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**(2015) 05 RAJ CK 0093**

**Rajasthan High Court (Jaipur Bench)**

**Case No:** Criminal Appeal No. 661 of 2005

Sunita

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision:** May 6, 2015

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 174, 313, 374
- Evidence Act, 1872 - Section 101, 106
- Penal Code, 1860 (IPC) - Section 202, 203, 302, 511

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J; Nisha Gupta, J

**Bench:** Division Bench

**Advocate:** Rajendra Sharma, Counsel, for the Appellant; Aladeen Khan, Public Prosecutor, Advocates for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Kanwaljit Singh Ahluwalia, J.

The case of the prosecution, in nut-shell, is that the present appellant, namely Smt. Sunita was married with one Gordhan @ Gordhan Lal Soni. Out of the wedlock, the appellant had given birth to two sons, namely Rohit @ Akshay (PW-13) and Kapil (PW-14) and one daughter, namely Priya. Gordhan Lal Soni, the husband of appellant, was employed as Peon in the Sales Tax Department. The family of the appellant was residing in Street No. 2, in front of Baldev Nagar, Gandhi Nagar, Gorsiwawas Road, Police Station, Christianganj, Ajmer. On the evening of 22.04.2004 at around 05:30 P.M. Gordhan Lal Soni died an unnatural death in his house.

2. The present appellant, Smt. Sunita, was tried by the Court of Additional Sessions Judge (Fast Track) No. 1, Ajmer for causing murder of her husband, Gordhan Lal Soni. Along with the present appellant, co-accused, namely Smt. Savitri Devi w/o Sunderlal Soni, Brijesh @ Raju @ Rajkumar s/o Sunder Lal Soni and Sunder Lal s/o Madan Lal Soni were also tried for offence punishable under Section 202/511 of

Indian Penal Code.

3. The trial Court, vide its impugned judgment dated 21.07.2005, acquitted Smt. Savitri Devi, Brijesh @ Raju @ Rajkumar and Sunder Lal, but, however, convicted the present appellant for offences punishable under Sections 302 and 203 of Indian Penal Code.

4. Having convicted the appellant - Smt. Sunita for causing murder of her husband, Gordhan Lal Soni, the trial Court, vide a separate order of even date, sentenced her as under:--

"For offence under Section 302 I.P.C. : to undergo life imprisonment and to pay a fine of Rs. 1000/-. In default of payment of fine, to further undergo three months simple imprisonment.

"For offence under Section 203 I.P.C. : to undergo two years simple imprisonment."

5. Aggrieved against her conviction pronounced and sentence awarded by the trial Court, appellant has instituted the present appeal under Section 374 of Code of Criminal Procedure, 1973, praying inter alia that her conviction and sentence, be set aside, and she be acquitted of the charges leveled against her.

6. Conviction of the appellant rests upon the testimony of two sons, namely Rohit @ Akshay (PW-13) and Kapil (PW-14).

7. In the present case, we have been called upon to determine the credibility of two child witnesses and as to whether deceased was murdered or had committed suicide.

8. Suffice it to say, prosecution, in order to bring home guilt of the appellant, in all, had examined nineteen witnesses and proved on record twenty-six documents, being Exhibit-P/1 to Exhibit-P/26.

9. The appellant, in her statement recorded under Section 313 Cr.P.C., has stated that she was not present at her house when her husband has died.

10. In defence, accused had examined three witnesses and also relied upon documents Exhibit-D/1 to Exhibit-D/5, which are the previous statements of Rohit @ Akshay and Kapil recorded by the Police under Section 161 Cr.P.C.

