

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal D No.992-DB of 2010

Date of Decision:- October 6, 2017

Kulwinder Singh

.....Appellant

Versus

State of Punjab

....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Ashok Paul Batra, Advocate as Amicus Curiae,
for the appellant.

Ms. Anju Arora, Additional Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. Kulwinder Singh son of Nazar Singh {hereinafter referred as 'Kulwinder Singh (accused)'} has filed the present appeal challenging judgment dated 17.08.2010 passed by the Court of learned Additional Sessions Judge, Barnala vide which he has been convicted for offence under Section 302 of Indian Penal Code, 1860 (for short 'IPC') and has been sentenced to undergo imprisonment for life and to pay fine amounting to ₹10,000/-. In default of payment of fine, he has been ordered to undergo further rigorous imprisonment for 2 years.
1. 2. The FIR in the present case was registered on the basis of statement (Ex.PE) of Kulwinder Singh, son of Hari Singh {hereinafter referred to as

'Kulwinder Singh (complainant)}', brother of deceased Paramjit Kaur, recorded by ASI Sewa Singh on 7.7.2009. The complainant alleged therein that while his father is no more, his mother Gurmail Kaur is alive. He has a brother and three sisters. Two of his sisters namely Paramjit Kaur and Jasbir Kaur were married at village Chunga to two brothers namely Kulwinder Singh (accused) and Ramandeep Singh. His sister Paramjit Kaur was married to Kulwinder Singh (accused) about 15-16 years back and was blessed with a daughter and two sons. Kulwinder Singh (accused) had served in Army but was discharged from Army. After his discharge from Army he remained idle and used to quarrel with his sister. Many times she was sent back to her parental village, after giving beatings. His sister however used to earn her livelihood by doing the work of stitching and embroidery. Kulwinder Singh (accused) was addicted to liquor and intoxicants and used to take money forcibly from his sister. His father, sick of his acts, separated him and they started living at Bhadaur in a rented accommodation. For the last 3 months they along with their children were residing at Ugoke in the house of retired Col. Pritam Singh. His brother-in-law used to harass his sister. On 5.7.2009 his brother-in-law left his two sons with his father at village Chunga. His niece was already living there. The complainant further stated therein that on 7.7.2009 somebody informed him telephonically that his sister Paramjit Kaur was serious and thereafter he along with his brother Balwant Singh and sons of his father's sister namely Baldev Singh and Jagdev Singh and respectables of village went to village Ugoke where they found the dead body of Paramjit Kaur lying on a cot in courtyard. The dead body was bearing blue coloured

marks on the neck, knees and arms which indicated that she had either been compelled to commit suicide or Kulwinder Singh (accused) had killed her by strangulating her. It is further stated therein that one wooden stool, one sickle and blue and green coloured plastic rope were lying near the dead body.

3. Pursuant to recording of aforesaid statement (Ex.PE) of Kulwinder Singh (complainant), the police initially registered FIR (Ex.PE/2) under Section 306 of IPC. Inquest proceedings were conducted. The dead body was sent for post mortem examination. Rough site plan of the place of occurrence was prepared. Statement of witnesses were recorded in terms of Section 161 Cr.P.C. The accused was arrested on 9.7.2009. After conclusion of investigation challan was presented in the Court of learned Chief Judicial Magistrate, Barnala on 11.8.2009 who committed the case to the Court of Sessions vide order dated 1.9.2009. The case was assigned to the Court of Additional Sessions Judge who upon finding sufficient grounds to presume that the accused had committed offence punishable under Section 302 IPC framed charges against the accused on 1.12.2009. An alternate charge for offence under Section 306 IPC was also framed. The accused pleaded not guilty and claimed trial.
4. The prosecution, in order to establish the charges framed against the accused, examined as many as 7 witnesses. PW-1 Dr. Subhash Singla, Medical officer, Civil Hospital, Barnala, who was comprised in the Medical Board constituted for conducting post mortem examination on the dead body of Paramjit Kaur proved the post mortem report as Ex.PA. He opined the cause of death to be strangulation. PW-2 Kulwinder Singh (complainant) stated in tune with the

version put forth by him in his statement Ex.PE made to the police on the basis of which FIR was lodged. PW-3 Gurmail Kaur mother of deceased stated in corroboration to the statement of PW-2 Kulwinder Singh (complainant). PW-4 Jagdev Singh cousin of deceased stated that on 7.7.2002 Kulwinder Singh (complainant) asked him telephonically to reach at his house as his sister Paramjit Kaur was in serious condition and that he accompanied Kulwinder Singh (complainant) and others to village Ugoke to the house of Col. Pritam Singh where they found dead body of Paramjit Kaur lying on a cot in courtyard.

