

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No. 9-DB of 2019 (O&M)

Reserved on : 13.3.2019

Date of decision : 25.3.2019

Sunita Appellant
versus
State of Haryana ... Respondent

Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Kuldip Singh

Present Mr. Rahul Sharma, Advocate, for the appellant.
Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment dated 13.12.2018 and order dated 17.12.2018, rendered by learned Additional Sessions Judge (Exclusive Court), Bhiwani, in Sessions Case No. 140 of 2017, by appellant Sunita. She was charged with and tried for the offence punishable under Sections 201, 302, 297, 328, 120-B IPC. She was convicted and sentenced as under:-

<i>Under Section</i>	<i>Sentence imposed</i>
302 IPC	To undergo imprisonment for life and to pay a fine of ₹ 10,000/- and in default of payment of fine, to further undergo the imprisonment for a period of one year.
120-B IPC	To undergo rigorous imprisonment for two years and to pay a fine of ₹ 1,000/- and in default of payment of fine, to further undergo the imprisonment for a period of three months.
201 IPC	To undergo rigorous imprisonment for two years and to pay a fine of ₹ 2,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months.
297 IPC	To undergo rigorous imprisonment for a period of six months and to pay a fine of ₹ 200/- and in default of payment of fine, to further undergo simple imprisonment for a period of one week.
All the sentences were ordered to run concurrently.	

2. The case of the prosecution in a nutshell is that on 29.6.2016, SA Rajiv 400 BWN (Security Agent) was present in village Jamalpur, in connection with some secret investigation. He was informed by the secret informer that Pooja daughter of Jagdish had been killed by administering some poisonous substance by her family members in collusion with each other as she had lived out of home with one boy resident of village Kalanaur for 7/8 days about 3/4 months ago. Her family members had brought her home in the village and since then she was not allowed to go outside the house. She was kept under strict supervision and on that day i.e. 29.6.2016, she was, however, murdered. In the night of 27.6.2016, dead-body of Naresh son of Bhana Ram was also found in the agricultural field, who related to the family of deceased Pooja. There was rumor in the village that Naresh might also have been killed by them because on that day i.e. 29.6.2016 at about 10.00 A.M., his dead-body was cremated without any medical examination or information to the police, while dead-body of Pooja was taken by her family in Maruti vehicle to the cremation ground. Her dead-body was burnt in the same funeral pyre along with Naresh by pouring kerosene so as to conceal the factum of death of Pooja from the society. On the basis of secret information vide application, Ex.PW3/A of Secret Agent Rajiv, formal FIR, Ex.PW3/B, was registered under Section 302/201 IPC by Inspector Ramesh Kumar. On the same day, he accompanied by HC Anil Kumar and Constable Parveen visited Cremation Ground of village Jamalpur and inspected the scene of crime. FSL team was summoned. FSL team visited the spot. Ash and bones of dead-body of Pooja were taken by Dr. Ravinder Pal, Incharge, Scene of Crime Team, SP Office, Bhiwani. Ash and bones were converted into five sealed parcels. Inspector Ramesh Kumar

along with other associates also visited at the house of Jagdish, father of deceased Pooja, from where Dr. Ravinder Pal collected vomit smeared cotton, two *chunnis* (yellow colour and indigo/blue colour) and broken pieces of red colour glass bangles from underneath the bed (*diwan*). All the materials were converted into separate sealed parcels. On 30.6.2016, Mahender was produced by Satbir Singh, husband of Sarpanch of village Jamalpur, along with written complaint, Ex.PW3/G. He made disclosure statement, Ex.PW3/H, regarding his involvement in the commission of crime. In pursuance to his disclosure statement, one plastic-can of kerosene and *fawada* (spade), which were used in the commission of crime, were recovered from the place of concealment i.e. bushes situated near Cremation Ground of village Jamalpur. Rough sketch, Ex.PW5/A, of recovered *fawada* and rough site plan, Ex.PW3/K, of the place of recovery were prepared. Motor-cycle was also recovered. On 30.6.2016 itself, accused Mahender disclosed about the involvement of his other companions, namely, appellant Sunita wife of Jagdish, Ashish son of Shamsheer, Pankaj son of Jagdish, Jain @ Balwant son of Dalbir, Rakesh Kumar son of Jugti Ram, Kamal Singh son of Ram Dass, Anil Kumar and Shamsheer Singh sons of Bharat Singh in the commission of crime. Co-accused Shamsheer Singh and Rakesh Kumar made disclosure statements vide Ex.PW8/A and PW8/B. Co-accused Kamal Singh and Anil Kumar were also arrested. They made disclosure statements, Ex.PW4/A and Ex.PW4/E. Appellant Sunita was also arrested on 15.8.2017. She made disclosure statement, Ex.PW7/A. Investigation was completed and challan was filed against accused Sunita on 10.11.2017, after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. She denied the case of the prosecution and pleaded that she was falsely implicated in the case. Four witnesses were examined in defence. She was convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned trial Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Sub-Inspector Galla Ram deposed that on 15.9.2016, he was posted as SI/SHO, Police Station, Bawani Khera. He recorded the statements of E/ASI Ram Mehar, HC Rajesh Kumar and other officials.

