the first informant on the pretext that he signed it without reading or understanding the contents in a moment of great distress. The FIR, though not a substantive piece of evidence, is certainly the earliest account of the occurrence, which has its own evidentiary value. The circumstance, that PW-1 within two days of the occurrence nominated the appellants, besides the two other co-accused, as perpetrators of the crime, is certainly very relevant notwithstanding his hostility in the dock evidence.

22. The second most important circumstance appearing against the appellants is that the victim died an unnatural death within the four-walls of her matrimonial home, suffering as many as seven injuries with a continuous horizontal ligature mark, the cause of death being medically opined to be 'asphyxia due to strangulation'. The learned Counsel for the appellants about this circumstance has argued that the autopsy doctor in his cross-examination has said that in case of hanging a ligature mark is there, and in cases involving hanging, death occurs as a result of oxygen supply being cutoff. In Hindi, the relevant evidence reads: *Hanging vale cases me dam ghutne se maut hoti hai*. The learned Counsel for the appellants has urged that it is, therefore, not conclusively proved that the deceased was strangulated to death by someone else. She could have well died as a result of hanging. Unfortunately, for the appellants, the doctor in the autopsy report has clearly opined the case to be one of death, as a result of asphyxia due to ante-mortem strangulation. Moreover, the ligature mark is continuously horizontal about 29.0 x 1.0 cm in the neck below the thyroid. In the base of the groove, soft and reddish subcutaneous tissue under the mark is ecchymosed. The hyoid bone is fractured on the right side. The general appearance of the dead body showed at the time of autopsy a protruded tongue and

the eyes bulged out. In addition to the injury to the neck, there are six other injuries, already noted, all of which are contusions on the right lower limb, right hip, left hip and the left thigh, besides one on the abdomen and still another on the shoulder joint.

23. In the celebrated treatise on **Medical Jurisprudence – A Textbook of Medical Jurisprudence and Toxicology by Modi, 24th Edition, published by Lexis Nexis, Butterworths Wadhwa,** a comparative study of the postmortem presentation of injuries and other medical features in cases of hanging and strangulation is to be found at Page 456 (Chapter 19). The comparative study is important and reproduced here:

	Hanging		Strangulation
1	Mostly suicidal.	1	Mostly homicidal.
2	Face–Usually pale and petechiae rare.	2	Face–Congested, livid and marked with petechiae.
3	Saliva–Dribbling out of the mouth down on the chin and chest.	3	Saliva–No such dribbling.
4	Neck–Stretched and elongated in fresh bodies.	4	Neck–Not so.
5	External signs of asphyxia, usually not well marked.	5	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).
6	Ligature mark–Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	6	Ligature mark–Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
7	Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7	Abrasions and ecchymoses round about the edges of the ligature mark, common.
8	Subcutaneous tissues under the mark–White, hard and glistening.	8	Subcutaneous tissues under the mark–Ecchymosed.
9	Injury to the muscles of the neck–Rare.	9	Injury to the muscles of the neck–Common.
10	Carotid arteries, internal coats ruptured in violent cases of a long drop.	10	Carotid arteries, internal coats ordinarily ruptured.
11	Fracture of the larynx and trachea– Very rare and may be found that too in judicial hanging.	11	Fracture of the larynx trachea and hyoid bone
12	Fracture-dislocation of the cervical vertebrae–Common in judicial hanging.	12	Fracture-dislocation of the cervical vertebrae–Rare.
13	Scratches, abrasions and bruises on the face, neck and other parts of the body–Usually not present.	13	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body–Usually present.
14	No evidence of sexual assault.	14	Sometimes evidence of sexual assault.
15	Emphysematous bullae on the surface of the lungs–Not present.	15	Emphysematous bullae on the surface of the lungs–May be present.

24. In addition about the inference about strangulation from a hyoid bone fracture, the following opinion is expressed by Modi at Page 462 of the treatise:

> "The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, postmortem detection of hyoid fracture is relevant to the diagnosis of strangulation."