5. PW-5 HC Paramjit Singh stated that on 7.7.2009 he was accompanying police party headed by ASI Sewa Singh and that Kulwinder Singh (complainant) met ASI Sewa Singh and got his statement recorded. Thereafter, they proceeded to village Ugoke where inquest proceedings were conducted. He further deposed about the proceedings conducted at the spot by the police and also as regards the arrest of Kulwinder Singh (accused) from village Jagjitpura. PW-6 ASI Sewa Singh who is the Investigating Officer of the case stated in detail in respect of the entire proceedings conducted by the police in the present case right from recording of statement Ex.PE of the complainant in the first instance upto the filing of challan. PW-7 HC Jasvir Singh is a formal official witness who tendered his affidavit Ex.PJ in evidence.
6. Upon conclusion of the prosecution evidence, entire incriminating evidence appearing against the accused was put to the accused to enable him to explain the same but the accused denied the prosecution case in toto and pleaded false implication. He further pleaded that he had never given beatings to Paramjit

Kaur nor had quarreled with her or taken any money from her. He further stated that Paramjit Kaur had died under suspicious circumstances and that her in-laws wanted to grab his 3/4th *killa* of land and for the said purpose he had been implicated falsely.

7. The accused in his defence examined DW-1 Sunil Rana, Nodal Officer, Bharti Airtel Ltd., who produced record pertaining to telephone No.98762-51378 and 97798-82494. He stated that while mobile No.98762-51378 is in the name of Kulwinder Singh(complainant), the other mobile No.97798-82494 is in the name of Sarabjit Kaur wife of Balvir Singh. He proved the said information as Ex.D-1 and further produced the call detail record as Ex.D-2 and D-3.
8. The learned trial Court upon appraisal of the evidence on record held the accused guilty of committing offence punishable under Section 302 IPC vide judgment dated 17.8.2010. Feeling aggrieved with the same, the accused has filed the present appeal.
9. The learned counsel for the appellant while assailing the impugned judgment has submitted that there is no evidence worth credence to connect the accused with the death of Paramjit Kaur and that in fact neither there is any direct evidence nor there is any circumstantial evidence to substantiate the case of prosecution. The learned counsel further submitted that in fact the evidence on record clearly suggests that Paramjit Kaur had committed suicide, but her family had falsely implicated the accused so as to grab his property. The learned counsel has thus submitted that the impugned judgment cannot sustain and has prayed for acquittal of the accused.

10. On the other hand learned counsel representing the State has submitted that the present case is a case of death of a lady in her matrimonial home and that her husband owed an explanation for the same especially when the medical evidence clearly rules out the case of suicide. The learned counsel has further submitted that from the consistent testimonies of PW-2 and PW-3, it is evident that the accused was an addict and had been harassing the deceased. The learned State counsel has submitted that the impugned judgment is well reasoned and there is absolutely no misreading of evidence. The learned counsel has thus prayed for dismissal of the appeal.
11. We have considered the rival submissions addressed before this Court and with able assistance of learned counsel have also perused the record of the case.
12. The first and foremost question before this Court is as to whether it is a case of homicidal death or suicide as pleaded by the accused. Since, it is a case where there is no eye witness to the occurrence, therefore, it is the medical evidence which holds the key to the aforesaid question. The police had got the post mortem conducted on the dead body of Paramjit Kaur. To prove the same, the prosecution examined PW-1 Dr. Subhash Singla who deposed that on 7.7.2009 he along with Dr. Parvesh Kumar and Dr. Bharti Singla were members of the Board constituted for conducting post mortem examination on the dead body of Paramjit Kaur wife of Kulwinder Singh (accused). While proving the post mortem report as Ex.PA, he has described the injuries found on the dead body of Paramjit Kaur as follows:

- “1. Reddish abrasion 1.5cm x 1 cm on the right knee joint.
2. Redish abrasion 3cm x 2 cm on right leg in upper and lateral aspect.
3. Redish abrasion 0.5cm x .3cm on the left leg on upper part.
4. Redish abrasion 3cm x 1.5cm on the back of left elbow.
5. Redish abrasion 1cm x .5cm on the back of right elbow.
6. Redish abrasion 3cm x 1.5cm on right side of face, 2cm below and lateral to angle of mouth.
7. Redish abrasion 2.5cm x 1cm on left side of neck just below of the lower border of mandible near chin.
8. Ligature mark was present in the middle and below thyroid cartilage of neck. Mark was prominent at front of the neck and extended to the sides of neck. The ligature mark was absent on the back of neck, the size was 20cm x 3cm and was transverse. The base of ligature mark was dry and pale with reddish ecchymosed margins. The abrasions and ecchymosis was present at places in the skin adjacent to the ligature mark. On dissection ecchymosis of subcutaneous tissues was present under ligature mark. Laceration and bruising of neck muscles was present in and above the area of compression. Fractures of superior cornue of thyroid cartilage was present. The total circumference of the neck was 36 cms.”

13. PW-1 Dr. Subhash Singla, in his examination-in-chief, has categorically stated that the cause of death was strangulation which was sufficient to cause death in ordinary course of nature. PW-1 was cross-examined on behalf of the accused wherein various questions were put to him in an attempt to elicit

something to suggest that it was a case of suicide but to no avail. The cross-examination of PW-1 is reproduced below in entirety as all the important questions are answered in the said cross-examination:

“XXX on behalf of the accused by Sh. C.S.Azad Adv,
Legal Aid Counsel.

There was no injury mark on the back of the neck. It is not necessary there should be ligature mark on the entire neck if a person is strangled by means of rope. It is not necessary that the ligature mark should be more in width than the diameter of rope in every case. The width of ligature mark can be to the extent of diameter of the rope or more than it. It was not a case of hanging and I rule out the possibility of suicide and it was a case of strangulation. In case of hanging the ligature mark is present in the upper part of the neck and is obliquely placed. In the case of hanging the ligature mark is above the thyroid cartilage and obliquely placed but in the present case it was placed in and below thyroid cartilage and was transverse. It is not necessary that the ligature mark must be corresponding to the grooves of the rope use for strangulation. It is not necessary that some pieces of skin and tangle with the rope in case of strangulation. The finger prints of the assailant will appear on the neck in case of throatling by means of hands. The neck of the deceased tilts towards one side in case of hanging. It is correct that the bleeding from ear, nose and mouth are very rare in case of hanging and such bleeding may be found in case of strangulation. There is less likelihood of injuries No.1 to 4 having been caused by striking with a table or chair after the deadbody is hanging from ceiling. I was not shown any rope by the

police. It is incorrect that I have given false opinion. It is incorrect that I have deposed falsely.”

14. A perusal of the cross-examination of PW-1 shows that the doctor has, in unambiguous terms, clarified that it is a case of strangulation and has absolutely ruled out the possibility of a suicide while assigning reasons for the same.

15. However, the learned counsel for the accused has vehemently argued that all the symptoms and observations as recorded in the post mortem examination clearly indicate that it is a case of death by hanging and not by strangulation. Learned counsel in this context made the following submissions:-

1 that since Hyoid bone of the deceased was not found to be fractured, therefore, the same is a clear indication that it is a case of hanging;

2 that since the ligature mark found was found to be pale and dry, the said description is more peculiar to a case of death by hanging;

3 that since no attempt was made by the Doctor conducting the post mortem examination to lift any ligature fibre from ligature mark, therefore a void is created in the said crucial and clinching evidence.

16. Learned counsel in order to hammer forth his aforesaid submissions has referred to the relevant extract from the renowned text i.e. *Modi's Medical Jurisprudence and Toxicology* and as well as text book of *Forensic Medicine*

and Toxicology, by Krishna Vij. Learned counsel has thus submitted that in the absence of positive medical evidence to establish that it is a case of death by strangulation with ligature, it cannot be held that it is a case of murder and that on the other hand the medical evidence on record establishes that it is a case of death by hanging and which is in tune with the defence plea.