7. PW2 Dharmender Singh deposed that on 14.7.2016, he visited the place of occurrence at village Jamalpur and prepared scale site plan, Ex.PW2/A on the demarcation of Inspector/SHO Ramesh Kumar with correct marginal notes.

8. PW3 Inspector/ SHO Ramesh Kumar deposed that on 29.6.2016, Rajiv security agent informed him vide application, Ex.PW3/A, on the basis of which formal FIR, Ex.PW3/B, was registered. He reached the place of occurrence along with HC Anil Kumar and Constable Parveen. Crime Team was also called. Dr. Ravinder Pal took into possession ashes and bones of dead-body of Pooja and the same were put into plastic *dibi*. He

converted the same into sealed parcels. Thereafter, they went to the house of Jagdish, father of deceased Pooja. They took swab of vomit, *chunnis* and pieces of broken bangles. The same were handed over to Dr. Ravinder Pal. On 30.6.2016, PW15 Satbir Singh husband of lady Sarpanch of village Jamalpur moved complaint, Ex.PW3/G, along with accused Mahender before him. He interrogated Mahender. Mahender got recovered one plastic-can of oil, *fawada* (spade) on the basis of disclosure statement, Ex.PW3/H. These were taken into possession. In his disclosure statement, accused Mahender disclosed names of other accused involved in the case. He ordered the arrest of accused, namely, Shamsheer Singh, Jagdish, Sunita wife of Jagdish, Ashish son of Shamsheer, Pankaj son of Jagdish, Kamal son of Ramdass, Rakesh son of Jugti Ram, Balwant and Anil son of Bharat Singh. At the instance of accused Mahender, one motorcycle was also recovered. Accused Mahender also got demarcated the place of occurrence i.e. house of the accused Jagdish. In his cross-examination, he has categorically admitted that Naresh was not murdered and his death was natural. He also admitted that when he visited the cremation ground, the pyre was scattered so he took the samples of ashes and bones of two different places. He denied the suggestion that there were two pyres. He tried to join independent witnesses at the time of recovery, however, they refused to join investigation.

9. PW4 ASI Vinod Kumar deposed that on 30.6.2016, he was posted in Police Station, Bawani Khera. He arrested accused Kamal and Anil. Accused Kamal suffered his disclosure statement, Ex.PW4/A regarding his involvement in the crime. He got recovered one car. Accused Anil made disclosure statement, Ex.PW4/E, in pursuance to which he got

recovered Pick-up Dala vehicle.

10. PW5 Head Constable Parveen Kumar deposed that he along with other police officials went to the cremation ground. They took into possession ashes and burnt bones of deceased Pooja and Naresh. These were put in plastic containers. Thereafter, they went to the place of occurrence i.e. house of Jagdish from where they took into possession residue of vomit, broken bangles of red colour and two *chunnis*. On 30.6.2016, during investigation, representative Sarpanch Satbir Singh produced accused Mahender, who got recovered one container of kerosene oil containing some kerosene and one *fawda* (spade) from nearby the cremation ground.

11. PW6 ASI Gopal Dass deposed that on 15.8.2017 he went to village Jamalpur and visited the office of Sarpanch of village Jamalpur. He arrested accused Sunita from her father-in-law's house. She made disclosure statement. She got demarcated the place of occurrence in the residential house of Jagdish where Pooja was administered poisonous substance.

12. PW7 Lady ASI Parveen Devi deposed that on 15.8.2017 she along with ASI Gopal Dass went to village Jamalpur and visited the office of Sarpanch. Husband of the Sarpanch, Satbir told that accused Sunita was present in the house of her father-in-law. They arrested accused Sunita. She suffered disclosure statement, Ex.PW7/A.

