



2026:CGHC:910-DB
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 825 of 2018

[Arising out of judgment dated 31.05.2018 passed in Sessions Trial
No.127/2017 by the 8th Additional Sessions Judge Bilaspur,
Chhattisgarh.]

1. Parmendra Gendle S/o Late Lakhan Gendle, aged about 38 years;
 2. Khel Kumar Gendle S/o Late Lakhan Gendle, aged about 42 years;
- Both are R/o Village Udgan, P. S. Bilha, District Bilaspur, Chhattisgarh.

... Appellants

versus

- State of Chhattisgarh through the Police Station Bilha, District Bilaspur, Chhattisgarh.

... Respondent

For Appellants :- Mr. Anchal Kumar Matre, Advocate.

For State-Respondent :- Vivek Mishra, Panel Lawyer.

Division Bench

Hon'ble Shri Justice Sanjay K. Agrawal &
Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment On Board

(07.01.2026)

Sanjay K. Agrawal, J

1. Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence dated 31.05.2018 passed by the 8th Additional Sessions Judge, Bilaspur, Chhattisgarh in Sessions

Trial No.127/2017 by which the appellants herein namely Parmendra Gendle (A-1) and Khel Kumar Gendle (A-2) have been convicted for offence under Sections 302/34 of the IPC and sentenced thereunder to suffer imprisonment for life with fine of ₹500/- each; in default of payment of fine, they have to undergo rigorous imprisonment for two months.

Prosecution story:-

2. The case projected by the prosecution and accepted by the trial Court is that on 14.06.2017 at about 4:00 pm at village Udgan, Police Station Bilha, District Bilaspur, Chhattisgarh, two appellants herein along with 4 other acquitted co-accused persons, in furtherance of their common intention, poured kerosene oil over the body of Manisha Gendle, wife of A-1 herein, and set her ablaze by which she suffered grievous injuries and died. Against the said act of the appellants merg intimations were registered vide Exs.P/32 & P/47. FIR was registered vide Ex.P/36. Nazari naksha and crime details form were prepared vide Exs.P/10 & P/12, respectively. Inquest proceedings (Ex.P/23) were conducted and the dead body of the deceased was subjected to postmortem. As per postmortem report (Ex.P/43) proved by Dr. Dharmendra Kumar (PW-26), cause of death was cardio respiratory failure due to shock as a result of burn injury.

Wheels of investigation started running and the appellant was arrested. Bedsheets and burnt wood were seized from the spot vide Ex.P/5. Other articles were also seized. Seized articles were sent for chemical analysis to FSL and as per FSL report (Ex.P/47) on the bedsheets and hairs & skin of the deceased kerosene oil was found.

3. After due investigation, appellants herein were charge-sheeted for the aforesaid offences and the case was committed to the Court of Sessions for trial in accordance with law. The appellants / accused persons abjured their guilt and entered into defence.
4. In order to bring home the offence, prosecution has examined as many as 28 witnesses and exhibited 47 documents whereas, defence, in support of its case, has not examined any witness, but exhibited 1 document. The statements of the appellants / accused persons were recorded under Section 313 of the CrPC in which they denied the circumstances appearing against them in the evidence brought on record by the prosecution, pleaded innocence and false implication.
5. The learned trial Court after appreciating the oral and documentary evidence available on record, convicted the appellants / accused persons for the offences as mentioned in the

opening paragraph of the judgment, against which the instant appeal has been preferred by the appellants herein questioning the impugned judgment of conviction and order of sentence.

Submission of the Parties:-

6. Mr. Anchal Kumar Matre, learned counsel for the appellants, would submit that the trial Court is absolutely unjustified in invoking Section 106 of the Indian Evidence Act, 1872 (for brevity "IEA") as it is the case of the prosecution that the incident was witnessed by Shradha Gendle (PW-1) and Kumari Sweta Gendle (PW-2) and, therefore, Section 106 of the IEA would not have been made applicable in the instant case though the trial Court has prosecuted, which was not the case of the prosecution itself on the date of filing of charge-sheet. Furthermore, FSL is of no use to the prosecution as the impugned articles were seized on 27.07.2017 & 26.08.2017 and the same was received to the State Forensic Science Laboratory on 22.09.2017 and no evidence has been brought on record by the prosecution that the said seized articles were kept in the safe custody from the date of seizure of articles i.e. 27.07.2017 and 26.08.2017 till the date of the articles were received to the State Forensic Laboratory i.e. 22.09.2017, therefore, chances of fabrication and manipulation cannot be ruled out. He would further submit that only on the basis of motive, the appellants

could not be convicted that too for offence under Section 302 in light of decision of the Supreme Court in the matter of **Sampath Kumar v. Inspector of Police, Krishnagiri**¹. Thus, the appeal deserves to be allowed and the appellants are entitled for acquittal on the basis of benefit of doubt.

