

STATE OF RAJASTHAN

v

KASHI RAM

NOVEMBER 7, 2006

[B.P. SINGH AND TARUN CHATTERJEE, JJ.]

*Indian Evidence Act. 1872;*

*Section 106—deceased last seen together—Burden to prove what happened thereafter—Held, on the accused.*

*Section 106—circumstantial evidence—facts specially within the knowledge of the accused—burden of proof—Held, is not shifted but failure to adduce any explanation for the same is to be considered as an additional link in the chain of circumstances.*

*Extra judicial/confession—conviction based upon—Held, is a weak piece of evidence but to base a conviction on the same, it must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made.*

**The respondent was accused of committing murder of his wife and two daughters and disappearing thereafter. The trial court on an exhaustive consideration of the evidence on record came to the conclusion that the prosecution had successfully established that the deceased was last seen alive in her house by her brother. It also held that the prosecution had proved that the two doors of the house were found locked till the recovery of the bodies when the concerned prosecution witnesses entered the house after removing the door. The trial court relied on the recoveries made of the weapon of offence namely - the waist chord, and the keys of the two locks, from possession of the respondent pursuant to his statement recorded under Section 27 of the Evidence Act. Reliance was also placed by the trial court on the extra-judicial confession said to have been made by the respondent. The trial court also found that till he was arrested, the whereabouts of the respondent were not known. Even after his arrest he did not offer any explanation and even at the trial only denied the allegations made against him without offering any explanation**

**A** for his absence during the crucial days. Relying on these circumstances, and finding that the deaths were homicidal as proved by the medical evidence on record, the trial court came to the conclusion that the only inference that could be drawn from the proved facts and circumstances was that the respondent after committing the murder of his wife and his two daughters locked the house and disappeared from the scene. He was arrested two weeks later but failed to give any explanation in defence. Accordingly, the trial court finding the respondent guilty of the offence punishable under Section 302 IPC sentenced him to death having regard to the heinous nature of the crime committed by him in which three innocent lives were lost including two infants. In appeal, the High Court reversed the findings of fact recorded by the trial court and acquitted the respondent. High Court held that the circumstantial evidence relied upon by the prosecution was not strong enough to sustain the conviction of the respondent. Accordingly, the High Court allowed the appeals preferred by the respondent and declined the death reference made by the trial court for confirmation of the sentence of death. Hence this appeal.

**D** It was contended by the appellant-State that the High Court committed an apparent error in ignoring the evidence on record which disclosed that the respondent was last seen with the deceased. The disappearance of the respondent was rather suspicious because if at all only he could explain what happened thereafter. He, therefore, submitted that in the facts of the case, in the absence of any explanation offered by the respondent, an inference must be drawn against the respondent which itself is a serious incriminating circumstance against him.

**F** It was contended by the respondent that no reliance can be placed on the statement of the brother of the deceased regarding his having seen the deceased last in the company of the respondent as the aforesaid statement was not specifically put to the accused when he was examined under Section 313 Cr.P.C. It was also contended that, though the circumstance regarding his having been seen on the evening by his neighbour was put to the respondent accused during his examination under Section 313 Cr.P.C the name of the particular witness was not mentioned as the person who had also seen him on that day with the deceased.

**G** Allowing the appeal, the Court

**H** HELD 1.1 Extra-judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra-judicial

confession, the confessional evidence must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made. In view of the fact that, there was really no reason for the respondent to make a confessional statement before the prosecution witnesses who were neither known to the respondent nor held the office of a sarpanch or a ward member or even acquainted with him nor any reasons have been shown that he had reasons to confide in them, their evidence was rendered unnatural and unbelievable and must be rejected. [510-B, C, D]

2.1 The person last seen with the deceased 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. The provision 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 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, provided the missing link in the chain of circumstances which proved his guilt beyond reasonable doubt. [514-B, C, D, E, F]

*Joseph s/o Kooveli Poulo v. State of Kerala*, [2000] 5 SCC 197; *Ram Gulam Chaudhary and Ors. v. State of Bihar*, [2001] 8 SCC 311; *Sahadevan alias Sagadevan v. State represented by Inspector of Police, Chennai*, [2003] 1 SCC 534 and *In Re. Naina Mohd.*, AIR 1960 Madras, 218, relied upon.