17. We have considered the submissions raised above by learned counsel for the accused. Since the question involves Medical Jurisprudence, therefore, this court deems appropriate to refer to the renowned text i.e. *Modi's Medical Jurisprudence And Toxicology*. While dealing with characteristics of death by strangulation and hanging a comparative table has been drawn in the said *Modi's Medical Jurisprudence and Toxicology*, which for the sake of ready reference is reproduced below:-

	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	Bleeding from the nose, mouth and ears very rare.	6	Bleeding from the nose, mouth and ears may be found.
6	Ligature mark – Oblique, non-continuous placed high up in the neck between the chin and larynx, the base of	6	Ligature mark – Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the the

	groove or furrow being hard, yellow and parchment-like.		groove or furrow being soft and reddish.
7	Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7	Abrasions and ecchymosis 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 that too in judicial hanging.	11	Fracture of the larynx and trachea, often found also hyoid bone.
12	Fracture-dislocation of the cervical, vertebrae – common in judicial hanging.	12	Fracture-dislocation of the cervical vertebrae – Rare.
13	Scratches, abrasion and bruises on the face, neck and other parts of the body – usually not present.	13	Scratches, abrasions finger nail marks and bruises on the face, neck and other parts of the body – usually present.
14	No evidence of sexual assault.	14	Sometimes evident of sexual assault.
15	Emphysematous bullae on the surface of the lung – Not present.	15	Emphysematous bullae on the surface of the lungs – May be present.

18. Bearing in mind the aforesaid distinctive features of case of hanging and of case of strangulation and also the observations recorded in post mortem examination report(Ex.PA), this court proceeds to examine each of the above referred three contentions made by learned counsel for the accused.

19. Submission no.1 regarding Hyoid bone being not fractured :

Learned counsel has submitted that since in the present case, there is no observation to show that Hyoid bone was fractured, therefore, it is evident that

it is a case of hanging and not strangulation.

20. We have considered the aforesaid submission. A perusal of point No.11 in the above referred comparison table does show that it has been mentioned that fracture of Hyoid bone is often found in case of strangulation and that same is not there in the case of hanging. Even in the text book of *Forensic Medical and Toxicology by Krishan Vij*, it is mentioned that while fracture of hyoid bone is less common in hanging, but the same may be common in case of manual strangulation i.e. throttling. In this context, a reference needs to be made to a judgment of Hon'ble Apex Court reported as (2008) 5 SCC 587, Ponnusamy v. State of T.N., wherein the said aspect of no fracture of hyoid bone in the case of strangulation was discussed and it was held that the absence of fracture is not a sure sign to indicate that it is a case of hanging. The relevant extract from the said judgment is reproduced below for the sake of ready reference:

“It is true that the autopsy surgeon, PW 17, did not find any fracture on the hyoid bone. Existence of such a fracture leads to a conclusive proof of strangulation but absence thereof does not prove contra.”

21. The Hon'ble Supreme Court reached at the above conclusion while discussing *Taylor's Principles and Practice of Medical Jurisprudence*, and as well as *Journal of Forensic Sciences*, and *Modi's Medical Jurisprudence*. The relevant

extract from *Journal of Forensic Sciences* as relied upon in above cited judgement is also being reproduced below for the sake of ready reference:

“In *Journal of Forensic Sciences*, Vol. 41 under the title — Fracture of the Hyoid Bone in Strangulation: Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated :

“The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone.”

22. In view of aforesaid discussion especially in the light of ratio of above cited judgment, the absence of fracture of hyoid bone cannot lead to an inference that it is a case of death by hanging.

23. Submission No.2 regarding colour of ligature mark :

Learned counsel while referring to point no.6 of comparative table reproduced above has submitted that since the ligature mark was observed to be pale and dry therefore, the same is indicative of the fact that it is a case of death by

hanging and not by strangulation.

24. We have considered the aforesaid submission and have also perused that comparative table. While in the comparative table the furrow in case of hanging is stated to be yellow in colour, in case of strangulation the same is stated to be reddish in colour. In the present case in the post mortem report, the description of ligature mark as regards colour is as follows:

“The base of ligature mark was dry and
pale with reddish ecchymosed margins.”