11. In the present case, Joshmohan I.P.S. (PW-15) on 23.04.2004 was posted as Station House Officer, Police Station, Christianganj, Ajmer. In the morning at 10:30 A.M., he received a telephonic information that Gordhan Lal Soni was murdered due to strangulation. The said information was recorded in the Daily Diary Register, entry of which has been proved as Exhibit-P/24-A. After receiving the said information, this witness constituted a Police team and reached at the cremation ground. In the cremation ground, about 50/100 persons were present and were doing preparation for cremation. The dead-body was examined and as per

information, marks of injury were found on the dead-body. Considering the death to be an unnatural, dead-body was sent for the Post Mortem. This witness had questioned the present appellant and the other ladies. On this, appellant disclosed that her husband had committed suicide and she presented a written-report Exhibit-P/15. The said report through Head Constable Ajay Singh was sent to the Police Station for registration of the case. The Post Mortem of dead-body of Gordhan Lal Soni was conducted by the Medical Board. Inquest proceedings of the dead-body (Exhibit-P/1) were also carried. Thereafter, dead-body was handed over to Rajkumar, the brother of Gordhan Lal Soni vide Exhibit-P/2. The Post Mortem Report (Exhibit-P/22) was made part of the investigation. This witness, being Investigating Officer, had recorded statements of Rohit @ Akshay and Kapil under Section 174 Cr.P.C. Thereafter, opinion of the Medical Board was obtained regarding the cause of death. During investigation, vide arrest memo (Exhibit-P/28), Investigating Officer had arrested appellant on 24.04.2004 at 05:15 P.M. After arrest, appellant made a disclosure statement (Exhibit-P/29) and voluntarily got recovered string (nada) with which she had strangled her husband. The said string (nada) was recovered vide memo Exhibit-P/4. The witness (PW-15), being Investigating Officer, had also prepared site-plan of the spot vide Exhibit-P/7. Lastly, this witness stated that appellant, Smt. Sunita admitted that her husband, after showing obscene C.D. used to sexually exploit her and she got C.D. recovered.

12. The criminal proceedings, in the present case, were set into motion, on the basis of formal First Information Report (Exhibit-P/27). The said First Information Report contains version given by the appellant, during interrogation. Since the said version will not be admissible, suffice it to say that the appellant during interrogation had stated to the Police that her husband had committed suicide by tying string (nada) around his neck.

13. Before we take note of evidence of the material witnesses, we shall have a quick glance on the remaining prosecution evidence.

14. Radheyshyam (PW-1) had attested inquest proceedings vide Exhibit-P/1. He further stated that vide Exhibit-P/2 dead-body was handed over to the brother of deceased.

15. Sampat (PW-2) stated that in his presence, Police had prepared site-plan of the spot (Exhibit-P/3). He had attested the same.

16. Jagdish (PW-3) had turned hostile to the prosecution case and stated that in his presence, site-plan was not prepared.

17. Manak Chand (PW-4) stated that the house situated at Gandhi Nagar, where Gordhan Lal Soni was residing, was sold by him to deceased one year before the alleged occurrence. This witness stated that Police had not recovered string (nada) in his presence. The witness further denied that the Police had not recovered any C.D. in his presence. This witness was declared hostile to the prosecution case and

was confronted with his previous statement recorded by the Police.

18. Indra Singh (PW-5) stated that he was posted as Head Constable at Police Station, Chistianganj, Ajmer. At that time, Lady Constable Smt. Ratna Devi has handed over the articles recovered during personal search of accused. This witness further proved various articles deposited during investigation and handed over to Constable Rajendra Singh (PW-6), who had carried the same to the State Forensic Science Laboratory Rajasthan, Jaipur.

19. Dr. Sumer Singh (PW-7) stated that he was posted as Medical Jurist at Ajmer. This witness on 24.04.2004 had medico-legally examined appellant, Smt. Sunita Soni @ Jhuma, and as per Injury Report (Exhibit-P/13), he had found following injuries on her person:--

- "1. Abrasion 2 x 1 cm on right elbow
2. Contusion 8 x2 on right leg upper 1/3 near knee.
3. Diffuse swelling on right foot
4. Complain of pain on left hand"s finger."

20. According to this witness (PW-7), Injury Nos. 1, 2 and 4 were simple in nature. Injury No. 3 was advised x-ray, but later-on same was also declared as simple in nature.

21. Ajay Singh (PW-8) stated that he was posted as Head Constable at Police Station, Christianganj. This witness had accompanied Investigating Officer to the spot after receiving a telephonic information regarding unnatural death. This witness had carried written-report (Exhibit-P/15) submitted by the present appellant to the Police.