*P. Mani v. State of Tamil Nadu*, [2006] 3 SCC 161, referred to.

2.2. 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. [514-C]

2.3 The incriminating circumstances that the accused was not on

**A** cordial terms with his wife - the deceased, he was last seen in his house with his wife, his house was found locked till it was opened when the dead bodies of his wife and daughters were found, and the medical evidence established that they had been strangulated to death, the cause of death being asphyxia, the respondent was not traceable in the course of investigation, and for the first time he appeared on the scene when he was arrested and even after his

**B** arrest he did not offer any explanation as to when he parted company with his wife nor did he offer any exculpatory explanation to discharge the burden under Section 106 of the Evidence Act, are clearly established, and thus form a complete chain and are consistent with no other hypothesis except the guilt of the accused respondent. [516-D, E, F, G; 517-A, B]

**C** 3.1 The statement of the prosecution witness, the brother of the deceased, regarding his having seen the deceased last in the company of the respondent - a statement to the same effect made in the course of investigation - was not even challenged in his cross-examination. It cannot therefore, be said that he had introduced this fact for the first time at the trial. Since this witness had

**D** deposed in the presence of the respondent and was exhaustively cross-examined by the counsel appearing for him no prejudice has been caused to him even though the aforesaid statement was not specifically put to the accused when he was examined under Section 313 Cr.P.C. [515-B, A]

**E** 3.2 The fact that the incriminating circumstance was put to the accused and his response was a bald denial no prejudice was caused to him even if the name of the witness who made the statement was not mentioned. [516-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 745 of 2000.

**F** From the final Judgment and Order dated 21.12.1999 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Murder Ref. 02/1999.

Naveen Kumar, Mukul Sood, S. Gupta, Shikha Tandon and Aruneshwar Gupta for the Appellant.

**G** Doongar Singh, V.J. Francis, A. Radhakrishnan, Anupam Mishra and P.I. Jose for the Respondent.

The Judgment of the Court was delivered by

**H** **B.P. SINGH, J.** This appeal by special leave has been preferred by the

State of Rajasthan against the common judgment and order of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No.622 of 1999, D.B. Jail Appeal No.619 of 1999 and D.B. Criminal Murder Reference No.2 of 1999 whereby the High Court by its impugned judgment and order dated December 21, 1999 allowed the appeals preferred by the respondent and declined the murder reference made by the learned Additional Sessions Judge for confirmation of the sentence of death. We notice that both the criminal appeals were preferred by the respondent herein, one from jail and the other presented through an advocate. The judgment and order of the Special Additional District and Sessions Judge (Women Atrocities), Sri Ganganagar in Sessions Trial No.39 of 1998 dated September 29, 1999 sentencing the petitioner to death under Section 302 I.P.C. was set aside.

The respondent herein Kashi Ram was married to Kalawati (deceased) about seven years before the occurrence. They were blessed with two children, Suman (deceased) and Guddi (deceased) aged two and half years and two and half months respectively. It appears from the record that the relationship between them was not cordial and there were incidents of the respondent assaulting Kalawati and treating her with cruelty. A Panchayat had also been convened at the house of the father of the respondent, however, the respondent's father pleaded helplessness since the appellant did not pay any heed to his advice. The result was that Kalawati stayed with her parents for about two years. Later Harchand, father of the respondent assured her parents that Kashi Ram had improved in his behaviour and, therefore, Kalawati should be sent to her matrimonial home. On being convinced, Kalawati was sent to her matrimonial home.

The case of the prosecution is that after some time Kashi Ram again started mis-behaving in the same old manner and used to beat his wife Kalawati off and on.