The doctor has while describing the ligature as pale has also stated that the margins were reddish. As such, the said description, by itself would not be sufficient to conclude that it is a case of suicide if other characteristics point to the contrary.

25. Submission No.3 regarding omission to lift ligature fibre from furrow:

It is indeed correct that the doctors who conducted the post mortem examination have nowhere stated anything to the effect that they had lifted ligature fibre from the ligature mark. Lifting of fibre certainly helps the investigators and the Court to reach quickly at a decision regarding the manner of causing death. In any case, omission in that regards can not be fatal to the case of prosecution as the cause of death can be ascertained from other facts and circumstances. The contention raised by learned defence counsel, thus, does not merit acceptance and is hereby rejected.

26. Having discussed the aforesaid submissions made by learned counsel for the accused, it is apposite to refer to other features and observations recorded in the post mortem report, which indicate that the present case is a case of strangulation and not of hanging. As per the observations made in the post mortem report Ex.PA, abrasions and ecchymoses were found present along the edges of groove at places. A perusal of point No.8 in the comparative table reproduced above shows that the presence of such abrasions and ecchymoses around the edges of the ligature mark is very rare in a case of hanging and that the presence of such abrasions and ecchymosis round about the edges of the ligature mark is very common in case of strangulation and which again shows that it is a case of strangulation and not a case of hanging. Neck was not found to be elongated as is usually found in case of hanging. Furthermore, the presence of a large number of injuries on various parts of the dead-body indicates a scuffle before death. Such a large number of injuries would not have been there in case of suicide by hanging.
27. Thus, we find that there is hardly any ground to discard the opinion of medical board which has opined that the cause of death due to strangulation. The mere fact that one of the observation regarding ligature being pale and dry is insignificant when examined against other distinctive features which point it to be a case of strangulation.
28. The discussion made above, wherein the contentions raised by learned counsel for the accused have been discussed in the light of judgments of Hon'ble Apex Court and also in view of the fact that some prominent characteristics of case of strangulation are observed in the present case, leave no room to hold it to be

a case of strangulation. Thus, this court is of the firm opinion that it is a case of death by strangulation and not by hanging.

29. Though, the learned counsel for the appellant submitted that the presence of a stool and rope near the dead body of Paramjit Kaur would show that the present case was a case of suicide, but such like articles are household articles and mere presence of said articles is insufficient to conclude that it is a case of suicide especially when the medical evidence suggests to a contrary.
30. Since, it is a case where there is no eye witness, it is from the attending circumstances from which prosecution seeks to establish the charges framed against the accused. The most important being that Paramjit Kaur died in her matrimonial home where she was staying with her husband. The complainant in his statement Ex.PE on the basis of which the FIR was lodged has stated that her sister Paramjit Kaur was married to accused about 15-16 years back and she was blessed with a daughter and two sons and that Kulwinder Singh (accused) after his discharge from army remained idle and used to quarrel with his sister. It is further stated therein that he was an addict and used to take money from his sister forcibly and that father of Kulwinder Singh (accused), being sick of him separated him and then they initially resided at Bhadaur in rented accommodation and thereafter they along with children started residing at Ugoke in the house of a retired Colonel. While in the witness box PW-2 Kulwinder Singh (complainant) stated absolutely in tune with his statement Ex.PE. The relevant extract from the statement of PW-2 is reproduced below:

“.....The accused had been consuming intoxicants and giving beatings to my sister Paramjit Kaur. On some

occasion the accused had been sending Paramjit Kaur to our house. Paramjit Kaur was also doing the job of knitting and sewing. She had been earning livelihood by doing the knitting and sewing work for the people. The accused had been taking money from Paramjit Kaur. The parents of accused had separated the accused on account of his bad deeds. Thereafter, the accused started residing in a rented house at Bhadaur. About 3 months prior to the occurrence, the accused started residing in the Bungalow of Colnel (retired) Pritam Singh at village Ugoke. The accused was not doing anything at village Ugoke and he had been snatching the money earned by my sister and spending the same on liquor. On 5/7/2009 the accused left both his sons in the house of his father. The daughter of accused was already residing in the house of father of accused.”