13. PW8 SI Subhash Chander deposed that on 30.6.2016, he arrested accused Shamsher and Rakesh. During interrogation, accused Shamsher suffered his disclosure statement, Ex.PW8/A. Accused Rakesh made his disclosure statement, Ex.PW8/B.

14. PW9 Constable Rajeev is the material witness as on 28.6.2016 he was on patrolling duty in village Jamalpur. Secret informer met him and told that Pooja daughter of Jagdish, was murdered by her family members because she eloped with one boy of Kalanaur about 3-4 months ago. She remained with that boy for 7-8 days. Thereafter, her family members inquired about Pooja and they brought her back. She was confined in the house by her family members. She was not allowed to go out from the house. She was murdered by her family members. On 27.6.2016, dead-body of Naresh son of Bhana, resident of village Jamalpur was found in the field. Naresh was murdered and no treatment/ post-mortem examination was conducted and no information regarding his death was given by anyone to the police. Naresh belonged to the family of Pooja. On 28.6.2016 at about 10.00 A.M., Naresh was cremated in the cremation ground. The dead-body of Pooja was taken in the Maruti Car to the cremation ground. Dead-body of Pooja was put on the burning pyre of Naresh by pouring kerosene oil. He made complaint Ex.PW3/A to the SHO, Police Bawani Khera, on 29.6.2016. In his cross-examination, admitted that name of accused Sunita was not told to him by the secret informer, rather it was informed that the family members of deceased Pooja had murdered her. He did not make any inquiry from the chowkidar of the area. He admitted that he did not mention in his complaint that he was present in village Jamalpur on 28.6.2016. He also admitted that he did not mention in his complaint that on 28.6.2016 Naresh was cremated in cremation ground. He has not verified the facts before submitting the complaint to the SHO.

15. PW14 Head Constable Virender Singh deposed that on 30.6.2016 accused Kamal suffered his disclosure statement, Ex.PW4/A, on

the basis of which he got recovered Maruti car bearing registration no. DL-3CZ-0471 and demarcated the place of occurrence. Accused Anil suffered disclosure statement, Ex.PW3/B, on the basis of which he got recovered Pick-Dala vehicle bearing registration no. HR-39B/0905 from village Jamalpur. In his cross-examination, he admitted that name of accused Sunita did not figure in disclosure statement of accused Kamal and Anil.

16. PW15 Satbir deposed that he was husband of Sumitra, who was Sarpanch of the village. In the panchayat affairs, he attended the panchayats and other activities along with his wife. Accused Mahender was not produced by him before SHO, Police Station Bawani Khera and he did not disclose anything about this case to him. He was declared hostile and was cross-examined by the learned Public Prosecutor. He had seen the complaint, Ex.PW3/G. His signatures were obtained by SHO on blank papers. He denied that Mahender son of Sajjan had stated before him that the police was searching for the offenders, who committed the murder of Pooja. (Confronted with portion A to A1 of Ex.P3/G, wherein it is so recorded). He did not mention in complaint that accused Mahender along with his family members committed murder of Pooja and he was absconding and he felt ashamed. (Confronted with portion B to B1 of Ex.PW3/G, wherein it is so recorded). He also did not mention that accused Mahender stated to him that he should be produced and he would disclose all the facts regarding the murder of Pooja before the police or that he confessed his guilt. (Confronted with portion C to C1 of Ex.PW3/G, wherein it is so recorded). He did not mention in complaint that he brought accused Mahender and produced him before the police and requested the police to make enquiry from him and culprits should be punished. He has admitted

the contents of disclosure statement, Ex.PW3/H, however, he denied the suggestion that accused Mahender confessed his guilt along with his co-accused. He denied his statement, Ex.PW15/A. Volunteered that police never recorded his statement. In his cross-examination by learned defence counsel, he admitted that police never met him regarding the arrest of accused Sunita. When accused Sunita was arrested, he was not present there. He admitted that he was summoned by the SHO on telephone. He admitted that complaint, Ex.PW3/G and disclosure statement were not read over to him.

17. PW16 Inspector/SHO Shree Bhagwan deposed that on 15.8.2017 accused Sunita was arrested. During interrogation, she suffered disclosure statement, Ex.PW7/A. She admitted her involvement in the crime. In pursuance to her disclosure statement, she demarcated the place of occurrence vide demarcation memo., Ex.PW7/B.