7. Mr. Vivek Mishra, learned State counsel, would oppose the prayer made by learned counsel for the appellant and submit that the trial Court has rightly invoked Section 106 of the IEA to base the conviction of the appellants for the offences in question and also rightly relied upon the other incriminating circumstances. Therefore, the appeal deserves to be dismissed.
8. We have heard learned counsel for the parties, considered their rival submission made herein above and gone through the records precisely.

Discussion & Analysis:-

9. The first question, as to whether the death of the deceased was homicidal in nature, has been answered by the trial Court in affirmative relying upon the postmortem report (Ex.P/29) proved by Dr. Dharmendra Kumar (PW-26) and the same has not been questioned by the defence, which, in our considered opinion, is a correct finding of fact based on evidence available on record and

¹ (2012) 4 SCC 124

the same is neither perverse nor contrary to the record. Accordingly, we hereby affirm the finding of the trial Court holding that the death of the deceased was homicidal in nature.

10. Now, the next question is, whether the appellants are authors of the crime in question?

11. The case of the prosecution is based upon the testimony of eye witnesses Shradha Gendle (PW-1) and Kumari Sweta Gendle (PW-2), daughters of A-1 and the deceased. However, they have turned hostile and though they have been permitted to ask leading question, but still they have not supported the case of the prosecution. The trial Court has clearly recorded a finding that PW-1 & PW-2 have turned hostile and not supported the case of the prosecution and thereafter held that the following circumstances have been found established against the appellants herein:-

- (i) The deceased died in the house of the appellants which is only within their special knowledge;
- (ii) Motive of offence is established as she (deceased) opposed the idea of appellants herein to sell 98 *dismil* of land, and therefore, they have the enmity with the deceased and enmity of the deceased with any other person is not established;
- (iv) On the seized articles kerosene oil was found in the FSL report (Ex.P/47).

12. We will consider the following circumstance one by one on which the conviction of the appellant is based:-

- (i) Section 106 of the IEA invoked by the trial Court;
- (ii) On the seized articles kerosene oil was found in the FSL report (Ex.P/47) &
- (iii) Motive of offence has been found established by the trial Court.

Section 106 of the IEA:-

13. Admittedly, the prosecution came with a specific case that it is case of eye witness and the incident was witnessed by Shradha Gendle (PW-1) and Kumari Sweta Gendle (PW-2). Statements of PW-1 under Sections 164 & 161 of the CrPC were recorded vide Exs.P/1 & P/2, respectively, and statements of PW-2 under Sections 164 & 161 of the CrPC were recorded vide Exs.P/3 & P/4, respectively. As per their statements recorded under Sections 161 & 164 of the CrPC they have seen the incident. However, they have not supported the case of the prosecution and they were declared hostile by the prosecution and trial Court permitted the prosecution to ask the leading question, but despite that they have not supported the case of the prosecution. Then the trial Court has held that since Manisha Gendle died in the house of the appellants herein (A-1 & A-2), the incident was within the special knowledge of the appellants and they have

failed to explain in their statements recorded under Section 313 of the CrPC as to how and under what circumstances Manisha Gendle died in their house and, therefore, the trial Court invoked the Section 106 of the IEA and proceeded to base the conviction of the appellants.

14. Now, the question would be, whether Section 106 of IEA would be applicable or not?

15. Section 106 of the Indian Evidence Act, 1872, states as under: -

“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.”

16. This provision states that when any fact is specially within the knowledge of any person the burden of proving that fact is upon him. This is an exception to the general rule contained in Section 101, namely, that the burden is on the person who asserts a fact. The principle underlying Section 106 which is an exception to the general rule governing burden of proof applies only to such matters of defence which are supposed to be especially within the knowledge of the other side. To invoke Section 106 of the Evidence Act, the main point to be established by prosecution is that the accused persons were in such a position that they could have special knowledge of the fact concerned.

17. The question involved in the present case as to whether, in the case of eye witness Section 106 of the IEA would apply, came to be considered by the Supreme Court in the matter of **Murlidhar and others v. State of Rajasthan**², in which their Lordships of the Supreme Court have held that the rule in Section 106 of the IEA would apply when the facts are “especially within the knowledge of the accused” and it would be impossible or at any rate disproportionately difficult for the prosecution to establish such facts “especially within the knowledge of the accused”. Their Lordships have further held that when the prosecution did not proceed on the footing that the facts were especially within the knowledge of the accused then principle in Section 106 of the IEA could not apply and observed as under:-

“22. In our judgment, the High Court was not justified in relying on and applying the rule of burden of proof under Section 106 of the Evidence Act to the case. As pointed out in *Mir Mohammad Omar* (supra) and *Shambu Nath Mehra* (supra), the rule in Section 106 of the Evidence Act would apply when the facts are “especially within the knowledge of the accused” and it would be impossible, or at any rate disproportionately difficult for the prosecution to establish such facts, “especially within the knowledge of the accused”. In the present case, the prosecution did not proceed on the footing that the facts were especially within the knowledge of the accused and, therefore, the principle in

