

Case Comment on sec. 106 of the Indian Evidence Act *

INTRODUCTION

The present case is mainly concerned with sec. 106 –

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.¹

In law, it is usually the customary practice that the burden of proof lies on the prosecution to prove the guilt of the accused. It is said that he who asserts a fact should also prove the fact or the assertion that he is making. This burden is usually with the prosecution and very rarely is seen to shift to the defence. An example of that would be when the accused takes the defence of a general exception like insanity, incapacity or the right to private defence. In such a situation the defence is responsible to prove the assertion that they are making and prove that they indeed come into the general exceptions.

Sec. 106 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.”²

In the present case, it was held that, “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.”³

* Ms. Anushka Jain, 3rd Year B.A LL.B, Institute of Law, Nirma University.

¹ Indian Evidence Act, 1872.

² Shambhu Nath Mehra v. State of Ajmer, 1956 SCR 199.

³ State of Rajasthan v. Thakur Singh, 2014 Cri LJ 4047.

The author in the present case comment intends to analyse the case facts and the application of the law by the courts in the case. The author will also analyse the final judgment and the gaps or loopholes, if any, which stand out according to the author.

BACKGROUND

In *Shambhu Nath Mehra v. State of Ajmer*, 1956 SCR 199 there was a similar situation wherein it was impossible for the prosecution to prove a certain fact as it was only in the knowledge of the accused. It was held-

“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.”

In a specific instance in *Trimukh Maroti Kirkan v. State of Maharashtra*⁴ this Court 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.”

The court was of the opinion that where a husband and wife stay together and the wife dies due to injuries which the husband is unable to explain, then the Court can take this to indicate that the husband is responsible for the injuries.

In *Ganeshlal v. State of Maharashtra*⁵, the court was of the opinion that the accused husband, whose wife was murdered in their matrimonial house, was under an obligation to give an explanation under Section 313 of the Code of Criminal Procedure as to the cause of death of the victim. An absence of any explanation was held against the accused husband in this case.

In *Dnyaneshwar v. State of Maharashtra*⁶, the victim wife was murdered in the matrimonial home but no explanation or defence by the accused was given as to some other person committing the act. It was thus, according to the court, the responsibility of the accused husband to explain the unnatural cause of his wife's death.

In *Jagdish v. State of Madhya Pradesh*⁷, 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.”

⁴ (2006) 10 SCC 681.

⁵ (1992) 3 SCC 106.

⁶ (2007) 10 SCC 445.

⁷ (2009) 9 SCC 495.

*State of West Bengal v. Mir Mohammad Omar*⁸ 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.”

Thus, if we summarize the whole development that has taken place over the years regarding sec. 106 we can say that while the primary burden of proving the guilt of the accused lies on the prosecution, in cases where a fact is such that only the accused has knowledge of it and the prosecution could not possibly prove it, then if the accused refuses to furnish an explanation with regard to such facts then this will point to his guilt in the crime based on those facts.

PRESENTATION OF THE COURT'S OPINION

To briefly state the facts –

The accused, Thakur Singh was married to the victim and they had a one year old daughter. On the day of the incident, the accused locked himself, the victim and their daughter in their room of their home. Even after being repeatedly asked by other members of the family, the accused did not open the door this went on for a whole day after which the “kelu” of the house was removed by the relatives and it was seen that the victim had died. Thereafter the lock of the door was broken open and the relatives captured and tied by his brothers and other relatives.

The Trial Judge held that even though most of the witnesses of the prosecution, who were the relatives of the accused turned hostile, some relevant facts still stood. It was held that it was impossible for anyone else to have killed the victim as the fact that she was locked in with the accused for the whole day was well established. No other person had entered the room and nobody else could have caused the death (by strangulation) of the victim other than the accused.

The High Court, on appeal, however 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.”⁹

The High Court was also swayed by the fact that all the prosecution witnesses had turned hostile.

The Supreme Court, however, overturned the judgment of the High Court and upheld the judgment of the Trial Court. The reasoning given by the Supreme Court is that in the circumstances of the case, it was the accused and only him who had access to the room where the victim was found, no alternate theory or explanation has been propounded by the defence. The

⁸ (2000) 8 SCC 382.

⁹ *Supra* note 3.

facts of the death of the victim are only known to the accused but he has not told them in court. This leads the court to a strong presumption that the victim was killed by the accused.

The Supreme Court thus, held the accused guilty for the murder of the victim.

ANALYSIS

The author agrees with the opinion of the Trial Court and Supreme Court in the present case and also concurs with the judgment holding the accused guilty of murder of the victim. The Supreme Court has expertly applied previous relevant decisions in the present case. The precedents set by earlier cases were followed in this case logically and the courts were successful in using them.

The High court, however, made an error in judgment by relying upon irrelevant and unimportant facts that did not have bearing on the case. They made a blunder in acquitting the accused on the reasons which they did as the Trial Court had valid reasons for convicting him.

The Supreme Court took all the relevant facts and points into consideration and did not miss anything that would have made the prosecution case weaker and the defence stronger thereby fully establishing the guilt of the accused.

The author fully agrees with the final judgment in the present case. The established trend with regard to sec. 106 makes it fairly obvious that it was the accused who should have furnished an explanation with regard to the occurrences of the incident. This does not mean that the burden of the prosecution to prove his guilt has shifted, it only means that this fact comes into a special category of facts that holds the accused responsible. The failure of the accused to come up with a logical and reasonable explanation quite clearly points to his guilt.

CONCLUSION

The law with regard to sec. 106 of the Indian Evidence Act, 1872 has been fairly well settled with the help of cases that have reiterated a similar line of argument. In the present case, the High Court's oversight had led it to acquit the accused. However, the Supreme Court stepped in by correctly applying the well settled law and holding the accused liable in the present case.

The present case has only served to cement the previous case trends with regard to sec. 106 and has made it easier for future courts to apply.

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