25. A look at the postmortem report in this case would show, as already noticed, that the ligature mark is 'continuously horizontal'. In cases of hanging, the ligature mark is oblique, non-continuous and placed high up in the neck between the chin and the larynx, as the comparative study with cases of strangulation would show (*supra*). Similarly, in cases of strangulation, the ligature mark is horizontal or transverse continuous, round the neck, low down the neck below the thyroid and in the base of the groove or furrow, the tissue is soft and reddish. Here, the ligature mark is below the thyroid and the base of the groove shows soft and reddish subcutaneous tissue, which is ecchymosed. This is also typical of strangulation, where, according to Modi, subcutaneous tissue under the mark is ecchymosed, as distinguished from hanging, where it would be white, hard and glistening. Fracture of larynx, trachea and hyoid bone is also typical of a case of strangulation. Here, admittedly, the hyoid bone is fractured on the right side. The doctor's opinion, therefore, in the autopsy, which is clear about a case of strangulation and has not been materially impeached during cross-examination, is to be accepted. It is a case of death on account of ante-mortem asphyxia as a result of strangulation.

26. Above all, considering the wholesome cause of death, it is evident that the deceased was subjected to much violence before her death. Apart from the ligature mark to the neck, that accounts for the fatal injury, there are six other injuries already noticed, all of which are contusions over various parts of the body, particularly the limbs. This would show, in our opinion, ante-mortem struggle

and an act of overpowering the deceased before she was done to death.

27. Therefore, the next circumstance that is firmly established is that the deceased was violently murdered by an act of throttling her to death. On the evidence established, the deceased and the three appellants were the inmates in the house, where she suffered a fatal assault and died. It has figured in the evidence of PW-1, by way of a very casual remark, much in contradiction to the first information version, that he came to know later on that his daughter had been murdered by miscreants. PW-9, Jitendra Kumar, who is a brother of the deceased, has also spoken in the same vein in his examination-in-chief, casually saying that he came to know later on that his sister was done to death by miscreants.

28. Now, assuming for a moment that there were some intruder in the deceased's matrimonial home, who had entered the premises and murdered the victim. There is no earthly reason why miscreants would enter the deceased's matrimonial home, unless they had an intention to commit some offence, like theft, robbery or dacoity. There is no such case of robbery or dacoity. Assuming further that miscreants entered the deceased's home with whatever intention, assaulted and killed her, there is no earthly reason why the assault would be limited to the deceased alone and all other inmates would remain unscathed. There could be an explanation for it in a case of robbery, if the appellants were to say in their statements under Section 313 Cr.P.C. that the robbers entered the matrimonial home and were resisted by the deceased alone, leading to violence and her death. In a situation of the last mentioned kind, one could think of the other inmates remaining uninjured. These are hypotheses to analyze and understand the casual remark in the testimony of PW-1 and PW-9 that they came

to know later on that some unknown miscreants murdered the victim.

29. The next inculpatory circumstance, therefore, is that in her matrimonial household comprised of the three appellants and the deceased, it was the deceased alone, who received violent injuries, including the one that resulted in her death, with all others remaining unscathed. Still further is the circumstance that assuming that on account of an intrusion from outside, say intruding robbers, the deceased was done to death, it would be the natural sequence of things that out of the three appellants, her husband or her father-in-law, would have promptly called the Police and reported the matter. The Police were after all called by the deceased's father, PW-1, the first informant. No one from the deceased's family ever intimated the Police either at the station or the Dial 100 Facility or by reaching the Superintendent of Police. This is a circumstance, which is again inculpatory and one link in the chain of the different circumstances that point a finger to the guilt of the appellants.

30. Now, that there are an overbearing chain of circumstances, almost complete, pointing to the guilt of the appellants, where the deceased passed away in her matrimonial home, in the company of the appellants, throttled to death with no injury sustained by any other inmate, say as a result of any intruder's assault, the stage would have arrived where the appellants would be obliged to reveal facts especially within their knowledge attending the deceased's homicidal death.