22. In the written-report (Exhibit-P/15), appellant, Smt. Sunita, stated that she along with her three children and husband was residing at Street No. 2, Baldev Nagar, Gandhi Nagar, Ajmer. Her husband was posted as Peon in the Sales Tax Department. On 22.04.2004 at 05:30 P.M. her husband came to the house under the influence of liquor. Immediately on arrival, he started abusing her. When she restrained him, he started abusing more, gave two slaps on her face and caught hold of her hair. With a great difficulty, she got herself released from the grip of her husband. Thereafter, her husband was lying on the cot and giving abuses. She had switched on cooler and television. She raised volume of the television and went to the kitchen. After half an hour, she came in the room and found that her husband by putting string (nada) of petticoat had hanged himself. She found her dead. She informed her mother-in-law. Smt. Savitri Devi and other relatives. At 06:30 P.M. her in-laws came. She called her relatives on telephone. Immediately on arrival, her mother-in-law had removed string (nada) from the neck of her husband and had taken the dead-body for cremation. Lastly, she stated that her husband had

committed suicide.

23. We shall not take into consideration the statement (Exhibit-P/15) made by the appellant to the Police, as its voluntary character is under doubt.

24. However, we are convinced that the prosecution had laid enough evidence to prove guilt of the appellant.

25. Smt. Pani Devi (PW-9), the wife of Manak Chand, stated that she had sold her plot to Gordhan Lal Soni. This witness further stated that she was not aware whether Gordhan Lal Soni used to take liquor or used to quarrel with his wife. This witness was declared hostile by the prosecution.

26. Brahma Ram (PW-10) stated that he was posted as Sub-Inspector at Police Station, Christianganj, Ajmer. He further stated that in his presence, Head Constable, Ajay Singh (PW-8) presented written-report (Exhibit-15), on the basis of which a formal First Information Report (Exhibit-P/27) was registered.

27. Dr. R.K. Mathur (PW-11), being a Member of the Medical Board, had conducted autopsy on the dead-body of Gordhan Lal Soni.

28. As per Post Mortem Report (Exhibit-P/22), he had found the following injuries on the person of deceased :--

"Following ante-mortem external injury present :

1. Ligature mark 35 x 0.5 cm encircling the neck, continuously placed just above the level of thyroid cartilage. The mark on right side of neck has double impression, the upper one is 8 x 0.5 cm in size just above the main ligature mark. There is no peculiar pattern of the ligature (illegible) the ligature mark.

On the ligature mark in continuation with it, there is an abrasion obliquely placed 7 x 1.5 cm in size in front of neck in its middle part.

There is an abrasion 1 x 0.5 cm in size on right side of the neck just above the ligature mark. There is an abrasion 2 x 0.5 cm in size on lower part of neck in front just lateral to the middle line of the neck in left side.

2. Abrasion 1 x 1 cm in right side of chin.

3. Abrasion 5 x 2 cm on the right shoulder in its sup part. There is one abrasion 2 x 1 cm in size just inside the previous abrasion in right shoulder. Abrasion 1 x 1 cm in size is placed just below the previous abrasion in the right shoulder.

4. Eight abrasions varying in size from 0.5 cm x 0.5 cm to 2.5 cm x 1 cm on back of right elbow in an area 8 x 5 cm.

5. Abrasion 1 x 0.3 cm on right arm mid 1/3 laterally. An abrasion 1 x 0.5 cm in size on lower 1/3 of right arm laterally with another 2 x 0.5 cm on the same with upper 1/3 med.

6. Abrasion 3 x 0.5 cm in right forearm mid 1/3 dorsally with another abrasion 1 x 0.3 cm in size just below the previous one.
7. (illegible) abrasion placed one above other 1 x.3 cm size each on right forearm lower 1/3 ant.
8. Four abrasions 0.5 cm x 0.5 cm in size on back of left elbow.
9. Abrasion 3 x 1 cm on left shoulder post in upper part.
10. Abrasion 3 x 0.3 cm on left deltoid area of arm.
11. Abrasion on 1x 0.5 cm just below left knee lateral.