The case of the prosecution is that the respondent killed his wife and two daughters on the night intervening 3rd and 4th February, 1998 and thereafter disappeared. The first information regarding the incident was given by Inder Bhan, PW-6, a cousin of the father of Kalawati (deceased). On the basis of information given by him, a formal first information report was drawn up and a case registered against the respondent under Section 302 IPC. The first information was recorded at 10.15 a.m. on February 6, 1998 in which the informant stated as follows:-

A The respondent was married to Kalawati (deceased) about seven years before the occurrence. Kalawati used to come to her parents off and on in the first six months after marriage but it appears that there were frequent quarrels between Kalawati and her husband (respondent herein) who used to complain that she had brought a camel instead of a buffalo at the time of marriage. He also complained that she was dark complexioned. Things came to such a stage that Kalawati had to return to her parents. On the very next day, the informant along with the father of the deceased and others went to the father of the respondent namely, - Harchand and complained to him about the behaviour of his son. Harchand pleaded helplessness in the matter and advised them to do whatever they liked, since his son was not under his control. In these circumstances, Kalawati continued to stay with her parents for about one and half or two years. One day, Harchand, father of the respondent came to the house of the father of Kalawati and assured him that his son Kashi Ram (respondent herein) had improved in his behaviour and assured him that she will be cared for in her matrimonial home. The father of the deceased and other relatives after getting assurance from the brothers of Harchand decided to send her back to her matrimonial home. The respondent along with his father Harchand came and the deceased accompanied them to her matrimonial home. The respondent and his wife Kalawati (deceased) were blessed with two daughters who were two and half years and two and half months old at the time of occurrence. The respondent and Kalawati (deceased) resided with the respondent's parents for some time but about two months before the occurrence the respondent shifted to a rented premises in Prem Nagar.

F Milk used to be sent to Kalawati's house from her father's house, and her brother Mamraj, PW-2, used to supply milk everyday. On February 3, 1998 as usual Mamraj, PW-2 had gone to supply milk. His sister Kalawati told him not to bring milk in future. On the next day, that is on February 4, 1998 Mamraj PW-2 noticed that the entrance of the house of the respondent was locked. On enquiry, he was told by a neighbour Gurdayal Singh that he had seen the respondent and his family members till last evening but he did not know where they had gone thereafter.

H In the evening at about 5.30 p.m. the mother of Kalawati (PW-5) came to the informant and told him that she suspected something, and therefore, requested him to find out the whereabouts of the respondent and his family members. The informant went on a motor-cycle along with one Sheo Narayan (PW-1) to search for the respondent and his family members. On the way, he

met Kashmiri Lal and another son of Harchand on the bridge. On enquiry they told him that the respondent along with his family members may have gone to the Suratgarh fair and that they were also waiting for them. In the meantime, Harchand father of the respondent also came. The informant asked them to come to the house of the respondent rather than wait on the bridge. Accordingly, they all proceeded towards the house of the respondent on their respective vehicles, but as soon as they came near Prem Nagar, the two brothers of accused disappeared from his sight. At about 7.30 p.m. the informant came to the house of the respondent and found the main entrance locked. The doors were got opened and inside the house they found the dead body of Kalawati lying on a cot and dead bodies of the two children lying on another cot. It was, therefore, alleged by the informant that the respondent had committed the murder of his wife and two daughters and had thereafter disappeared.

Dr. Prem Arora, PW-10 conducted the post mortem examination of the dead bodies of Kalawati and her two children. On Kalawati he found the following injuries:-

“Mark of ligature present on neck 2cm in width and knot present on back of neck, ligature mark is situated just below the thyroid cartilage and encircling neck completely. Base of mark is pale, dry and hard. One cut section tissue below ligature mark is dry and white. No external injury present anywhere in body”.

Death in his opinion was caused by asphyxia. In his opinion, death of the two children was also caused by asphyxia. In his opinion, deaths had occurred 48 to 72 hrs. before the post-mortem examination which was conducted on February 7, 1998.

At the trial several witnesses were examined to prove the case of the prosecution. PW-1, Sheo Narayan, is the person with whom PW-6 Inder Bhan had gone to search for the respondent and his family members on the request of the mother of the deceased namely - PW-5, Jai Kauri. He fully supported the case of the prosecution to the effect that he had gone with the father of the respondent and Inder Bhan, PW-5 to the house of the respondent in the evening of February 6, 1998 and after opening the main gate and removing the door from the entrance of the house they entered the house and found the dead bodies lying on two cots inside the house.