² AIR 2005 SC 2345

Section 106 could not apply. On the other hand, the prosecution proceeded on the footing that there were eye-witnesses to the fact of murder. The prosecution took upon itself the burden of examining Babulal (PW-5) as eyewitness. Testimony of Ram Ratan (PW-7) and Isro (PW-10) shows that their agricultural land was situated in a close distance from the house of Khema Ram. As rightly pointed out by the High Court, it is highly unlikely and improbable that their kith and kin Ramlal would have been given beating resulting in his death by the accused-appellants while keeping lights of their house on and door of the room opened. It is also unlikely that the accused-appellants would have taken the risk of dragging Ramlal to the house of Khema Ram, which was situated in the vicinity of agricultural land and well of Isro (PW-10), the father of Ramlal.

23. In the result, we are of the view that the prosecution having put forward a case that, what transpired after Ramlal was dragged away by the assailants was within the knowledge of witnesses, utterly failed in proving the said facts. Once this is established, it was not open for the High Court to have fallen back on the rule of burden of proof under Section 106 of the Evidence Act. In fact, as we notice, it was nowhere the case of the prosecution that Section 106 of the Evidence Act applied to the facts on record. The High Court seems to have brought it out on its own, but without any justification. We are, therefore, of the view that the conviction of Murlidhar, Chhaju Ram and Babu Lal s/o Chhaju Ram under Section 364, IPC is justified and liable to be confirmed, but their conviction under Section 302/34, IPC cannot be sustained and they are liable to be acquitted of the said charges.”

18. Recently, in the matter of **Balvir Singh v. State of Uttarakhand**³, their Lordships of the Supreme Court, reviewing its earlier decision on the point of Section 106 of the Evidence Act, have held that Section 106 has to be applied in criminal cases with care and caution and held in paragraphs 41 to 48 as under:-

“41. Thus, from the aforesaid decisions of this Court, it is evident that the court should apply Section 106 of the Evidence Act in criminal cases with care and caution. It cannot be said that it has no application to criminal cases. The ordinary rule which applies to criminal trials in this country that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the provisions contained in Section 106 of the Evidence Act.

42. Section 106 cannot be invoked to make up the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. This section cannot be used to support a conviction unless the prosecution has discharged the onus by proving all the elements necessary to establish the offence. It does not absolve the prosecution from the duty of proving that a crime was committed even though it is a matter specifically within the knowledge of the accused and it does not throw the burden of the accused to show that no crime was committed. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

³ 2023 SCC OnLine SC 1261

43. Section 106 obviously refers to cases where the guilt of the accused is established on the evidence produced by the prosecution unless the accused is able to prove some other facts especially within his knowledge which would render the evidence of the prosecution nugatory. If in such a situation, the accused gives an explanation which may be reasonably true in the proved circumstances, the accused gets the benefit of reasonable doubt though he may not be able to prove beyond reasonable doubt the truth of the explanation. But if the accused in such a case does not give any explanation at all or gives a false or unacceptable explanation, this by itself is a circumstance which may well turn the scale against him. In the language of Prof. Glanville Williams:

“All that the shifting of the evidential burden does at the final stage of the case is to allow the jury (Court) to take into account the silence of the accused or the absence of satisfactory explanation appearing from his evidence.”

44. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again,

when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para 527 negative averments and para 528 —“require affirmative counter-evidence” at page 438 and foil, of Kenny's outlines of Criminal Law, 17th Edn. 1958.

45. But Section 106 has no application to cases where the fact in question having regard to its nature is such as to be capable of being known not only by the accused but also by others if they happened to be present when it took place. From the illustrations appended to the section, it is clear that an intention not apparent from the character and circumstances of the act must be established as especially within the knowledge of the person whose act is in question and the fact that a person found travelling without a ticket was possessed of a ticket at a stage prior in point of time to his being found without one, must be especially within the knowledge of the traveler himself: see Section 106 of the Indian Evidence Act, illustrations (a) and (b).

46. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence which if believed by the court would convince them of the accused's guilt beyond a reasonable doubt, the

accused is in a position where he should go forward with counter-vailing evidence if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might have been rebutted. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution (Wharton's Criminal Evidence, 12th Edn. 1955, Vol. 1, Ch. 2 p. 37 and foil). *Leland v. State* reported in 343 U.S. 790=96 L.Ed. 1302, *Raffel v. U.S.* reported in 271 U.S. 294=70 L.Ed. 1054.

WHAT IS "PRIMA FACIE CASE" IN THE CONTEXT OF SECTION 106 OF THE EVIDENCE ACT?