31. Assuming that the information about the victim's death was given to PW-1 by her father-in-law, the appellant Gauri Shankar, there is not a word in his testimony or that of any other witness or the appellants' explanation under Section 313 Cr.P.C. as to how the victim met a violent death with a fatal injury of throttling her to death being established by medical evidence. There were a

number of other injuries too, indicative of violence suffered by the victim before she passed away. Now, the fact, how the victim met an unnatural death within the four-walls of her matrimonial home, is something especially within the knowledge of the appellants. The appellants having not come up with any explanation either about the injuries sustained by the deceased, that were apparently non-fatal or the fatal injury of a continuous ligature mark around her neck that led to her death on account of asphyxia as a result of throttling.

32. Given all these circumstances, burden under Section 106 of the Evidence Act would lie upon the appellants to explain how the deceased came to be done to death in a most violent manner within the four corners of her matrimonial home. Absent that explanation by the appellants, by as much as a hint even in the statements under Section 313 Cr.P.C., this is a clinching link of circumstances pointing to the appellants' guilt.

33. The following circumstances appear against the appellants:

(1) The deceased was the daughter-in-law of the appellants Gauri Shankar and Smt. Munni Devi and the wife of Sudhakar, the appellant in Criminal Appeal No. 4606 of 2017 and was staying together with the appellants as part of their household when she died an unnatural and violent death;

(2) The fact that within two days of the occurrence, the first informant, PW-1, lodged an FIR, nominating the three appellants as the perpetrators of the crime and notwithstanding the appellants disowning its contents, though admitting his signatures, we have found the FIR to be a dependable and the earliest account of the occurrence;

(3) The fact that the victim was murdered within the four corners of her matrimonial home with the cause of death established being asphyxia due to strangulation, besides there being as many as six other injuries on her body clearly showing ante-mortem violence;

(4) The fact that the superficially narrated story of some miscreants entering the deceased's home and murdering her, that has figured in the evidence of PW-1 and PW-9, the deceased's father and brother, both hostile witnesses, is utterly unbelievable because neither is there any evidence of a robbery being committed in the deceased's matrimonial home nor have the other inmates received any injuries, which all or some of them would certainly have received, if some miscreants had intruded in the house to commit any offence or depredation; and,

(5) the fact that assuming that the victim suffered at the hands of some intruders in her matrimonial home a violent death, the appellants who are her close relatives would have reported the matter to the Police and called them, but after all it was PW-1, who called the Police and lodged the FIR.

34. Now, all these circumstances put together, which point a very definitive finger towards the appellants committing the crime, the clincher or the last link in the chain of evidence comes from the fact that what actually happened in the four corners of the appellants' home, where the deceased was murdered, is a fact especially within the appellants' knowledge. The appellants having not come forward with an explanation about the circumstances in which the victim met an unnatural death or was violently murdered in her matrimonial home, leads to the inescapable conclusion taken together with the other circumstances in their entirety that it was the appellants, who did her to death.

35. In the totality of circumstances, we are not inclined to interfere with the impugned judgment and order of conviction or the sentences passed upon the appellants by the learned Additional Sessions Judge.

36. In the result, these appeals fail and are hereby **dismissed**. The appellants in Criminal Appeal No. 4605 of 2017, Gauri Shankar and Smt. Munni Devi are bail. They will surrender before the learned Chief Judicial Magistrate, Etawah in order to serve out

the sentences awarded to them. In case they do not surrender, the Chief Judicial Magistrate, Etawah will take coercive steps to secure their presence and commit them to prison. The appellant in Criminal Appeal No.4606 of 2017, Sudhakar is in jail. This order will be communicated to him through the Jail Superintendent concerned, wherever he is serving, by the Chief Judicial Magistrate, Etawah.

37. This judgment and order shall be communicated to the Chief Judicial Magistrate, Etawah by the Registrar (Compliance).

38. Let the lower court records be returned.

(Saurabh Srivastava, J.) (J.J. Munir, J.)

July 01, 2026
Anoop