PW-5, Jai Kauri, mother of the deceased has also deposed to the effect

A that her daughter was treated with cruelty by the respondent. She has narrated the incidents which took place before deceased Kalawati was sent back with her husband to her matrimonial home. She has deposed that milk used to be delivered by her son Mamraj, PW-2 at the house of the respondent and on February 3, 1998 when Mamraj had gone to deliver milk Kalawati had asked him not to bring milk thereafter since milk was to be supplied by her husband's elder brother. She claimed that she had gone to the house of the deceased on Thursday, i.e. on February 5, 1998, but finding the doors locked she had returned. She had made enquiries from the neighbours, who told her that they had seen them on Tuesday (February 3, 1998) evening but not thereafter. She had again gone to her daughter's house on Friday and it was again found locked. She grew suspicion and, therefore, requested Inder Bhan, PW-6 and Sheo Narayan, PW-1 to search for them.

D PW-2, Mamraj, a brother of deceased Kalawati has also narrated the incidents relating to the cruel treatment meted out to Kalawati by her husband. According to this witness, he used to deliver milk at the house of the respondent, since the brother of Kashi Ram, who used to supply milk to them, was ill. On February 3, 1998 when he had gone to supply milk he was told by the respondent and his sister Kalawati (deceased) to stop further supply of milk. On February 4, 1998 while returning home he had found the house of Kalawati (deceased) locked. On the next day, when his mother PW-5, went to the house of Kalawati, she also found the house locked. The neighbour had informed them that Kalawati and Kashi Ram were last seen on Tuesday evening (3.2.1998). When his mother again went to the house of Kalawati on February 6, 1998 she found the house locked and, therefore, she had requested Inder Bhan and Sheo Narayan to search for them. This witness has been cross-examined at length but nothing has been elicited in his cross-examination which may discredit him. The assertion of this witness that he has been told by deceased Kalawati and her husband (respondent herein) on February 3, 1998 to stop supply of milk, went unchallenged in his cross-examination. Only with a view to assure ourselves that this witness had also said so in his statement recorded under Section 161 CrI.P.C. we read his police statement and we find that he had said so even in the course of investigation. We have looked into the case diary not as substantive evidence but only to verify whether PW-2 had omitted to say so in the course of investigation. The substantive evidence of PW-2 that he had seen his sister and the respondent on February 3, 1998, has gone unchallenged.

H The prosecution examined two witnesses Dinesh Kumar, PW-3 and Om



Prakash, PW-4 to prove that the respondent had made an extra-judicial confession before these two witnesses on February 17, 1998. The prosecution also relied on the evidence of recovery made at the instance of the respondent pursuant to which a waist chord and keys of the locks put on the two doors were recovered from the possession of the respondent on February 18, 1998. The prosecution also examined several other witnesses to prove its case.

The trial court on an exhaustive consideration of the evidence on record came to the conclusion that the prosecution had successfully established that the deceased Kalawati was last seen alive in her house on February 3, 1998 and that Mamraj, PW-2 had seen her as well as her husband in their rented premises. It also held that the prosecution had proved that the two doors of the house were found locked on the morning of February 4, 1998 and that the concerned prosecution witnesses entered the house after removing the door on February 6, 1998. The house was also found locked on February 4, 1998 when the mother of deceased Kalawati had gone to her house. The trial court relied on the recoveries made of the weapon of offence namely - the waist chord, and the keys of the two locks, from possession of the respondent pursuant to his statement recorded under Section 27 of the Evidence Act. Reliance was also placed by the trial court on the extra-judicial confession said to have been made by the respondent before PWs 3 and 4. The trial court also found that the house was found locked on February 4, 1998, and till he was arrested on February 17, 1998, the whereabouts of the respondent were not known. Even after his arrest he did not offer any explanation and even at the trial only denied the allegations made against him without offering any explanation for his absence during the crucial days. Relying on these circumstances, and finding that the deaths were homicidal as proved by the medical evidence on record, the trial court came to the conclusion that the only inference that could be drawn from the proved facts and circumstances was that the respondent after committing the murder of his wife and his two daughters locked the house and disappeared from the scene. He was arrested two weeks later but failed to give any explanation in defence. Accordingly, the trial court finding the respondent guilty of the offence punishable under Section 302 IPC sentenced him to death having regard to the heinous nature of the crime committed by him in which three innocent lives were lost including two infants.