31. PW-3 mother of the deceased also stated identically to the effect that the accused was idle and an addict and used to take money from her daughter who was doing stitching to earn livelihood. She further deposed that Paramjit Kaur during visit to her house told that accused gave beatings to her and maltreated her and also used to visit other women. She also apprehended that one day she would be killed. PW-4 Jagdev Singh cousin of deceased has stated that Paramjit Kaur was married with Kulwinder Singh (accused) and they were residing in the house of retired Col. Pritam Singh and that on the day of occurrence he had accompanied Kulwinder Singh (complainant) to the house of Kulwinder Singh (accused) where they found the dead body of Paramjit Kaur lying on the cot in the courtyard of the house. All the aforesaid witnesses were cross-examined on behalf of the accused, nothing substantial could be elicited during their cross-examinations so as to doubt the fact that

the deceased and Kulwinder Singh (accused) were residing together. In fact even the accused, in his statement under Section 313 Cr.PC., has not taken any plea to the contrary.

32. From the above referred statements of PW-2, PW-3 and PW-4, it is clearly established that on account of ill-behaviour of Kulwinder Singh (accused), he had been turned out of his parental house by his father and that Kulwinder Singh (accused) along with deceased and children had initially started residing at Bhadaur and subsequently shifted to village Ugoke in the house of retired Col. Pritam Singh. It is further borne out that two days prior to the occurrence, the accused had left his two sons at his father's place where his daughter had already been left. Thus, it appears that the accused in a pre-planned manner wanted to ensure that there was no eye witness to the crime which he was planning to commit. Once it is established that both husband and wife were staying together, then burden lay heavy on the accused to render explanation as regards the homicidal death of his wife Paramjit Kaur.
33. The accused has not pleaded *alibi*. His wife died as a result of strangulation in his house. Other than the accused, none else was residing in the house of accused. His father was residing separately as the accused had been turned out from his house, being fed up with his conduct. As such, the accused was expected to come out with some plausible explanation regarding death of his wife. In this context reference may be made to provisions of section 106 of Indian Evidence Act 1872. Section 106 is in the nature of an exception to general rule enshrined in section 101 of Indian Evidence Act, which mandates that the burden of proof lies on the person who asserts the existence of such

fact. Section 106 in The Indian Evidence Act, 1872 reads as follows :-

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.

34. The Hon'ble Apex Court, in judgement reported as (2009) 6 SCC 61 Narendra v. State of Karnataka, where a woman was done to death in the bedroom of the matrimonial home and the accused raised a plea of alibi that he had gone to another place for purchase of milk and was therefore not involved with the crime, upheld conviction of accused wherein the plea of alibi was rejected, while resorting to provisions of section 106 of Indian Evidence Act.
35. In another judgement reported as (2012) 1 SCC 10 Prithipal Singh v. State of Punjab, the Hon'ble Apex Court has held that if a fact is especially in the knowledge of any person, then burden of proving that fact is upon him and that it would be impossible for the prosecution to prove certain facts particularly within exclusive knowledge of the accused. It was further held therein that Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, offers any explanation which might drive the court to draw a different inference. Thus it was held 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.

36. The Hon'ble Apex Court, in a case reported as (2016) 12 SCC 665 Harijan Bhala Teja v. State of Gujarat in somewhat identical circumstances where the dead-body had been found in the house of the accused affirmed the judgment of the High Court reversing acquittal of accused. The relevant extract from cited judgment is reproduced below for the sake of ready reference:

“ Section 106 of the Evidence Act, 1872 provides that when any fact is special within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly when the prosecution has successfully proved that she died homicidal death.”

37. The deceased, being wife of the accused and having died in the house of accused puts heavy burden on the accused to explain the circumstances under which the deceased was found dead in his house in the morning on 7.7.2009 as a result of strangulation. The plea that the deceased had committed suicide is not borne out from medical evidence. The accused having failed to render any explanation for the same leaves no room to doubt that it is accused who was responsible for causing death of Paramjit Kaur.

38. As an upshot of our discussions made above, we find that there is no infirmity in the findings of the Trial Court as regards guilt of accused for having murdered his wife. His conviction for offence u/s 302 of IPC is affirmed. There is no merit in this appeal and the same is hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

October 6, 2017

mohan

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No