18. The case of the prosecution precisely is that secret information was received that Pooja daughter of Jagdish had been killed by her family members in collusion with each other as she had lived out of home with one boy resident of village Kalanaur for 7/8 days about 3/4 months ago. Dead-body of Naresh son of Bhana Ram was also found in the agricultural fields. Her dead-body was burnt in the same funeral pyre along with Naresh. On 30.6.2016, PW15 Satbir Singh produced accused Mahender before the police along with written complaint, Ex.PW3/G. Accused Mahender made disclosure statement, Ex.PW3/H, regarding his and other co-accused's involvement in the commission of crime.

19. We have gone through the statement of PW15 Satbir Singh. He categorically deposed in his examination-in-chief that accused Mahender

was not produced by him before SHO, Police Station, Bawani Khera. He had not disclosed anything to him. He was declared hostile and was cross-examined by the learned Public Prosecutor. The contents of his complaint, Ex.PW3/G, were not read over to him. He had not narrated that Mahender wanted to confess his crime. The disclosure statement made by accused Mahender is Ex.PW3/H. In his disclosure statement, accused Mahender had stated they had made a mistake. They wanted to produce themselves before the police. In these circumstances, he produced them in the police station. However, the fact of the matter is that, as noticed hereinabove, PW15 Satbir Singh has stated that he had not produced accused Mahender before SHO, Police Station, Bawani Khera. It creates doubt on the alleged disclosure statement of accused Mahender. PW15 has also disowned his statement, Ex.PW3/G. In his statement, he had not stated that on 30.6.2016, he produced accused Mahender before the police.

20. PW6 ASI Gopal Dass in his deposition stated that on 15.8.2017 he went to village Jamalpur and visited the office of Sarpanch of village Jamalpur, who told that accused Sunita was present in her father-in-law's house. She was arrested. Thereafter, she made disclosure statement. We have noticed that PW15 Satbir in his cross-examination has categorically stated that police never met him regarding the arrest of accused Sunita from 29.6.2017 till the date of recording of his statement in Court. He also deposed that he was not present there. Police has never contacted him prior to the arrest of accused Sunita.

21. Statement made by Sunita is Ex.PW7/A. According to it, on 27.6.2016, her family member Mahender, her *jeth* Shamsheer and her husband Jagdish came to her at 8.00 P.M. and conspired to kill Pooja. She

stated that her husband told that he would send Pooja in city for studies, however, she told that such type of girl should be killed/ finished. On the same day, Naresh of our family died due to consuming liquor. Mahender got purchased a bottle of poison spray for ₹ 200/- to kill Pooja. Mahender had taken ₹ 200/- from her. Thereafter, Ashish son of her jeth and her son Pankaj also came. At that time Pooja was sitting on *Dewan* bed. Her dever Mahender told that Shamsheer will watch outside and they all three will finish Pooja by giving poison. They all three entered in the room of Pooja. She had gone to bring grass for buffallos. Pooja was administered poison. Thereafter, her dead-body was taken for cremation.

22. The case of the prosecution is also that Pooja was administered some poisonous substance by the accused. PW3 Inspector Ramesh Kumar along with other associates also visited the house of deceased Pooja, from where Dr. Ravinder Pal collected vomit smeared cotton, two *chunnis* and broken bangles. The same were sent to Forensic Science Laboratory for examination. FSL Report is Ex.PA. According to it, kerosene was detected in exhibit-4 (plastic canny). Kerosene, petrol, diesel and their residues could not be detected in exhibits-1(ash) and 3 (*a wooden stick having attached at one end flat iron stated to be Belcha/ Fawara*). According to Ex.PB, blood could not be detected on exhibit-5 (broken bangles). As per Ex.PC, no opinion regarding species of origin could be given as bones recovered from exhibit-2 (piece of bones) were too small and fragmentary.

23. As per report of Regional Forensic Science Laboratory, Sunaria, Rohtak, Ex.PD, no common poison could be detected in exhibit-1 (one multi coloured synthetic chunni, one yellow coloured net chunni and some pieces of red coloured glass bangles) and exhibit-2 (one cotton swab).

Thus, the case of the prosecution that Pooja was killed by administering some poisonous substance, is not proved. As per FSL report, Ex.PE, kerosene, petrol, diesel and their residues could not be detected in exhibit-1 (one sealed cloth parcel enclosing a container) and exhibit-2 (one sealed cloth parcel enclosing a plastic container).

24. It is a case based on circumstantial evidence. It is necessary for the prosecution to complete the chain. All the circumstances must exclusively points towards the guilt.