On appeal, the High Court reversed the findings of fact recorded by the trial court and acquitted the respondent. Before adverting to the other incriminating circumstances we may at the threshold notice two of them

A namely - the circumstance that the respondent made an extra-judicial confession before PWs 3 and 4, and the circumstance that recoveries were made pursuant to his statement made in the course of investigation of the waist chord used for strangulating Kalawati (deceased) and the keys of the locks which were put on the two doors of his house. The High Court has disbelieved the evidence led by the prosecution to prove these circumstances and we find ourselves in agreement with the High Court. There was really no reason for the respondent to make a confessional statement before PWs 3 and 4. There was nothing to show that he had reasons to confide in them. The evidence appeared to be unnatural and unbelievable. The High Court observed that evidence of extra-judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra-judicial confession, the confessional evidence must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made. The High Court found that PW-3 Dinesh Kumar was known to Mamraj, the brother of deceased Kalawati. PW-3 was neither a Sarpanch nor a ward member and, therefore, there was no reason for the respondent to repose faith in him to seek his protection. Similarly, PW-4 admitted that he was not even acquainted with the accused. Having regard to these facts and circumstances, we agree with the High Court that the case of the prosecution that the respondent had made an extra-judicial confession before PWs-3 and 4 must be rejected.

E So far as the recoveries are concerned, the High Court has not accepted the same since PW-6, Inder Bhan admitted in the course of his cross-examination that the waist chord which had been used for strangulating Kalawati was recovered much earlier from the scene of offence by the police itself. Moreover, the waist chord as well as the keys were not even produced before the Court. It may be that some other witnesses have stated that the waist chord was not recovered from the spot, but in the facts of the case the benefit of doubt must go to the accused.

G The most important circumstance that the respondent was last seen with the deceased on February 3, 1998 whereafter he had disappeared and his house was found locked and that he had offered no explanation whatsoever, was disposed of by the High Court in one short paragraph observing that there was nothing unusual if the accused was seen in the company of his own family members in his house. On such reasoning, the High Court held that the circumstantial evidence relied upon by the prosecution was not strong enough to sustain the conviction of the respondent. Accordingly, the High

Court allowed the appeals preferred by the respondent and declined the death reference made by the trial court for confirmation of the sentence of death. A

We have been taken through the entire evidence on record. The medical evidence on record clearly proves that the death of Kalawati and her two minor daughters was homicidal caused by strangulation. The cause of death was asphyxia. It is also established on record that the deceased was last seen alive in the company of respondent on February 3, 1998 at her house. The prosecution has also successfully established the fact that the house was found locked on the morning of February 4, 1998 and continued to remain locked till it was opened after removing the door on February 6, 1998. Throughout this period the respondent was not to be seen and he was arrested only on February 17, 1998. Neither at the time of his arrest, nor in the course of investigation, nor before the Court, has the respondent given any explanation in defence. He has not even furnished any explanation as to where he was between February 4, 1998 and February 17, 1998. It has been argued on behalf of the prosecution that this most important circumstance has been completely ignored by the High Court. The case of the prosecution substantially rested on this circumstance. The respondent was obliged to furnish some explanation in defence. He could have explained where he was during this period, or he could have furnished any other explanation to prove his innocence. Counsel for the respondent on the other hand, contends that though the respondent furnished no explanation whatsoever, there is evidence on record to prove that he had gone to attend Suratgarh fair with his family members. A question, therefore, arises whether the presumption under Section 106 of the Evidence Act may be drawn against the respondent in the facts of the case, since the facts as to where he was during the relevant period and when he parted company with the deceased, were matters within his special knowledge the burden of proving which was cast upon him by law. D E F

Learned counsel for the State strenuously urged before us that the High Court committed an apparent error in ignoring the evidence on record which disclosed that the respondent was last seen with deceased Kalawati in his house on February 3, 1998 late in the afternoon. Thereafter, he was not seen by anyone and his house was found locked in the morning. The evidence of PW-5, mother of the deceased Kalawati, and her brother Mamraj, PW-2, clearly prove the fact that the house was found locked on February 4, 1998. The evidence also establishes beyond doubt that the doors were removed and dead bodies of the deceased Kalawati and her daughters were found inside the house on February 6, 1998. In these circumstances, the disappearance G H

A of the respondent was rather suspicious because if at all only he could explain what happened thereafter. He, therefore, submitted that in the facts of the case, in the absence of any explanation offered by the respondent, an inference must be drawn against the respondent which itself is a serious incriminating circumstance against him. He has supported his argument relying upon several decisions of this Court.