On dissection of neck.

The sub cut tissue underneath the ligature marks shows congestion and ecchymosis. There are over of ecchymosis in the ligature area with the layer of muscle, hyoid bone and thyroid cartilage - NAD. Neck there are engorged with blood."

29. As per opinion of the Doctor, the cause of death of the deceased was strangulation.

30. Ramdayal (PW-12) was posted as Head Constable at Police Station, Christianganj, Ajmer. This witness stated that on 23.04.2004 he received a telephonic information and noted the same in the Daily Diary Register, copy of which has been Exhibited and proved as Exhibit-P/24-A.

31. Joshmohan (PW-15), as already stated by us, being young I.P.S. Officer, during training was posted as Station House Officer, Police Station, Christianganj, Ajmer. This witness proved various facets of the investigation.

32. P.K. Saraswat (PW-18) stated that he was a Member of the Medical Board. This witness stated that after receiving the report of viscera from the chemical examiner, ethyl alcohol was found in the viscere, and as per his opinion, the cause of death was strangulation.

33. Ashraf (PW-19) got the spot photographed. He proved photographs vide Exhibit-P/30 to Exhibit-P/35 and the negatives thereof.

34. Now we shall come to the testimony of the star witnesses of the prosecution case i.e. two sons of the deceased and the appellant.

35. Rohit @ Akshay (PW-13), the son of the deceased and appellant, aged about nine years, was questioned by the trial Court and after recording note of satisfaction considering the answer given by him, the trial Court came to a conclusion that the witness is competent to make the statement before the Court.

36. In the Court, this witness stated that on the day of occurrence i.e. on 22.04.2004 his father had returned from the Office at 06:00 P.M. At that time, Ranveer and her mother were present at the house. Her mother has concealed Ranveer in another room. His father had asked to him to cook the meals. Then quarrel had ensued between his father and mother. His mother had closed the main gate and raised volume of television and deck. From the window, witness and his brother, namely Kapil (PW-14) had seen the alleged occurrence. His mother had tied hands of the father with the chunni. Thereafter, his mother sat on the chest of the father and strangulated him with string (nada). Thereafter, his mother started weeping and informed grand-mother.

37. Kapil (PW-14), another son of the deceased and appellant, at the time of his deposition in the Court was four years old. The Court also in order to satisfy itself asked questions to this witness and arrived at a conclusion that this witness is competent to make statement before the Court.

38. In the Court, this witness, stated that he came to the Court along with his grand-mother and uncle. This witness further stated that grand-mother, uncle and mother are also present. His mother, Sunita had strangulated his father. She had tied his hands and feet. Ranveer was present there, along with his mother, Sunita.

39. We shall also take note of witnesses examined by the accused in defence.

40. Sumer Singh (DW-1) stated that on 22.02.2004 at about 05:15 P.M. Sunita came weeping to his house. She stated that she had dispute with her husband and her husband had given beating to her. There were injuries on the person of Sunita. She stayed for a night at their house. In the morning at 05:30 A.M., she left his house saying that she had to send her children to the school. This witness had told her that he will come to her house at 09:00/10:00 A.M. and will advice her husband. When he reached to the house of Sunita, weeping and crying was going on and he was informed by the parents of Gordhan Lal that he had committed suicide.

41. Shankar Lal Soni (DW-2) stated that on 22.04.2004, he learnt from the people at around 06:30/07:00 P.M. that Gordhan Lal has died. They had gone to the house of Gordhan Lal at 07:15 P.M. At that time, two Police personnel and five/ten persons of the society were present The parents of Gordhan and his brother were also present there.

42. Om Prakash Soni (DW-3) stated that on 22.04.2004 Gordhan had died. He received information at around 05:00/ 06:00 P.M. He reached at the house of deceased Gordhan at 07:30 P.M. Police personnels and five/six residents of the locality were present there. Sunder Lal, his wife and Sunita were also present at the spot. Sunder Lal was telling Police that he suspects that death of his son to be an unnatural.