47. The Latin expression prima facie means "at first sight", "at first view", or "based on first impression". According, to Webster's Third International Dictionary (1961 Edn.), "prima facie case" means a case established by "prima facie evidence" which in turn means "evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted". In both civil and criminal law, the term is used to denote that, upon initial examination, a legal claim has sufficient evidence to proceed to trial or judgment. In most legal proceedings, one party (typ-

ically, the plaintiff or the prosecutor) has a burden of proof, which requires them to present prima facie evidence for each element of the charges against the defendant. If they cannot present prima facie evidence, or if an opposing party introduces contradictory evidence, the initial claim may be dismissed without any need for a response by other parties.

48. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding death."

19. Coming to the facts of the present in light of principles of law laid down by their Lordships of the Supreme Court in the above-cited judgments, it is quite vivid that in the instant case, the prosecution proceeded on the footing of two eye witnesses Shradha Gendle (PW-1) & Kumari Sweta Gendle (PW-2), daughters of the deceased and A-1, who have seen the incident. The prosecution took upon itself the burden of examining PW-1 & PW-2, as eye witnesses, however, they have turned hostile and not supported the case of the prosecution and, therefore, the prosecution has utterly failed in proving the facts of the eye witness and it was not open for the trial Court to have fallen back on the rule of burden of proof under Section 106 of the IEA as it was not the case of the prosecution at any stage that Section 106 of the IEA would be applicable.

20. In that view of the matter, since it is the case of the prosecution that the incident was witnessed by PW-1 & PW-2, the prosecution could not have fallen back on the rule of burden of proof under Section 106 of the IEA. As such, the trial Court has wrongly held that the alleged assault by the appellants herein was within the special knowledge of the appellant only and in light of the decisions rendered by the Supreme Court in the matters of **Balvir Singh** (supra) and **Murlidhar** (supra) the trial Court has wrongly invoked Section 106 of the IEA to base the conviction of the appellants herein, therefore, we hereby reject the finding of the trial Court in this regard.

Forensic Evidence:-

21. To base the conviction of the appellants, the trial Court has relied upon the FSL report (Ex.P/47) in which on the seized articles i.e. bedsheets, hairs and skin of the deceased kerosene oil was found. However, it is pertinent to mention here that the bedsheets were seized on 27.07.2017 vide Ex.P/5 and hairs and skin of the deceased was seized on 26.08.2017 vide Ex.P/30, which were sent for chemical analysis and the same was received to the State Forensic Science Laboratory on 22.09.2017 and no evidence has been brought on record by the prosecution that the said seized articles were kept in the safe custody from the date of seizure of

articles i.e. 27.07.2017 and 26.08.2017 till the date of the articles were received to the State Forensic Laboratory i.e. 22.09.2017, therefore, chances of fabrication and manipulation cannot be ruled out. As such, the FSL report is of no use to the prosecution and even otherwise, only on the basis of forensic evidence the appellants could not be convicted that too for offence under Section 302 of the IPC when the main incriminating circumstance of Section 106 of the IEA is not established.

Motive:-

22. Last incriminating circumstance, which has been found proved by the trial Court is motive. It is the case of the prosecution that the idea of selling 98 *dismil* land refuted by the deceased, therefore, the appellants have enmity with the deceased and also motive to commit murder which was accepted by the trial Court and the trial Court proceeded to base the conviction of the appellants on the basis of motive of offence. However, in serious offences like murder, the Court always searches for the motive and the motive always plays an important role. Motive is of great importance in cases based on circumstantial evidence, and if there is absence of such motive, it is always a circumstance in favour of the accused and against the prosecution. Motive, however adequate, cannot sustain a criminal charge in absence of clear and cogent evidence

pointing to the guilt of the accused and motive alone can hardly be a ground for conviction in absence of any other circumstantial evidence. [See: **Sampath Kumar** (supra)]. As such, it is well settled that the motive is a weak piece of evidence and in absence of other incriminating circumstances, the appellants could not be convicted that too for offence under Section 302 of the IPC, therefore, the appellants are entitled for acquittal on the basis of benefit of doubt.

Conclusion:-

23. In view of the aforesaid discussion and analysis, the appeal is allowed and the impugned judgment of conviction and order of sentence dated 31.05.2018 passed by the trial Court convicting and sentencing the appellants for the offences in question, is hereby set aside and the appellants are entitled for acquittal on the basis of principle of benefit of doubt as the prosecution has also failed to complete the chain of circumstances in light of decision of the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**⁴. Since the appellants are stated to be on bail, they need not surrender. However, their bail bonds shall remain in operation for a period of six months as per provisions contained in Section 437-A of the CrPC.

⁴ (1984) 4 SCC 116

24. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned, forthwith for information and necessary action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge

Ankit