B

Before advertng to the decisions relied upon by the counsel for the State, we may observe that whether an inference ought to be drawn under Section 106 IPC is a question which must be determined by reference to proved fact. It is ultimately a matter of appreciation of evidence and, therefore, each case must rest on its own facts.

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In *Joseph s/o Kooveli Poulo v. State of Kerala*, [2000] 5 SCC 197; the facts were that the deceased was an employee of a school. The appellant representing himself to be the husband of one of the sisters of Gracy, the deceased, went to the St. Mary's Convent where she was employed and on a false pretext that her mother was ill and had been admitted to a hospital took her away with the permission of the Sister-in-charge of the Convent, PW-5. The case of the prosecution was that later the appellant not only raped her and robbed her of her ornaments, but also laid her on the rail track to be run over by a passing train. It was also found as a fact that the deceased was last seen alive only in his company, and that on information furnished by the appellant in the course of investigation, the jewels of the deceased, which were sold to PW-11 by the appellant, were seized. There was clear evidence to prove that those jewels were worn by the deceased at the time when she left the Convent with the appellant. When questioned under Section 313 Cr.P.C., the appellant did not even attempt to explain or clarify the incriminating circumstances inculpatng and connecting him with the crime by his adamant attitude of total denial of everything. In the background of such facts, the Court held:-

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“Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see *State of Maharashtra v. Suresh*, [2000] 1 SCC 471). That missing link to connect

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the accused appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of Gracy".

In *Ram Gulam Chaudhary and Ors. v. State of Bihar*, [2001] 8 SCC 311; the facts proved at the trial were that the deceased boy was brutally assaulted by the appellants. When one of them declared that the boy was still alive and he should be killed, a chhura blow was inflicted on his chest. Thereafter, the appellants carried away the boy who was not seen alive thereafter. The appellants gave no explanation as to what they did after they took away the boy. The question arose whether in such facts Section 106 of the Evidence Act applied. This Court held:

"In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be 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 like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference".

In *Sahadevan alias Sagadevan v. State represented by Inspector of Police, Chennai*, [2003] Vol. 1 SCC 534, the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of March 5, 1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of March 6, 1985. In the background of such facts the Court observed:

"Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which

A they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever”.

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 categoric 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 Mohd.*, AIR (1960) Madras, 218.

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.

Counsel for the respondent submitted that no reliance can be placed on the evidence of Mamraj, PW-2, the brother of the deceased, who stated that when he had gone to the house of the deceased on February 3, 1998 he had seen his sister as well as the respondent in the house and he was asked not to bring milk thereafter since alternative arrangement had been made. This statement of Mamraj, PW-2 was not even challenged in his cross-examination. Even in the course of investigation Mamraj, PW-2 had made a statement to

the same effect. It cannot therefore, be said that he had introduced this fact for the first time at the trial. Learned counsel submitted that the aforesaid statement of PW-2 was not specifically put to the accused when he was examined under Section 313 Cr.P.C.. That may be so, but in the facts of the case, we find that by such omission no prejudice has been caused to the appellants. Mamraj, PW-2 had deposed in his presence and was exhaustively cross-examined by counsel appearing for him. The statement of Mamraj, PW-2 regarding his having seen the deceased last in the company of the respondent was not even challenged in his cross-examination. Moreover, from the trend of the answers given by the respondent in his examination under Section 313 Cr.P.C., it appears that the respondent made only a bald denial of all the incriminating circumstances put to him, and had no explanation to offer.