43. From the evidence of Sumer Singh (DW-1), it is apparent that at the time of occurrence, appellant and her husband were present in the house. Sumer Singh (DW-1) stated that Sunita came in the evening and had made a grievance that she was beaten by the deceased, her husband. Shankar Lal Soni (DW-2) and Om Prakash Soni (DW-3) stated that they learnt about the death of Gordhan Lal at about 06:00 P.M.

44. Therefore, Sumer Singh (DW-1) has deposed in the evidence that Sunita had a quarrel with her husband and received injuries and around the same time Gordhan Lal died. Injury on the person of Sunita, which has been proved on record by Dr. Sumer Singh (PW-7) prove presence of Sunita in the house, along with deceased Gordhan Lal Soni.

45. In her statement recorded under Section 313 Cr.P.C. accused, Smt. Sunita, stated that she was not present at the house. Therefore, accused had given up her initial version of the suicide and has taken a definite stand that she was not present at the house. However, receipt of injuries on her person and the information relayed by her to Sumer Singh (DW-1) and death of Gordhan Lal around the time she gave information to Sumer Singh (DW-1) prove that at the time of occurrence, she was present in the house along with her husband.

46. For the sake of arguments, even if we ignore the testimony of two child witnesses, namely Rohit @ Akshay (PW-13) and Kapil (PW-14). It stands conclusively proved from defence evidence and the injuries on the person of present appellant that she was present in the house along with her husband when he died. Even otherwise, the appellant, being house wife is expected to be present in the house at the time when her husband has to return from the office.

47. In these circumstances, there is a burden upon the appellant to divulge as to how Gordhan Lal has died. It also stands conclusively proved by the medical evidence that it is not a case of hanging, as deceased had died due to throttling/strangulation. The fact, which was specially in the knowledge of the appellant, has to be disclosed by her, prosecution in facts and circumstances of the case is entitled to invoke Section 106 of the Indian Evidence Act against the appellant.

48. Recently, the Hon"ble Supreme Court in the case of [State of Rajasthan Vs. Thakur Singh](#), (2014) AIRSCW 4479 : (2014) 8 JT 50 : (2014) 8 SCALE 82 , had observed as under :--

"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.<sup>1</sup> 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.

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 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-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."

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

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

20. In *Jagdish v. State of Madhya Pradesh* 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* 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* which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act in the following words:

"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"

49. The similar view was also formulated by the Hon"ble Supreme Court in the case of [State of Rajasthan Vs. Kashi Ram](#), AIR 2007 SC 144 : (2006) 10 JT 28 : (2006) 11 SCALE 440 : (2006) 12 SCC 254 : (2006) 9 SCR 501 Supp , and His Lordship has observed as under :--

"17. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated [In Re: Naina Mohamed](#), (1960) CriLJ 620 : (1960) ILR (Mad) 157 : (1960) 73 LW 210 : (1960) 1 MLJ 118 .

There is considerable force in the argument of counsel for the State that in the facts of this case as well it should be held that the respondent having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since

those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt."

50. It is not a case where husband had a quarrel, given abuses and beating to the wife, and she under sudden provocation has picked up something from the spot and caused injuries to her husband.

51. From the report of the State Forensic Science Laboratory Rajasthan, Jaipur (Exhibit-P/23), it is clear that sufficient quantity of ethyl alcohol was found in the blood and viscera of Gordhan Lal.

52. Thus, it is apparent that when her husband under the influence of liquor had retired to the bed, the wife, being only person present in the house in a calculated manner had caused his death by way of strangulation.

53. From the circumstances gathered and by invoking Section 106 of the Indian Evidence Act, we are of the view that there is no scope left for the appellant.

54. However, on perusal of the evidence, we also find that testimony of Rohit @ Akshay (PW-13) and Kapil (PW-14) aspires confidence and implicit reliance can be placed upon the same, as the same is duly corroborated by the medical evidence and the attending circumstances.

55. Thus, taking totality of circumstances, we find no merit in the present appeal and the same is, hereby, dismissed, being devoid of merit.