25. In Registrar General, High Court of Karnataka, etc. vs. Prakash Jadav, etc. 2006 Criminal Law Journal 3393, Karnataka High Court has held that the principle embodied in Section 106 of the Evidence Act 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 the facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of this special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. The relevant paragraph of the judgment is extracted below:-

“18. The true rule is that the circumstances alleged must be established by satisfactory evidence as in the case of the other evidence and the circumstances proved must be conclusive in character. In other words, the chain of circumstances established must be so complete as to leave no reasonable doubt about the guilt of the accused. While it is true that there should be no missing links in the prosecution case, it is not the law that every one of the links must appear on the surface of the evidence adduced. Some

of these links may have to be inferred from the proved facts. Those links may be termed as inferential links. In drawing those inferences or to be more accurate, presumptions, a judge of fact is required to have due regard to the common course of natural events, to human conduct and their relation to the facts of the particular case. If that is not so, Section 114 of the Evidence Act would become otiose, which in its own would make the laws ineffective. A reference may also be made to the legal principle enunciated or adumbrated in Section 106 of the Evidence Act, which prescribes that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. True, the principle embodied in Section 106 of the Evidence Act 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 the 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 now well settled 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 special knowledge of the accused. In the case of *Shambhu Nath Mehra v. The State of Ajmer* reported in 1956 S.C. 404, the Hon'ble Supreme Court has stated the legal principle thus:

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 preeminently or exceptionally within his knowledge".

26. Their Lordships of Hon'ble the Supreme Court in Vikramjit Singh alias Vicky vs State of Punjab 2006 (12) Supreme Court Cases 306, have held that only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same subject to certain statutory exceptions. The relevant paragraphs of the judgment are extracted below:-

“13. In the instant case, there are two versions. The learned Sessions Judge proceeded to weigh the probability of both of them and opined that the appellant having not been able to prove its case, the prosecution case should be accepted. In our opinion, the approach of the learned Sessions Judge was not correct. The High Court also appeared to have fallen into the same error. It invoked Section 106 of the Indian Evidence Act although opining:

"The section 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 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."

14. Section 106 of the Indian Evidence Act does not

relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.

15. It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt.

16. In Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116], this Court laid down the law in the following terms :

"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 where the observations were made:

[1973 (2) SCC 793,

"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."

It was further observed :

"179. We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.

180. It must be recalled that the well established rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made."

27. Their Lordships of Hon'ble the Supreme Court in Prithipal Singh and others vs State of Punjab and another 2012 (1) Supreme Court Cases 10, have held that Section 106 of the Evidence Act does not relieve prosecution of its burden to prove guilt of accused beyond reasonable doubt. The relevant paragraph nos. 53 and 79 of the judgment are extracted below:-

“Burden of proof under Section 106.

53. In State of W. B. v. Mir Mohammad Omar etc. etc., AIR 2000 SC 2988, this Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for prosecution to prove certain facts particularly within the knowledge of accused. 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 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. 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. (See also: Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404; Sucha Singh v. State of Punjab, AIR 2001 SC 1436; and Sahadevan @ Sagadevan v. State rep. by Inspector of Police, Chennai, AIR 2003 SC 215)”

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79. Both the courts below have found that the accused /appellants have abducted Shri Jaswant Singh Khalra. In such a situation, only the accused person could explain as

what happened to Shri Khalra, and if he had died, in what manner and under what circumstances he had died and why his corpus delicti could not be recovered. All the accused/appellants failed to explain any inculpatory circumstance even in their respective statements under Section 313 Cr.P.C. Such a conduct also provides for an additional link in the chain of circumstances. The fact as what had happened to the victim after his abduction by the accused persons, has been within the special knowledge of the accused persons, therefore, they could have given some explanation. In such a fact-situation, the Courts below have rightly drawn the presumption that the appellants were responsible for his abduction, illegal detention and murder.”

28. The case of the prosecution is also that Jagdish, father of Pooja has hatched conspiracy along with accused to kill her, but no challan was put up against him. The theory of conspiracy has not been proved against the accused at all. There is no corroborative material produced on record by the prosecution, except the disclosure statements made by the accused, which do not inspire confidence to convict her.

29. In view of our aforesaid discussion, the prosecution has failed to prove the case against the appellant beyond reasonable doubt. The appeal is allowed. The appellant is acquitted. She is directed to be released forthwith.

(Rajiv Sharma)
Judge

25.3.2019
vs

(Kuldip Singh)
Judge

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