It was then submitted on behalf of the respondent that the neighbours who had stated that they had seen the respondent and deceased Kalawati on the evening of February 3, 1998 were not examined by the prosecution. In view of the evidence of PW-2, Mamraj who proved this fact, the non-examination of those witnesses does not have any adverse effect on the case of the prosecution. It was also submitted that there is no evidence to show that the respondent No.1 was absconding after the occurrence. From the facts proved on record it is established that on February 4, 1998 the house was found locked. The same was the position on February 5, 1998. when PW-5, Jai Kauri, mother of deceased Kalawati visited the house of her daughter and found the house locked. Finding the house also locked on February 6, 1998, she became anxious to know about the welfare of her daughter and, therefore, she went to the informant, PW-6 and requested him to find out the whereabouts of her daughter Kalawati and members of her family. These facts clearly prove that while the doors of the house of the respondent were locked, he was nowhere on the scene. The fact that PWs-1 and 6 went in search of the respondent and the deceased and their children, and were informed by the respondent's brother that he may have gone to Suratgarh fair, also points in the same direction. Obviously, therefore he was absconding after commission of the offence. In fact, he never appeared on the scene till his arrest on February 17, 1998. There is, therefore, abundant evidence to prove that the respondent was traceless between February 4, 1998 and February 17, 1998. Reliance placed by counsel on the decision of this Court in *P. Mani v. State of Tamil Nadu*, [2006] 3 SCC 161, is of no avail in the facts and circumstances of this case.

It was lastly submitted that in his examination under Section 313 Cr.P.C.

A though the circumstance regarding his having been seen on the evening by his neighbours on February 3, 1998 was put to the respondent accused, the name of PW-2 was not mentioned as a person who had also seen him on that day with the deceased. The fact remains that the incriminating circumstance was put to the accused and his response was a bald denial. We do not find that any prejudice was caused to the respondent by not mentioning the name of PW-2, when the incriminating circumstance appearing against him was put to him.

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D In the facts and circumstances of the case, we are satisfied that this appeal ought to be allowed. The High Court completely brushed aside the most incriminating circumstance which was proved by the prosecution namely - that the respondent was last seen with his wife on February 3, 1998 whereafter the house was found locked and the respondent was not to be seen anywhere. He continued to be traceless till February 17, 1998 when he was arrested. The respondent did not offer any explanation in defence and his response to all the incriminating circumstances put to him in his examination under Section 313 Cr.P.C. was a bald denial.

The following incriminating circumstances are clearly established against the respondent :

- E (a) That he was not on cordial terms with his wife Kalawati.
- (b) On the evening of February 3, 1998 he was seen in his house with his wife Kalawati (deceased).
- (c) The house of the respondent was found locked on the 4th, 5th and 6th February, 1998.
- F (d) On February 6, 1998 when his house was opened the dead bodies of his wife and daughters were found, and the medical evidence established that they had been strangled to death, the cause of death being asphyxia.
- G (e) Since the respondent was not traceable the mother of the deceased PW-5, Jai Kauri became anxious to know about their whereabouts and requested PWs-1 and 6 to search for them.
- (f) In the course of investigation the respondent never appeared at any stage, and for the first time he appeared on the scene when he was arrested on February 17, 1998.
- H



(g) Even after his arrest he did not offer any explanation as to when he parted company with his wife nor did he offer any exculpatory explanation to discharge the burden under Section 106 of the Evidence Act.

These incriminating circumstances in our view form a complete chain and are consistent with no other hypothesis except the guilt of the accused respondent. If he was with his wife on the evening of February 3, 1998, he should have explained how and when he parted company and/or offered some plausible explanation exculpating him. The respondent has not pleaded alibi, nor has he given an explanation which may support his innocence.

We are aware of the fact that we are dealing with an appeal against acquittal, but having appreciated the evidence on record we have come to the conclusion that the High Court has completely given a go bye to the most important incriminating circumstance which appeared against the accused respondent. In the facts and circumstances of the case the most incriminating circumstance about the respondent being seen with his wife on February 3, 1998 and disappearing thereafter, and his failure to offer any explanation when arrested, has been completely ignored by the High Court by simply recording the finding that there was nothing unusual in the husband being found with the wife in his house. The High Court failed to appreciate the other co-related circumstances namely - his disappearance thereafter locking of the house, and his failure to offer a satisfactory explanation in defence. Thus, the High Court has ignored important clinching evidence which proved the case of the prosecution. Therefore, interference with the judgment of the High Court is warranted.

In the result, we allow this appeal and set aside the impugned judgment and order of the High Court. On the question of sentence, having regard to the fact that the offence took place in February 1998 and the respondent was acquitted by the High Court, we sentence him to imprisonment for life. The respondent may have been released pursuant to order of this Court dated 1.9.2000 issuing bailable warrant of arrest. His bail bonds are cancelled and he is directed to be taken into custody forthwith to serve out his sentence.

B.K.

Appeal allowed.